

STATE OF NEW YORK

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Twentieth Extraordinary Session

SENATE - ASSEMBLY

November 17, 2009

IN SENATE -- Introduced by Sens. DILAN, FUSCHILLO, SMITH, SCHNEIDERMAN, HASSELL-THOMPSON, C. JOHNSON, SQUADRON, GOLDEN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weisenberg, Silver, Lentol, Gantt, Canestrari, Farrell, Koon, Mayersohn, Gottfried, Destito, Gunther, Colton, Abbate, Alessi, Arroyo, Barron, Benedetto, Benjamin, Brodsky, Brook-Krasny, Carrozza, Christensen, Clark, Cook, Crespo, Cusick, Cymbrowitz, DelMonte, DenDekker, Dinowitz, Eddington, Englebright, Espaillat, Fields, Gabryszak, Galef, Gianaris, Glick, Gordon, Hevesi, Hoyt, Jaffee, Kellner, Lancman, Latimer, Lavine, Lifton, Lupardo, Magnarelli, Maisel, Meng, M. Miller, Millman, Nolan, Ortiz, Paulin, Peralta, Perry, Pfeffer, Powell, Pretlow, Ramos, Rosenthal, Scarborough, Schimel, Schroeder, Skartados, Spano, Stirpe, Sweeney, Thiele, Titone, Weinstein, Zebrowski) -- (at request of the Governor) -- read once and referred to the Committee on Transportation

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

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

- 1 Section 1. Subdivision 2-a of section 1192 of the vehicle and traffic
- 2 law, as amended by chapter 746 of the laws of 2006, is amended to read
- 3 as follows:
- 4 2-a. Aggravated driving while intoxicated[~~;~~ ~~per se~~]. **(a) Per se.** No
- 5 person shall operate a motor vehicle while such person has .18 of one
- 6 per centum or more by weight of alcohol in such person's blood as shown
- 7 by chemical analysis of such person's blood, breath, urine or saliva

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

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- 1 made pursuant to the provisions of section eleven hundred ninety-four of
- 2 this article.
- 3 **(b) With a child. No person shall operate a motor vehicle in violation**

4 of subdivision two, three, four or four-a of this section while a child
5 who is fifteen years of age or less is a passenger in such motor vehi-
6 cle.

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

10 12. Driving while intoxicated or while ability impaired by drugs--ser-
11 ious physical injury or death or child in the vehicle. (a) In every
12 case where a person is charged with a violation of subdivision two,
13 two-a, three, four or four-a of this section, the law enforcement offi-
14 cer alleging such charge shall make a clear notation in the "Description
15 of Violation" section of a simplified traffic information (i) if, aris-
16 ing out of the same incident, someone other than the person charged was
17 killed or suffered serious physical injury as defined in section 10.00
18 of the penal law; such notation shall be in the form of a "D" if someone
19 other than the person charged was killed and such notation shall be in
20 the form of a "S.P.I." if someone other than the person charged
21 suffered serious physical injury; ~~provided~~ and (ii) if a child aged
22 fifteen years or less was present in the vehicle of the person charged
23 with a violation of subdivision two, two-a, three, four or four-a of
24 this section; such notation shall be in the form of "C.I.V.". Provided,
25 however, that the failure to make such ~~notation~~ notations shall in no
26 way affect a charge for a violation of subdivision two, two-a, three,
27 four or four-a of this section.

28 (b) Where a law enforcement officer alleges a violation of paragraph
29 (b) of subdivision two-a of this section and the operator of the vehicle
30 is a parent, guardian, or custodian of, or other person legally respon-
31 sible for, a child aged fifteen years or less who is a passenger in such
32 vehicle, then the officer shall report or cause a report to be made, if
33 applicable, in accordance with title six of article six of the social
34 services law.

35 § 3. Paragraphs (b) and (c) of subdivision 1 of section 1193 of the
36 vehicle and traffic law, paragraph (b) as amended by chapter 669 of the
37 laws of 2007, paragraph (c) as amended by chapter 732 of the laws of
38 2006 and subparagraphs (i) and (ii) of paragraph (c) as amended by chap-
39 ter 345 of the laws of 2007, are amended to read as follows:

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

54 (ii) In addition to the imposition of any fine or period of imprison-
55 ment set forth in this paragraph, ~~the court shall require that any~~
56 ~~person who has been convicted of a violation of subdivision two-a of~~

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1 ~~section eleven hundred ninety-two of this article and who is sentenced~~

2 ~~to a period of probation, to install and maintain, as a condition of~~
3 ~~such probation and in accordance with section eleven hundred ninety-~~
4 ~~eight of this article, a functioning ignition interlock device in any~~
5 ~~vehicle owned or operated by the person during the term of such~~
6 ~~probation; provided,] the court shall also sentence such person~~
7 ~~convicted of a violation of subdivision two, two-a or three of section~~
8 ~~eleven hundred ninety-two of this article to a period of probation or~~
9 ~~conditional discharge, as a condition of which it shall order such~~
10 ~~person to install and maintain, in accordance with the provisions of~~
11 ~~section eleven hundred ninety-eight of this article, an ignition inter-~~
12 ~~lock device in any motor vehicle owned or operated by such person during~~
13 ~~the term of such probation or conditional discharge imposed for such~~
14 ~~violation of section eleven hundred ninety-two of this article and in no~~
15 ~~event for less than six months. Provided,~~ however, the court may not
16 authorize the operation of a motor vehicle by any person whose license
17 or privilege to operate a motor vehicle has been revoked pursuant to the
18 provisions of this section.

19 (c) Felony offenses. (i) A person who operates a vehicle (A) in
20 violation of subdivision two, two-a, three, four or four-a of section
21 eleven hundred ninety-two of this article after having been convicted of
22 a violation of subdivision two, two-a, three, four or four-a of such
23 section or of vehicular assault in the second or first degree, as
24 defined, respectively, in sections 120.03 and 120.04 and aggravated
25 vehicular assault as defined in section 120.04-a of the penal law or of
26 vehicular manslaughter in the second or first degree, as defined,
27 respectively, in sections 125.12 and 125.13 and aggravated vehicular
28 homicide as defined in section 125.14 of such law, within the preceding
29 ten years, or (B) in violation of paragraph (b) of subdivision two-a of
30 section eleven hundred ninety-two of this article shall be guilty of a
31 class E felony, and shall be punished by a fine of not less than one
32 thousand dollars nor more than five thousand dollars or by a period of
33 imprisonment as provided in the penal law, or by both such fine and
34 imprisonment.

35 (ii) A person who operates a vehicle in violation of subdivision two,
36 two-a, three, four or four-a of section eleven hundred ninety-two of
37 this article after having been convicted of a violation of subdivision
38 two, two-a, three, four or four-a of such section or of vehicular
39 assault in the second or first degree, as defined, respectively, in
40 sections 120.03 and 120.04 and aggravated vehicular assault as defined
41 in section 120.04-a of the penal law or of vehicular manslaughter in the
42 second or first degree, as defined, respectively, in sections 125.12 and
43 125.13 and aggravated vehicular homicide as defined in section 125.14 of
44 such law, twice within the preceding ten years, shall be guilty of a
45 class D felony, and shall be punished by a fine of not less than two
46 thousand dollars nor more than ten thousand dollars or by a period of
47 imprisonment as provided in the penal law, or by both such fine and
48 imprisonment.

49 (iii) In addition to the imposition of any fine or period of imprison-
50 ment set forth in this paragraph, the court shall also sentence such
51 person convicted of a violation of subdivision two, two-a or three of
52 section eleven hundred ninety-two of this article to a period of
53 probation or conditional discharge, as a condition of which it shall
54 order such person to install and maintain, in accordance with the
55 provisions of section eleven hundred ninety-eight of this article, an
56 ignition interlock device in any motor vehicle owned or operated by such

1 person during the term of such probation or conditional discharge
2 imposed for such violation of section eleven hundred ninety-two of this
3 article and in no event for a period of less than six months. Provided,
4 however, the court may not authorize the operation of a motor vehicle by
5 any person whose license or privilege to operate a motor vehicle has
6 been revoked pursuant to the provisions of this section.

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

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

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

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

23 2. Requirements. (a) In addition to any other penalties prescribed by
24 law, the court ~~may~~ shall require that any person who has been
25 convicted of a violation of subdivision two, two-a or three of section
26 eleven hundred ninety-two of this article, or any crime defined by this
27 chapter or the penal law of which an alcohol-related violation of any
28 provision of section eleven hundred ninety-two of this article is an
29 essential element, ~~[and who has been sentenced to a period of~~
30 ~~probation,]~~ to install and maintain, as a condition of probation or
31 conditional discharge, a functioning ignition interlock device in
32 accordance with the provisions of this section and, as applicable, in
33 accordance with the provisions of subdivisions one and one-a of section
34 eleven hundred ninety-three of this article; provided, however, the
35 court may not authorize the operation of a motor vehicle by any person
36 whose license or privilege to operate a motor vehicle has been revoked
37 except as provided herein. For any such individual subject to a
38 sentence of probation, installation and maintenance of such ignition
39 interlock device shall be a condition of probation.

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

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

52 3. Conditions. (a) Notwithstanding any other provision of law, the
53 commissioner may grant a post-revocation conditional license, as set
54 forth in paragraph (b) of this subdivision, to a person who has been
55 convicted of a violation of subdivision two, two-a or three of section

1 a period of probation or conditional discharge, provided the person has
2 satisfied the minimum period of license revocation established by law
3 and the commissioner has been notified that such person may operate only
4 a motor vehicle equipped with a functioning ignition interlock device.
5 No such request shall be made nor shall such a license be granted,
6 however, if such person has been found by a court to have committed a
7 violation of section five hundred eleven of this chapter during the
8 license revocation period or deemed by a court to have violated any
9 condition of probation or conditional discharge set forth by the court
10 relating to the operation of a motor vehicle or the consumption of alco-
11 hol. In exercising discretion relating to the issuance of a post-revoca-
12 tion conditional license pursuant to this subdivision, the commissioner
13 shall not deny such issuance based solely upon the number of convictions
14 for violations of any subdivision of section eleven hundred ninety-two
15 of this article committed by such person within the ten years prior to
16 application for such license. Upon the termination of the period of
17 probation or conditional discharge set by the court, the person may
18 apply to the commissioner for restoration of a license or privilege to
19 operate a motor vehicle in accordance with this chapter.

20 (b) Notwithstanding any inconsistent provision of this chapter, a
21 post-revocation conditional license granted pursuant to paragraph (a) of
22 this subdivision shall be valid only for use by the holder thereof, (1)
23 enroute to and from the holder's place of employment, (2) if the hold-
24 er's employment requires the operation of a motor vehicle then during
25 the hours thereof, (3) enroute to and from a class or course at an
26 accredited school, college or university or at a state approved institu-
27 tion of vocational or technical training, (4) to and from court ordered
28 probation activities, (5) to and from a motor vehicle office for the
29 transaction of business relating to such license, (6) for a three hour
30 consecutive daytime period, chosen by the department, on a day during
31 which the participant is not engaged in usual employment or vocation,
32 (7) enroute to and from a medical examination or treatment as part of a
33 necessary medical treatment for such participant or member of the
34 participant's household, as evidenced by a written statement to that
35 effect from a licensed medical practitioner, (8) enroute to and from a
36 class or an activity which is an authorized part of the alcohol and drug
37 rehabilitation program and at which participant's attendance is
38 required, and (9) enroute to and from a place, including a school, at
39 which a child or children of the participant are cared for on a regular
40 basis and which is necessary for the participant to maintain such
41 participant's employment or enrollment at an accredited school, college
42 or university or at a state approved institution of vocational or tech-
43 nical training.

44 (c) The post-revocation conditional license described in this subdivi-
45 sion may be revoked by the commissioner for sufficient cause including
46 but not limited to, failure to comply with the terms of the condition of
47 probation or conditional discharge set forth by the court, conviction of
48 any traffic offense other than one involving parking, stopping or stand-
49 ing or conviction of any alcohol or drug related offense, misdemeanor or
50 felony or failure to install or maintain a court ordered ignition inter-
51 lock device.

52 (d) Nothing contained herein shall prohibit the court from requiring,
53 as a condition of probation or conditional discharge, the installation

52 device only in the course and scope of such employment and only if the
53 employer has been notified that the person's driving privilege has been
54 restricted under the provisions of this article or the penal law and the
55 person whose privilege has been so restricted has provided the court and
56 probation department with written documentation indicating the employer
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1 has knowledge of the restriction imposed and has granted permission for
2 the person to operate the employer's vehicle without the device only for
3 business purposes. The person shall notify the court and the probation
4 department of his or her intention to so operate the employer's vehicle.
5 A motor vehicle owned by a business entity which business entity is all
6 or partly owned or controlled by a person otherwise subject to the
7 provisions of this article or the penal law is not a motor vehicle owned
8 by the employer for purposes of the exemption provided in this subdivi-
9 sion. The provisions of this subdivision shall apply only to the opera-
10 tion of such vehicle in the scope of such employment.

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

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

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

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

25 (e) In addition to any other provisions of law, any person convicted
26 of a violation of paragraph (a), (b) ~~(c)~~, (c), **or (d)** of this subdivi-
27 sion shall be guilty of a **Class A** misdemeanor.

28 § 6. Subdivision 2 of section 1198-a of the vehicle and traffic law,
29 as added by chapter 732 of the laws of 2006 and subparagraph (ii) of
30 paragraph (b) as amended by chapter 345 of the laws of 2007, is amended
31 to read as follows:

32 2. Procedure. (a) Mandatory screening; when authorized. Upon the
33 arraignment of, or at the discretion of the court, prior to the sentenc-
34 ing of any person who (i) at arraignment is charged with or prior to
35 sentencing convicted of a first violation of operating a motor vehicle
36 in violation of subdivision one, two or three **or paragraph (b) of subdivi-**
37 **vision two-a** of section eleven hundred ninety-two of this article while
38 such person has less than .15 of one per centum by weight of alcohol in
39 the person's blood as shown by chemical analysis of such person's blood,
40 breath, urine or saliva made pursuant to the provisions of section elev-
41 en hundred ninety-four of this article, or in violation of subdivision
42 four of such section eleven hundred ninety-two, or (ii) has refused to
43 submit to a chemical test pursuant to section eleven hundred ninety-four
44 of this article, the court shall order such person to submit to screen-
45 ing for alcohol or substance abuse and dependency using a standardized
46 written screening instrument developed by the office of alcoholism and
47 substance abuse services, to be administered by an alcohol or substance
48 abuse professional.

49 (b) Mandatory assessment; when authorized. The court shall order a

50 defendant to undergo a formal alcohol or substance abuse and dependency
51 assessment by an alcohol or substance abuse professional or a licensed
52 agency: (i) when the screening required by paragraph (a) of this subdi-
53 vision indicates that a defendant is abusing or dependent upon alcohol
54 or drugs; (ii) following the arraignment of any person charged with or,
55 at the discretion of the court, prior to the sentencing of any person
56 convicted of a violation of subdivision one, two, three, four or four-a
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1 of section eleven hundred ninety-two of this article after having been
2 convicted of a violation of any subdivision of section eleven hundred
3 ninety-two of this article or of vehicular assault in the second or
4 first degree, as defined, respectively, in sections 120.03 and 120.04 of
5 the penal law or of aggravated vehicular assault, as defined in section
6 120.04-a of the penal law or of vehicular manslaughter in the second or
7 first degree, as defined, respectively, in sections 125.12 and 125.13 of
8 the penal law or of aggravated vehicular homicide, as defined in section
9 125.14 of such law within the preceding five years or after having been
10 convicted of a violation of any subdivision of such section or of vehic-
11 ular assault in the second or first degree, as defined, respectively, in
12 sections 120.03 and 120.04 of the penal law or of aggravated vehicular
13 assault, as defined in section 120.04-a of the penal law or of vehicular
14 manslaughter in the second or first degree, as defined, respectively, in
15 sections 125.12 and 125.13 of the penal law or of aggravated vehicular
16 homicide, as defined in section 125.14 of such law, two or more times
17 within the preceding ten years; or (iii) following the arraignment of
18 any person charged with or, at the discretion of the court, prior to the
19 sentencing of any person convicted of operating a motor vehicle in
20 violation of subdivision two or three or paragraph (b) of subdivision
21 two-a of section eleven hundred ninety-two of this article while such
22 person has .15 of one per centum or more by weight of alcohol in the
23 person's blood as shown by a chemical analysis of such person's blood,
24 breath, urine or saliva made pursuant to the provisions of section elev-
25 en hundred ninety-four of this article or in violation of paragraph (a)
26 of subdivision two-a of section eleven hundred ninety-two of this arti-
27 cle.

28 (c) Mandatory assessment; procedure. The assessment ordered by a court
29 pursuant to this section shall be performed by an alcohol or substance
30 abuse professional or a licensed agency which shall forward the results,
31 in writing, to the court and to the defendant or his or her counsel
32 within thirty days of the date of such order.

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

35 § 120.04 Vehicular assault in the first degree.

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

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

44 (2) commits such crime while knowing or having reason to know that:

45 (a) his or her license or his or her privilege of operating a motor
46 vehicle in another state or his or her privilege of obtaining a license
47 to operate a motor vehicle in another state is suspended or revoked and

48 such suspension or revocation is based upon a conviction in such other
49 state for an offense which would, if committed in this state, constitute
50 a violation of any of the provisions of section eleven hundred ninety-
51 two of the vehicle and traffic law; or (b) his or her license or his or
52 her privilege of operating a motor vehicle in the state or his or her
53 privilege of obtaining a license issued by the commissioner of motor
54 vehicles is suspended or revoked and such suspension or revocation is
55 based upon either a refusal to submit to a chemical test pursuant to
56 section eleven hundred ninety-four of the vehicle and traffic law or
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1 following a conviction for a violation of any of the provisions of
2 section eleven hundred ninety-two of the vehicle and traffic law;
3 (3) has previously been convicted of violating any of the provisions
4 of section eleven hundred ninety-two of the vehicle and traffic law
5 within the preceding ten years, provided that, for the purposes of this
6 subdivision, a conviction in any other state or jurisdiction for an
7 offense which, if committed in this state, would constitute a violation
8 of section eleven hundred ninety-two of the vehicle and traffic law,
9 shall be treated as a violation of such law~~[.]~~;

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

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

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

20 If it is established that the person operating such motor vehicle
21 caused such serious physical injury or injuries while unlawfully intoxi-
22 cated or impaired by the use of alcohol or a drug, or by the combined
23 influence of drugs or of alcohol and any drug or drugs, then there shall
24 be a rebuttable presumption that, as a result of such intoxication or
25 impairment by the use of alcohol or a drug, or by the combined influence
26 of drugs or of alcohol and any drug or drugs, such person operated the
27 motor vehicle in a manner that caused such serious physical injury or
28 injuries, as required by this section and section 120.03 of this arti-
29 cle.

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

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

33 § 120.04-a Aggravated vehicular assault.

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

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

44 (2) commits such crimes while knowing or having reason to know that:

45 (a) his or her license or his or her privilege of operating a motor

46 vehicle in another state or his or her privilege of obtaining a license
47 to operate a motor vehicle in another state is suspended or revoked and
48 such suspension or revocation is based upon a conviction in such other
49 state for an offense which would, if committed in this state, constitute
50 a violation of any of the provisions of section eleven hundred ninety-
51 two of the vehicle and traffic law; or (b) his or her license or his or
52 her privilege of operating a motor vehicle in this state or his or her
53 privilege of obtaining a license issued by the commissioner of motor
54 vehicles is suspended or revoked and such suspension or revocation is
55 based upon either a refusal to submit to a chemical test pursuant to
56 section eleven hundred ninety-four of the vehicle and traffic law or
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1 following a conviction for a violation of any of the provisions of
2 section eleven hundred ninety-two of the vehicle and traffic law;
3 (3) has previously been convicted of violating any of the provisions
4 of section eleven hundred ninety-two of the vehicle and traffic law
5 within the preceding ten years, provided that, for the purposes of this
6 subdivision, a conviction in any other state or jurisdiction for an
7 offense which, if committed in this state, would constitute a violation
8 of section eleven hundred ninety-two of the vehicle and traffic law,
9 shall be treated as a violation of such law;
10 (4) causes serious physical injury to more than one other person; ~~or~~
11 (5) has previously been convicted of violating any provision of this
12 article or article one hundred twenty-five of this title involving the
13 operation of a motor vehicle, or was convicted in any other state or
14 jurisdiction of an offense involving the operation of a motor vehicle
15 which, if committed in this state, would constitute a violation of this
16 article or article one hundred twenty-five of this title~~;~~ or
17 (6) commits such crime while operating a motor vehicle while a child
18 who is fifteen years of age or less is a passenger in such motor vehicle
19 and causes serious physical injury to such child.

20 If it is established that the person operating such motor vehicle
21 caused such serious physical injury or injuries while unlawfully intoxi-
22 cated or impaired by the use of alcohol or a drug, or by the combined
23 influence of drugs or of alcohol and any drug or drugs, then there shall
24 be a rebuttable presumption that, as a result of such intoxication or
25 impairment by the use of alcohol or a drug, or by the combined influence
26 of drugs or of alcohol and any drug or drugs, such person operated the
27 motor vehicle in a manner that caused such serious physical injury or
28 injuries, as required by this section and section 120.03 of this arti-
29 cle.

30 Aggravated vehicular assault is a class C felony.

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

33 § 125.13 Vehicular manslaughter in the first degree.

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

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

42 (2) commits such crime while knowing or having reason to know that:

43 (a) his or her license or his or her privilege of operating a motor

44 vehicle in another state or his or her privilege of obtaining a license
45 to operate a motor vehicle in another state is suspended or revoked and
46 such suspension or revocation is based upon a conviction in such other
47 state for an offense which would, if committed in this state, constitute
48 a violation of any of the provisions of section eleven hundred ninety-
49 two of the vehicle and traffic law; or (b) his or her license or his or
50 her privilege of operating a motor vehicle in the state or his or her
51 privilege of obtaining a license issued by the commissioner of motor
52 vehicles is suspended or revoked and such suspension or revocation is
53 based upon either a refusal to submit to a chemical test pursuant to
54 section eleven hundred ninety-four of the vehicle and traffic law or
55 following a conviction for a violation of any of the provisions of
56 section eleven hundred ninety-two of the vehicle and traffic law;

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

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

9 (5) has previously been convicted of violating any provision of this
10 article or article one hundred twenty of this title involving the opera-
11 tion of a motor vehicle, or was convicted in any other state or juris-
12 diction of an offense involving the operation of a motor vehicle which,
13 if committed in this state, would constitute a violation of this article
14 or article one hundred twenty of this title~~[-]~~; or

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

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

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

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

30 § 125.14 Aggravated vehicular homicide.

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

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

41 (2) commits such crimes while knowing or having reason to know that:

42 (a) his or her license or his or her privilege of operating a motor
43 vehicle in another state or his or her privilege of obtaining a license
44 to operate a motor vehicle in another state is suspended or revoked and
45 such suspension or revocation is based upon a conviction in such other
46 state for an offense which would, if committed in this state, constitute
47 a violation of any of the provisions of section eleven hundred ninety-
48 two of the vehicle and traffic law; or (b) his or her license or his or
49 her privilege of operating a motor vehicle in this state or his or her
50 privilege of obtaining a license issued by the commissioner of motor
51 vehicles is suspended or revoked and such suspension or revocation is
52 based upon either a refusal to submit to a chemical test pursuant to
53 section eleven hundred ninety-four of the vehicle and traffic law or
54 following a conviction for a violation of any of the provisions of
55 section eleven hundred ninety-two of the vehicle and traffic law;

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

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

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

11 (6) has previously been convicted of violating any provision of this
12 article or article one hundred twenty of this title involving the opera-
13 tion of a motor vehicle, or was convicted in any other state or juris-
14 diction of an offense involving the operation of a motor vehicle which,
15 if committed in this state, would constitute a violation of this article
16 or article one hundred twenty of this title~~[-]~~; **or**

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

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

29 Aggravated vehicular homicide is a class B felony.

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

32 **15-a. Notwithstanding any other provision of law, where a person is**
33 **servng a sentence for a violation of section 120.03, 120.04, 120.04-a,**
34 **125.12, 125.13 or 125.14 of the penal law, or a felony as defined in**
35 **paragraph (c) of subdivision one of section eleven hundred ninety-three**
36 **of the vehicle and traffic law, if such person is released on parole or**
37 **conditional release the board shall require as a mandatory condition of**
38 **such release, that such person install and maintain, in accordance with**
39 **the provisions of section eleven hundred ninety-eight of the vehicle and**
40 **traffic law, an ignition interlock device in any motor vehicle owned or**

41 operated by such person during the term of such parole or conditional
42 release for such crime. Provided further, however, the board may not
43 otherwise authorize the operation of a motor vehicle by any person whose
44 license or privilege to operate a motor vehicle has been revoked pursu-
45 ant to the provisions of the vehicle and traffic law.

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

48 § 60.36 Authorized dispositions; driving while intoxicated offenses.
49 Where a court is imposing a sentence for a violation of subdivision
50 two, two-a, or three of section eleven hundred ninety-two of the vehicle
51 and traffic law pursuant to sections 65.00 or 65.05 of this title and,
52 as a condition of such sentence, orders the installation and maintenance
53 of an ignition interlock device, the court may impose any other penalty
54 authorized pursuant to section eleven hundred ninety-three of the vehi-
55 cle and traffic law.

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

3 § 60.21 Authorized dispositions; driving while intoxicated or aggravated
4 driving while intoxicated.
5 Notwithstanding paragraph (d) of subdivision two of section 60.01 of
6 this article, when a person is to be sentenced upon a conviction for a
7 violation of subdivision two, two-a or three of section eleven hundred
8 ninety-two of the vehicle and traffic law, the court may sentence such
9 person to a period of imprisonment authorized by article seventy of this
10 title and shall sentence such person to a period of probation or condi-
11 tional discharge in accordance with the provisions of section 65.00 of
12 this title and shall order the installation and maintenance of a func-
13 tioning ignition interlock device. Such period of probation or condi-
14 tional discharge shall run consecutively to any period of imprisonment
15 and shall commence immediately upon such person's release from imprison-
16 ment.

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

22 § 15. This act shall take effect on the thirtieth day after it shall
23 have become a law; provided that section five of this act and the amend-
24 ments made to subparagraph (ii) of paragraph (b) of subdivision 1 of
25 section 1193 of the vehicle and traffic law made by section three of
26 this act, except for those amendments concerning a violation of subdivi-
27 sion 2-a of section 1192 of the vehicle and traffic law, shall take
28 effect on the two hundred seventieth day after it shall have become a
29 law; provided, further, that this act shall not apply to any offense
30 committed before the date of enactment, and that section five of this
31 act shall apply only to individuals sentenced on or after the date such
32 section becomes effective; provided, further, that rules and regulations
33 may be issued in accordance with such sections prior to the effective
34 date; provided, further, that the amendments to section 1198 of the
35 vehicle and traffic law made by sections five and five-a of this act
36 shall not affect the repeal of such section and shall be deemed repealed
37 therewith.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S66008

SPONSOR: DILAN

TITLE OF BILL:

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

PURPOSE OF THE BILL:

This bill would create a new aggravated driving while intoxicated offense for a person who operates a vehicle while intoxicated by alcohol, impaired by drugs, or a combination of both while a child is a passenger in the vehicle, which would be a class E felony. In addition the bill requires that all individuals convicted of misdemeanor and felony DWI offenses to install and maintain an ignition interlock device.

SUMMARY OF PROVISIONS OF THE BILL:

Section 1 of the bill amends Vehicle & Traffic Law (VTL) § 1192(2-a) to add a new paragraph (b), creating the crime of aggravated driving while intoxicated with a child.

Section 2 of the bill amends VTL § 1192(12) to require a law enforcement officer to note when a child or person other than the offender has been killed or suffered serious physical injury; or when a child of fifteen years or under is present in the vehicle at the time of the arrest, and, when the operator of the vehicle is the parent, guardian, or custodian of such child, to make an appropriate report to the Department of Social Services.

Section 3 of the bill amends VTL § 1193(1)(b) and (c) to provide that aggravated driving while intoxicated with a child in violation of VTL § 1192(2-a)(b) with a child is a class E felony. Section 3 of the bill also requires that, in addition to any fine or period of imprisonment for a conviction of subdivisions two, two-a or three of VTL §1192, the court shall also sentence such person to probation or conditional discharge, a condition of which shall be the installation and maintenance of an ignition interlock device for a period of at least six months. Any person charged with aggravated driving while intoxicated with a child would be prohibited from receiving a reduced charge to a non-criminal violation.

Section 4 of the bill amends VTL § 1193(1) to require the Department of Probation and Correctional Alternatives to promulgate regulations for the monitoring of compliance by persons who are ordered to install and maintain an ignition interlock device, which shall provide counties with options on how to do such monitoring.

Section 5 of the bill amends VTL § 1198(5)(1),(2), (3)(4) and (5)(a) to require that a court order a person convicted of a violation VTL § 1192 (2), (2-a) or (3) install and maintain a ignition interlock device on any vehicle he or she owns or operates. This section also provides that the cost of the ignition interlock device shall be borne by the offender unless such offender is determined by the court to be financially unable to afford the cost. Further, the circumvention of such a device or the operation of a vehicle in which an ignition interlock device has not been installed is a class A misdemeanor.

Section 5-a of the bill amends VTL § 1198(8) and (9) to make various offenses arising out of non-compliance with interlock requirements and tampering with such devices a Class A misdemeanor.

Section 6 of the bill amends VTL § 1198-a(2) to provide for the screening and assessment for alcohol or substance abuse and dependency upon a charge of aggravated driving while intoxicated with a child in the second and first degrees.

Section 7 of the bill amends Penal Law § 120.04, vehicular assault in the first degree, a class D felony, to include a person who commits the crime of vehicular assault in the second degree and causes serious physical injury to a passenger who is a child fifteen years of age or less.

Section 8 of the bill amends Penal Law § 120.04, aggravated vehicular assault, a class C felony, to include a person who commits the crime of vehicular assault in the second degree and engages in reckless driving and causes serious physical injury to a passenger who is a child fifteen years of age or less.

Section 9 of the bill amends Penal Law § 125.13, vehicular manslaughter in the first degree, a class C felony, to include a person who commits the crime of vehicular manslaughter in the second degree and causes the death of a passenger who is a child fifteen years of age or less.

Section 10 of the bill amends Penal Law § 125.14, aggravated vehicular homicide, a class B felony, to include a person who commits the crime of vehicular manslaughter, engages in reckless driving and causes the death of a passenger who is a child fifteen years of age or less.

Section 11 of the bill amends Executive Law § 259-c to require a person who is released on parole or conditional release, following a conviction for Penal Law §§ 120.03, 120.04, 120.04-a, 125.12, 125.13, 125.14 or a conviction for aggravated driving while intoxicated with a child, to install and maintain an ignition interlock device as a condition of that release.

Section 12 of the bill would amend Penal Law § 60.36 to provide that when a court orders the installation and maintenance of an ignition interlock device for a violation of VTL § 1192(2)(2-a) or (3), it may also impose any other penalty authorized under VTL § 1193.

Section 13 of the bill would add a new section 60.21 to the Penal Law to authorize the imposition of any applicable period of imprisonment upon a conviction for a violation of subdivisions two, two-a or three of

section 1192 of the Vehicle and Traffic Law, including an indeterminate term of imprisonment of up to four years if the conviction is for a class E felony, as well as any allowable term of probation or conditional discharge and to provide that such sentences shall run consecutively. The addition of a new Penal Law §60.21 will ensure that persons convicted of driving while intoxicated and aggravated driving while intoxicated may be sentenced to the full range of penalties currently allowed for a misdemeanor or class E felony and must, additionally, be sentenced to a period of probation or conditional discharge in order to ensure the use and monitoring of ignition interlock devices.

Section 14 of the bill provides a severability clause.

Section 15 of the bill provides for an effective date within 30 days of enactment, provided however, that the amendments made by the bill concerning the ignition interlock device shall become effective 270 days after becoming law, and provided that the bill shall apply only to crimes committed after enactment, and to individuals sentenced after the effective date.

EXISTING LAW:

Current law provides penalties when a person who drives while intoxicated or while his or her ability is impaired by drugs or a combination of drugs and alcohol, however, an elevated penalty is not mandated when a child is a passenger in the vehicle.

STATEMENT IN SUPPORT:

While all persons who drive while intoxicated pose a danger to others, the person who knowingly chooses to drive drunk with children in the car has made a conscious decision to put those children at risk of harm or death. An adult can take steps to avoid riding with a drunk or impaired driver. But a child may not have that choice, particularly when the driver is a parent or guardian.

Currently a first DWI offense is a misdemeanor and may even be treated as a traffic infraction. This bill would make it a felony for an individual to drive while intoxicated or under the influence of drugs when a child fifteen years or younger is in the car. This bill would also prohibit a plea to a reduced, non-criminal charge for someone charged with DWI when there is a child is a passenger in the car. Finally, this bill will also require persons convicted of misdemeanor DWI offenses to install and maintain an ignition interlock device that will prevent such persons from driving under the influence of drugs or alcohol in the future. The use of such devices has proven an extraordinarily effective means of preventing recidivism by those who drive drunk.

BUDGET IMPLICATIONS:

This bill would not impose any costs on the State.

EFFECTIVE DATE:

This bill would be effective 30 days after enactment, provided however, that the amendments made by the bill concerning the ignition interlock device shall become effective 270 days after becoming law, and provided that the bill shall apply only to crimes committed after enactment, and to individuals sentenced after the effective date.