



**St. Thomas Aquinas College
Drug Free Schools and
Communities Act Program
Report**

2014

Introduction

In compliance with the Drug-Free Schools and Communities Act, St. Thomas Aquinas College (“College”) has implemented a program to prevent the illicit use of drugs and the abuse of alcohol by students and employees. The Program requires the College to distribute information annually to students and employees concerning the possession, use, or distribution of alcohol and illicit drugs at the College. This information includes the College’s standards of conduct relating to the unlawful possession, use, or distribution of illicit drugs and alcohol, health risks associated with the use of illicit drugs and alcohol abuse, resources for obtaining assistance with drug and alcohol abuse, and a summary of legal sanctions for violations of New York State and Federal law, as well as College disciplinary actions relating to the unlawful possession, use, or distribution of illicit drugs and alcohol. St. Thomas Aquinas College Drug Free Schools and Communities Act Program Report is sent annually in December to staff, faculty and students, and is distributed upon new hire or enrollment throughout the year.

The Drug-Free Schools and Communities Act Program is intended to supplement and not limit the provisions of the College’s Drug-Free Workplace policy applicable to College employees.

The Office of Student Development provides an overall coordination of the Drug-Free Schools and Communities Act Program; however, some services are the responsibility of other College departments and staff, including:

Alcohol and Drug Education: Counseling & Psychological Services (CAPS), Health Services, Student Activities, Residence Life, Human Resources Employee Assistance Program (EAP)

Counseling Referrals: Counseling & Psychological Services (CAPS), Human Resources

College Student Disciplinary Actions: Student Development, Residence Life staff

Employee Disciplinary Actions: Human Resources

Standards of Conduct

The following information outlines the College standards of conduct relating to the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on College property or as a part of College-sponsored activities:

College Student Abuse Use Policy:

In accordance with the Drug-Free Schools and Communities Act Amendments of 1989, St. Thomas Aquinas College has adopted and implemented programs and policies designed to prevent the unlawful possession, use or distribution of illicit drugs and alcohol by College community members on College Property or as part of any of its activities.

Alcoholic Beverages Policy - Federal law requires that in order for an institution of higher education to receive federal funds, it must adopt and implement a program to prevent the possession, use, or distribution of illegal or illicit drugs and alcohol by students and employees.

In keeping with the foregoing, all students are required to strictly adhere to the standards of conduct outlined below.

a) Alcoholic Beverages: In keeping with the laws of New York, college policy regarding alcoholic beverages is as follows:

- 1) It is illegal for any person under 21 years of age to possess alcoholic beverages or to attempt to purchase or to consume or transport any alcoholic beverage.
- 2) It is illegal for any person to sell or give alcoholic beverages of any kind to a minor.
- 3) It is illegal for any person to misrepresent his or her own age or the age of any other person to obtain alcoholic beverages.

For students and their guests of legal age, alcoholic beverages are confined to resident rooms with doors closed, or to a location designated and approved by the Office for Student Development. All individual students or guests in any student room must be of legal age (21 years or older) when alcohol is present.

Alcohol is prohibited in all public areas, including, without limitation, porches, lounges, stairs, lobbies, classrooms, hallways, and offices. In those situations in which exceptions are made, the college reserves the right to require additional procedures to ensure safety and responsible consumption.

Alcoholic beverages are not allowed in the Student Activities programs on campus unless during an event where all in attendance are of age and the sponsoring group has received the explicit written permission of the Vice President and Dean for Student Development.

b) Alcohol Containers and Quantities: This section regulates the amount of alcohol a student who is 21 or older may possess in our residence halls or while on college property.

The essential elements of that policy are as follows:

- 1) No kegs or beer balls, or the number of cases and/or bottles or cans of alcohol that equal the volume of these containers, are permitted in the residence halls or on college property.
- 2) No alcoholic punch/mix/concoction is permitted in the residence halls or on college property.
- 3) No student may possess more than one total unit in any combination of the following list of alcohol unit amounts:
 - One gallon of wine.
 - One liter of hard liquor or natural or distilled spirits used or intended for consumption.
 - One case of beer or malt products (24 12-ounce bottles or cans).
 - One case of wine coolers or similar alcoholic products (24 12-ounce bottles or cans).

Bulk amounts and common sources of alcohol are strictly prohibited for individual and campus organizations unless provided by a third-party vendor and approved by and registered with the Office for Student Development.

Examples of bulk amounts and common sources of alcohol are kegs and beer balls or jug wines. Alcohol used in violation of college policy will be confiscated. Empty alcohol containers and paraphernalia—including wine bottles, beer cans/bottles, liquor bottles of any size, shot glasses, beer bongs and funnels—are prohibited on college property, including those for decorative purposes.

The unlawful possession, use, sale, or distribution of illegal drugs or controlled substances is prohibited within the residence halls, on campus grounds, or at College-sponsored events. Drug paraphernalia is not permitted within the residence halls, on campus grounds, or at College-sponsored activities.

Drug Abuse Policy - The College also prohibits the use, possession, distribution, transfer or sale of any drug paraphernalia on College premises or while conducting College business. In addition, the College prohibits employees from reporting to work under the influence of, dispensing, possessing or using alcohol on College premises or while conducting College business except as permitted at specific College events.

Employee Substance Abuse Policy - The College prohibits the manufacture, distribution, dispensation, sale, purchase, or transfer of any controlled substance by its employees on College premises or while conducting College business. The College prohibits the unlawful possession or use of any controlled substance by its employees on College premises or while conducting College business. Employees may not report to work under the influence of an unauthorized controlled substance. Controlled substances include those drugs listed in the federal Controlled Substances Act.

The College also prohibits the use, possession, distribution, transfer or sale of any drug paraphernalia on College premises or while conducting College business. In addition, the College prohibits employees from reporting to work under the influence of, dispensing, possessing or using alcohol on College premises or while conducting College business except as permitted at specific College events.

Legal Sanctions

Local, state and federal laws prohibit the possession or use of, distribution of, manufacture of, or possession with intent to distribute a controlled substance or a counterfeit controlled substance.

Specific drugs, amounts, and penalties are described in the Controlled Substances Act, available online at <http://www.deadiversion.usdoj.gov/21cfr/21usc/>

These penalties include:

21 U.S.C.S. 862, Denial of Federal benefits, including student loans, grants, contracts, and professional commercial licenses. Persons convicted of illegal possession may be denied these benefits for up to one year for a first offense and up to five years for second and subsequent offenses. Persons convicted of drug trafficking may be denied these benefits for up to five years for a first offense and up to 10 years for a second offense. Upon a third or subsequent drug trafficking conviction, a person may be permanently ineligible for all Federal benefits.

The attached **Appendix A** which sets forth the legal sanctions under local, state or federal law for the unlawful possession or distribution of illicit drugs and alcohol. Please note that a student or employee who violates the College's policies relating to the possession or distribution of illicit drugs and alcohol is subject both to the College's sanctions as well as any applicable criminal sanctions provided by local, state or federal law.

Health Risks

The following provides information on the health risks associated with the abuse of alcohol and use of illicit drugs. The U.S. Department of Justice provides information on the effects of alcohol and commonly used drugs and can be referenced on the U.S. Department of Justice's website at <http://www.dea.gov/druginfo/factsheets.shtml>

Alcohol

Alcohol consumption causes a number of marked changes in behavior. Even a low amount can significantly impair the judgment and coordination required to drive a car safely, increasing the likelihood that the driver will be involved in an accident. Low to moderate amounts of alcohol also increase the incidence of a variety of aggressive acts, including spouse and child abuse. Moderate to high amounts of alcohol cause marked impairments in higher mental functions, severely altering a person's ability to learn and remember information. Very high amounts cause respiratory depression and death. If combined with other depressants of the central nervous system, much lower amounts of alcohol will produce the effects described here. Alcohol is an important dimension in sexual violence in that many perpetrators are drinking when they attack their victims or experience alcohol abuse problems.

Repeated use of alcohol can lead to dependence. Sudden cessation of alcohol intake is likely to produce withdrawal symptoms, including severe anxiety, tremors, hallucinations, and convulsions. Alcohol withdrawal can be life threatening. Long-term consumption of large quantities of alcohol, particularly combined with poor nutrition, can also lead to permanent damage to vital organs, such as the brain and the liver.

Based on language from the Mayo Clinic Consuming alcohol during pregnancy increases the risk that the child may be born with fetal alcohol syndrome. Problems that may be caused by fetal alcohol syndrome include physical deformities, mental retardation, learning disorders, vision difficulties and behavioral problems.

Because alcohol affects many organs in the body, long-term heavy drinking puts people at risk for developing serious health problems, some of which are described below.

Alcohol-Related Liver Disease: More than 2 million Americans suffer from alcohol-related liver disease. Some drinkers develop alcoholic hepatitis, or inflammation of the liver, as a result of long-term heavy drinking. Its symptoms include fever, jaundice (abnormal yellowing of the skin, eyeballs, and urine), and abdominal pain. Alcoholic hepatitis can cause death if drinking continues. If drinking stops, this condition often is reversible. About 10 to 20 percent of heavy drinkers develop alcoholic cirrhosis, or scarring of the liver. Alcoholic cirrhosis can cause death if drinking continues.

Heart Disease: Moderate drinking can have beneficial effects on the heart, especially among those at greatest risk for heart attacks, such as men over the age of 45 and women after menopause. But long term heavy drinking increases the risk for high blood pressure, heart disease, and some types of stroke.

Cancer: Long-term heavy drinking increases the risk of developing certain forms of cancer, especially cancer of the esophagus, mouth, throat, and voice box. Women are at slightly increased risk of developing breast cancer if they drink two or more drinks per day. Drinking may also increase the risk for developing cancer of the colon and rectum.

Pancreatitis: The pancreas helps to regulate the body's blood sugar levels by producing insulin. The pancreas also has a role in digesting ingested food. Long-term heavy drinking can lead to pancreatitis, or inflammation of the pancreas. This condition is associated with severe abdominal pain and weight loss and can be fatal.

Methamphetamine: Methamphetamine releases high levels of the neurotransmitter dopamine which stimulates brain cells enhancing mood and body movement. It also appears to have a neurotoxic effect damaging brain cells that contain dopamine and serotonin, another neurotransmitter. Over time, methamphetamine appears to cause reduced levels of dopamine, which can result in symptoms like those of Parkinson's disease, a severe movement disorder. Users may become addicted quickly and use it with increasing frequency and in increasing doses. The central nervous system (CNS) actions that result from taking even small amounts of methamphetamine include increased wakefulness, increased physical activity, decreased appetite, increased respiration, hyperthermia, and euphoria. Other CNS effects include irritability, insomnia, confusion, tremors, convulsions, anxiety, paranoia, and aggressiveness.

Hyperthermia and convulsions can result in death. Methamphetamine causes increased heart rate and blood pressure and can cause irreversible damage to blood vessels in the brain, producing strokes. Other effects of methamphetamine include respiratory problems, irregular heartbeat, and extreme anorexia. Its use can result in cardiovascular collapse and death.

Cocaine: Cocaine is a strong central nervous system stimulant that interferes with the re-absorption process of dopamine, a chemical messenger associated with pleasure and movement. Dopamine is released as part of the brain's reward system and is involved in the high that characterizes cocaine consumption. The physical effects of cocaine use include constricted peripheral blood vessels, dilated pupils, and increased temperature, heart rate, and blood pressure. The duration of cocaine's immediate euphoric effects, which include hyper-stimulation, reduced fatigue, and mental clarity, depends on the route of administration. High doses of cocaine and/or prolonged use can trigger paranoia. Smoking crack cocaine can produce a particularly aggressive paranoid behavior in users. When addicted individuals stop using cocaine, they often become depressed, which may lead to further cocaine use to alleviate depression. Prolonged cocaine snorting can result in ulceration of the mucous membrane of the nose and can damage the nasal septum enough to cause it to collapse. Cocaine-related deaths are often a result of cardiac arrest or seizures followed by respiratory arrest.

Heroin: Heroin abuse is associated with serious health conditions including fatal overdose, spontaneous abortion, collapsed veins, and infectious diseases, including HIV/AIDS and hepatitis. Mental functioning becomes clouded due to depression of the central nervous system. Long-term effects of heroin appear after repeated use for some period of time. Chronic users may develop collapsed veins, infection of the heart lining and valves, abscesses, cellulitis, and liver disease. Pulmonary complications, including various types of pneumonia, may result from the poor health condition of the abuser, as well as from heroin's depressing effects on respiration.

Marijuana: Recent research findings indicate that long-term use of marijuana produces changes in the brain similar to those seen after long-term use of other major drugs of abuse. Someone who smokes marijuana regularly may have many of the same respiratory problems as tobacco smokers. These individuals may have daily cough and phlegm, symptoms of chronic bronchitis, and more frequent chest colds. Continuing to smoke marijuana can lead to abnormal functioning of lung tissue injured or destroyed by marijuana smoke.

MDMA (Ecstasy): MDMA causes injury to the brain, affecting neurons that use the chemical serotonin to communicate with other neurons. The serotonin system plays a direct role in regulating mood, aggression, sexual activity, sleep, and sensitivity to pain. Many of the risks users face with MDMA use are similar to those found with the use of cocaine and amphetamines, such as: psychological difficulties including confusion, depression, sleep problems, drug craving, severe anxiety, and paranoia – during and sometimes weeks after taking MDMA; physical symptoms such as muscle tension, involuntary teeth clenching, nausea, blurred vision, rapid eye movement, faintness, and chills or sweating; and increases in heart rate and blood pressure, a special risk for people with circulatory or heart disease. There is also evidence that people who develop a rash that looks like acne after using MDMA may be risking severe side effects, including liver damage, if they continue to use the drug.

Rohypnol, GHB, and Ketamine: Coma and seizures can occur following abuse of GHB and, when combined with methamphetamine, there appears to be an increased risk of seizure. Combining use with other drugs such as alcohol can result in nausea and difficulty breathing. GHB may also produce withdrawal effects, including insomnia, anxiety, tremors, and sweating. In October, 1996, because of concern about Rohypnol, GHB, and other similarly abused sedative-hypnotics, Congress passed the “Drug-Induced Rape Prevention and Punishment Act of 1996.” This legislation increased federal penalties for use of any controlled substance to aid in sexual assault.

LSD: The effects of LSD are unpredictable. They depend on the amount taken; the user’s personality, mood, and expectations; and the surroundings in which the drug is used. Usually, the user feels the first effects of the drug 30 to 90 minutes after taking it. The physical effects include dilated pupils, higher body temperature, increased heart rate and blood pressure, sweating, loss of appetite, sleeplessness, dry mouth, and tremors. LSD is not considered an addictive drug since it does not produce compulsive drug-seeking behavior as do cocaine, amphetamine, heroin, alcohol, and nicotine. However, like many of the addictive drugs, LSD produces tolerance, so some users who take the drug repeatedly must take progressively higher doses to achieve the state of intoxication they had previously achieved. This is an extremely dangerous practice, given the unpredictability of the drug. The National Institute on Drug Abuse (NIDA) is funding studies that focus on the neurochemical and behavioral properties of LSD. This research will provide a greater understanding of the effects of the drug.

Drug or Alcohol Counseling, Treatment or Rehabilitation

The College provides supportive intervention resources related to drug and alcohol use and abuse for students and staff. The College disseminates informational materials, education programs and referrals regarding the use of alcohol and/or a controlled substance. The College provides services related to drug and alcohol use and abuse for its staff, faculty and students. College employee services are coordinated through the Employee Assistance Program. College students are afforded access to mental health and rehabilitation services through the Office of Counseling and Psychological Services (CAPS). These services include counseling and resource support and face to face counseling services.

The Office of Counseling and Psychological Services (CAPS) will provide contact information on national counseling, treatment, and rehabilitation programs for drug and alcohol resources for students and the community to access in a confidential manner.

The following information following is national toll-free telephone numbers are provided to assist any member of the College who may require assistance in dealing with a drug or alcohol problem:

American Council on Alcoholism (800) 527-5344: Addresses alcoholism as a treatable disease through public education, information, intervention, and referral.

Al-Anon (888) 425-2666: Helps families and friends of alcoholics recover from the effects of living with the problem drinking of a relative or friend.

The National Institute on Drug Abuse Hotline (877)-643-2644: Provides information, support, treatment options, and referrals to local rehab centers for any drug or alcohol problem.

Hotlines/Help Lines:

24 Hour National Alcohol & Substance Abuse Information Center
(800) 784-6776

Alcoholics Anonymous/Narcotics Anonymous

Rockland County, New York
Website: www.rocklandnyaa.org
(845) 352-1112

NewYork HOPEline – Call 24/7

Addiction can happen to anyone, any family, at any time. Find Help for Alcoholism, Drug Abuse, Problem Gambling.
(877) 846-7369

County of Rockland Department of Mental Health

50 Sanatorium Road, Bldg F, Pomona, NY 10970

Website: <http://rocklandgov.com/departments/mental-health/>

(845) 364-2378

Enforcement

The College seeks to uphold College drug and alcohol-related policies and laws, and will impose disciplinary sanctions against those students and/or employees who violate said policies and laws consistent with local, State or Federal law. Enforcement of the College's Drug and Alcohol policies is facilitated by Campus Security & Security, the Vice President & Dean of Student Development, Associate Dean of Student Development, and Senior Executive Director of Human Resources. As part of the disciplinary process, the College may also request that the student or employee complete a counseling or rehabilitation program.

Students

Sanctions for students included: warnings, fines, online-based developmental instruction, written assignments, conduct probation, removal from residence, suspension. The College maintains a progressive sanctioning protocol. It demonstrates a commitment to ensuring evenly imposed sanctioning processes through the development and implementation of the Community Standards sanctioning, which is available in the Student Handbook on the college website under Current Students\Student Life.

Employees

Sanctions for employees included: Mandatory EAP Referral and Termination. In addition, some employees chose to voluntarily resign. Employees may self-refer or have a Human Resources' referral to the Employee Assistance Program for assistance in dealing with the use of alcohol or a controlled substance. The Office of Human Resources manages staff corrective action. The findings of each investigation are reviewed against past precedents and recommended sanctions are imposed consistent with those comparisons. Employees have access to the Human Resources website to access the appropriate employee manual.

Appendix A

NEW YORK STATE PENAL LAW OFFENSES RELATED TO DRUGS AND ALCOHOL

Article 55 Classification And Designation Of Offenses

Sec. 55.05 Classifications of felonies and misdemeanors.

1. Felonies. Felonies are classified, for the purpose of sentence, into five categories as follows:

- (a) Class A felonies;
- (b) Class B felonies
- (c) Class C felonies;
- (d) Class D felonies; and
- (e) Class E felonies.

Class A felonies are subclassified, for the purpose of sentence, into two categories as follows: subclass I and subclass II, to be known as class A-I and class A-II felonies, respectively.

2. Misdemeanors. Misdemeanors are classified, for the purpose of sentence, into three categories as follows:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors; and
- (c) Unclassified misdemeanors.

Sec. 55.10 Designation of offenses.

1. Felonies.

(a) The particular classification or subclassification of each felony defined in this chapter is expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a felony without specification of the classification thereof, or for which a law outside this chapter provides a sentence to a term of imprisonment in excess of one year, shall be deemed a class E felony.

2. Misdemeanors.

(a) Each misdemeanor defined in this chapter is either a class A misdemeanor or a class B misdemeanor, as expressly designated in the section or article defining it.

(b) Any offense defined outside this chapter which is declared by law to be a misdemeanor without specification of the classification thereof or of the sentence therefor shall be deemed a class A misdemeanor.

(c) Except as provided in paragraph (b) of subdivision three, where an offense is defined outside this chapter and a sentence to a term of imprisonment in excess of fifteen days but not in excess of one year is provided in the law or ordinance defining it, such offense shall be deemed an unclassified misdemeanor.

3. Violations. Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if:

(a) Notwithstanding any other designation specified in the law or ordinance defining it, a sentence to a term of imprisonment which is not in excess of fifteen days as provided therein, or the only sentence provided therein is a fine; or

(b) A sentence to a term of imprisonment in excess of fifteen days is provided for such offense in a law or ordinance enacted prior to the effective date of this chapter but the offense was not a crime prior to that date.

4. Traffic infraction. Notwithstanding any other provision of this section, an offense which is defined as a "traffic infraction" shall not be deemed a violation or a misdemeanor by virtue of the sentence prescribed therefor.

Article 80 - (80.00 - 80.15) FINES

§ 80.00 Fine for felony.

1. A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding the higher of

a. five thousand dollars; or

b. double the amount of the defendant's gain from the commission of the crime or, if the defendant is convicted of a crime defined in article four hundred ninety-six of this chapter, any higher amount not exceeding three times the amount of the defendant's gain from the commission of such offense; or

c. if the conviction is for any felony defined in article two hundred twenty or two hundred twenty-one of this chapter, according to the following schedule:

(i) for A-I felonies, one hundred thousand dollars;

(ii) for A-II felonies, fifty thousand dollars;

(iii) for B felonies, thirty thousand dollars;

(iv) for C felonies, fifteen thousand dollars.

When imposing a fine pursuant to the provisions of this paragraph, the court shall consider the profit gained by defendant's conduct, whether the amount of the fine is disproportionate to the conduct in which defendant engaged, its impact on any victims, and defendant's economic circumstances, including the defendant's ability to pay, the effect of the fine upon his or her immediate family or any other persons to whom the defendant owes an obligation of support.

2. As used in this section the term "gain" means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed.

3. When the court imposes a fine for a felony pursuant to paragraph b of subdivision one of this section, the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support such a finding or to permit

adequate consideration of the matters specified in paragraph c of subdivision one of this section, the court may conduct a hearing upon such issues.

4. Exception. The provisions of this section shall not apply to a corporation.

5. All moneys in excess of five thousand dollars received or collected in payment of a fine imposed pursuant to paragraph c of subdivision one of this section are the property of the state and the state comptroller shall deposit all such fines to the rehabilitative alcohol and substance treatment fund established pursuant to section ninety-seven-cc of the state finance law.

6. Notwithstanding any inconsistent provision of subdivision one of this section a sentence to pay a fine for a felony set forth in the vehicle and traffic law shall be a sentence to pay an amount fixed by the court in accordance with the provisions of the law that defines the crime.

7. When the court imposes a fine pursuant to section 145.22 or 145.23 of this chapter, the court shall direct that no less than ten percent of such fine be credited to the state cemetery vandalism restoration and administration fund created pursuant to section ninety-seven-r of the state finance law.

§ 80.05 Fines for misdemeanors and violation.

1. Class A misdemeanor. A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.

2. Class B misdemeanor. A sentence to pay a fine for a class B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. Unclassified misdemeanor. A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the law or ordinance that defines the crime.

4. Violation. A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. Alternative sentence. If a person has gained money or property through the commission of any misdemeanor or violation then upon conviction thereof, the court, in lieu of imposing the fine authorized for the offense under one of the above subdivisions, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense; provided, however, that the amount fixed by the court pursuant to this subdivision upon a conviction under section 11-1904 of the environmental conservation law shall not exceed five thousand dollars. In such event the provisions of subdivisions two and three of section 80.00 shall be applicable to the sentence.

6. Exception. The provisions of this section shall not apply to a corporation.

§ 80.15 Multiple offenses.

Where a person is convicted of two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, and the court imposes a sentence of imprisonment or a fine or both for one of the offenses, a fine shall not be imposed for the other. The provisions of this section shall not apply to any offense or offenses set forth in the vehicle and traffic law.

**Article 220
Controlled Substances Offenses**

**Sec. 220.00
Controlled substances; definitions.**

1. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.
2. "Unlawfully" means in violation of article thirty-three of the public health law.
3. "Ounce" means an avoirdupois ounce as applied to solids or semisolids, and a fluid ounce as applied to liquids.
4. "Pound" means an avoirdupois pound.
5. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law other than marihuana, but including concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of such law.
6. "Marihuana" means "marihuana" or "concentrated cannabis" as those terms are defined in section thirty-three hundred two of the public health law.
7. "Narcotic drug" means any controlled substance listed in schedule I(b), I(c), II(b) or II(c) other than methadone.
8. "Narcotic preparation" means any controlled substance listed in schedule II(b-1), III(d) or III(e).
9. "Hallucinogen" means any controlled substance listed in schedule I(d) (5), (18), (19), (20), (21) and (22).
10. "Hallucinogenic substance" means any controlled substance listed in schedule I(d) other than concentrated cannabis, lysergic acid diethylamide, or an hallucinogen.
11. "Stimulant" means any controlled substance listed in schedule I(f),II(d).
12. "Dangerous depressant" means any controlled substance listed in schedule I(e)(2), (3), II(e), III(c)(3) or IV(c)(2), (31), (32), (40).
13. "Depressant" means any controlled substance listed in schedule IV(c) except (c)(2), (31), (32), (40).

14. "School grounds" means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

15. "Prescription for a controlled substance" means a direction or authorization, by means of an official New York state prescription form, a written prescription form or an oral prescription, which will permit a person to lawfully obtain a controlled substance from any person authorized to dispense controlled substances.

16. For the purposes of sections 220.70, 220.71, 220.72, 220.73, 220.74, 220.75 and 220.76 of this article:

(a) "Precursor" means ephedrine, pseudoephedrine, or any salt, isomer or salt of an isomer of such substances.

(b) "Chemical reagent" means a chemical reagent that can be used in the manufacture, production or preparation of methamphetamine.

(c) "Solvent" means a solvent that can be used in the manufacture, production or preparation of methamphetamine.

(d) "Laboratory equipment" means any items, components or materials that can be used in the manufacture, preparation or production of methamphetamine.

(e) "Hazardous or dangerous material" means any substance, or combination of substances, that results from or is used in the manufacture, preparation or production of methamphetamine which, because of its quantity, concentration, or physical or chemical characteristics, poses a substantial risk to human health or safety, or a substantial danger to the environment.

17. "School bus" means every motor vehicle owned by a public or governmental agency or private school and operated for the transportation of pupils, teachers and other persons acting in a supervisory capacity, to or from school or school activities or privately owned and operated for compensation for the transportation of pupils, children of pupils, teachers and other persons acting in a supervisory capacity to or from school or school activities.

18. "Controlled substance organization" means four or more persons sharing a common purpose to engage in conduct that constitutes or advances the commission of a felony under this article.

19. "Director" means a person who is the principal administrator, organizer, or leader of a controlled substance organization or one of several principal administrators, organizers, or leaders of a controlled substance organization.

20. "Profiteer" means a person who: (a) is a director of a controlled substance organization; (b) is a member of a controlled substance organization and has managerial responsibility over one or more other members of that organization; or (c) arranges, devises or plans one or more transactions constituting a felony under this article so as to obtain profits or expected profits. A person is not a profiteer if he or she is acting only as an employee; or if he or she is acting as an accommodation to a friend or relative; or if he or she is acting only under the direction and control of others and exercises no substantial, independent role in arranging or directing the transactions in question.

Sec. 220.03

Criminal possession of a controlled substance in the seventh degree.

A person is guilty of criminal possession of a controlled substance in the seventh degree when he or she knowingly and unlawfully possesses a controlled substance; provided, however, that it shall not be a violation of this section when a person possesses a residual amount of a controlled substance and that residual amount is in or on a hypodermic syringe or hypodermic needle obtained and possessed pursuant to section thirty-three hundred eighty-one of the public health law; nor shall it be a violation of this section when a person's unlawful possession of a controlled substance is discovered as a result of seeking immediate health care as defined in paragraph (b) of subdivision three of section 220.78 of the penal law, for either another person or him or herself because such person is experiencing a drug or alcohol overdose or other life threatening medical emergency as defined in paragraph (a) of subdivision three of section 220.78 of the penal law.

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

Sec. 220.06

Criminal possession of a controlled substance in the fifth degree.

A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or
2. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
3. phencyclidine and said phencyclidine weighs fifty milligrams or more; or
4. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one-fourth ounce or more; or
5. cocaine and said cocaine weighs five hundred milligrams or more.
6. ketamine and said ketamine weighs more than one thousand milligrams; or
7. ketamine and has previously been convicted of possession or the attempt to commit possession of ketamine in any amount; or
8. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.

Criminal possession of a controlled substance in the fifth degree is a class D felony.

Sec. 220.09

Criminal possession of a controlled substance in the fourth degree.

A person is guilty of criminal possession of a controlled substance in the fourth degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or

2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or

3. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or

4. a stimulant and said stimulant weighs one gram or more; or

5. lysergic acid diethylamide and said lysergic acid diethylamide weighs one milligram or more; or

6. a hallucinogen and said hallucinogen weighs twenty-five milligrams or more; or

7. a hallucinogenic substance and said hallucinogenic substance weighs one gram or more; or

8. a dangerous depressant and such dangerous depressant weighs ten ounces or more; or

9. a depressant and such depressant weighs two pounds or more; or

10. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one ounce or more; or

11. phencyclidine and said phencyclidine weighs two hundred fifty milligrams or more; or

12. methadone and said methadone weighs three hundred sixty milligrams or more; or

13. phencyclidine and said phencyclidine weighs fifty milligrams or more with intent to sell it and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or

14. ketamine and said ketamine weighs four thousand milligrams or more; or

15. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of two hundred grams or more.

Criminal possession of a controlled substance in the fourth degree is a class C felony.

Sec. 220.16

Criminal possession of a controlled substance in the third degree.

A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses:

1. a narcotic drug with intent to sell it; or

2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide, with intent to sell it and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. a stimulant with intent to sell it and said stimulant weighs one gram or more; or
4. lysergic acid diethylamide with intent to sell it and said lysergic acid diethylamide weighs one milligram or more; or
5. a hallucinogen with intent to sell it and said hallucinogen weighs twenty-five milligrams or more; or
6. a hallucinogenic substance with intent to sell it and said hallucinogenic substance weighs one gram or more; or
7. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers with intent to sell it and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
8. a stimulant and said stimulant weighs five grams or more; or
9. lysergic acid diethylamide and said lysergic acid diethylamide weighs five milligrams or more; or
10. a hallucinogen and said hallucinogen weighs one hundred twenty-five milligrams or more; or
11. a hallucinogenic substance and said hallucinogenic substance weighs five grams or more; or
12. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
13. phencyclidine and said phencyclidine weighs one thousand two hundred fifty milligrams or more.

Criminal possession of a controlled substance in the third degree is a class B felony.

Sec. 220.18

Criminal possession of a controlled substance in the second degree.

A person is guilty of criminal possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of four ounces or more; or
2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
3. a stimulant and said stimulant weighs ten grams or more; or
4. lysergic acid diethylamide and said lysergic acid diethylamide weighs twenty-five milligrams or more; or

5. a hallucinogen and said hallucinogen weighs six hundred twenty-five milligrams or more; or

6. a hallucinogenic substance and said hallucinogenic substance weighs twenty-five grams or more; or

7. methadone and said methadone weighs two thousand eight hundred eighty milligrams or more.

Criminal possession of a controlled substance in the second degree is a class A-II felony.

Sec. 220.21

Criminal possession of a controlled substance in the first degree.

A person is guilty of criminal possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of eight ounces or more; or

2. methadone and said methadone weighs five thousand seven hundred sixty milligrams or more.

Criminal possession of a controlled substance in the first degree is a class A-I felony.

Sec. 220.25

Criminal possession of a controlled substance presumption.

1. The presence of a controlled substance in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (c) when the controlled substance is concealed upon the person of one of the occupants.

2. The presence of a narcotic drug, narcotic preparation, marihuana or phencyclidine in open view in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, package or otherwise prepare for sale such controlled substance is presumptive evidence of knowing possession thereof by each and every person in close proximity to such controlled substance at the time such controlled substance was found; except that such presumption does not apply to any such persons if (a) one of them, having obtained such controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (b) one of them has such controlled substance upon his person.

Sec. 220.28

Use of a child to commit a controlled substance offense.

1. A person is guilty of use of a child to commit a controlled substance offense when, being eighteen years old or more, he or she commits a felony sale or felony attempted sale of a controlled substance in violation of this article and, as part of that criminal transaction, knowingly uses a child to effectuate such felony sale or felony attempted sale of such controlled substance.

2. For purposes of this section, "uses a child to effectuate the felony sale or felony attempted sale of such controlled substance" means conduct by which the actor: (a) conceals such controlled substance on or about the body or person of such child for the purpose of effectuating the criminal sale or attempted sale of such controlled substance to a third person; or (b) directs, forces or otherwise requires such child to sell or attempt to sell or offer direct assistance to the defendant in selling or attempting to sell such controlled substance to a third person.

For purposes of this section, "child" means a person less than sixteen years of age. Use of a child to commit a controlled substance offense is a class E felony.

Sec. 220.31

Criminal sale of a controlled substance in the fifth degree.

A person is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.

Sec. 220.34

Criminal sale of a controlled substance in the fourth degree.

A person is guilty of criminal sale of a controlled substance in the fourth degree when he knowingly and unlawfully sells:

1. a narcotic preparation; or
2. a dangerous depressant or a depressant and the dangerous depressant weighs ten ounces or more, or the depressant weighs two pounds or more; or
3. concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; or
4. phencyclidine and the phencyclidine weighs fifty milligrams or more; or
5. methadone; or
6. any amount of phencyclidine and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or
- 6-a. ketamine and said ketamine weighs four thousand milligrams or more.
7. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon school grounds or on a school bus; or
8. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds. As used in this subdivision, the phrase "the grounds of a child day care or educational facility" shall have the same meaning as provided for in subdivision five of section 220.44 of this article. For the purposes of this subdivision, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility; or
9. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-

three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more.

Criminal sale of a controlled substance in the fourth degree is a class C felony.

Sec. 220.39

Criminal sale of a controlled substance in the third degree.

A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. a stimulant and the stimulant weighs one gram or more; or
4. lysergic acid diethylamide and the lysergic acid diethylamide weighs one milligram or more; or
5. a hallucinogen and the hallucinogen weighs twenty-five milligrams or more; or
6. a hallucinogenic substance and the hallucinogenic substance weighs one gram or more; or
7. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
8. phencyclidine and the phencyclidine weighs two hundred fifty milligrams or more; or
9. a narcotic preparation to a person less than twenty-one years old.

Criminal sale of a controlled substance in the third degree is a class B felony.

Sec. 220.41

Criminal sale of a controlled substance in the second degree.

A person is guilty of criminal sale of a controlled substance in the second degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and the preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
3. a stimulant and the stimulant weighs five grams or more; or
4. lysergic acid diethylamide and the lysergic acid diethylamide weighs five milligrams or more; or
5. a hallucinogen and the hallucinogen weighs one hundred twenty-five milligrams or more; or

6. a hallucinogenic substance and the hallucinogenic substance weighs five grams or more; or
7. methadone and the methadone weighs three hundred sixty milligrams or more.

Criminal sale of a controlled substance in the second degree is a class A-II felony.

Sec. 220.43

Criminal sale of a controlled substance in the first degree.

A person is guilty of criminal sale of a controlled substance in the first degree when he knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and the preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
2. methadone and the methadone weighs two thousand eight hundred eighty milligrams or more.

Criminal sale of a controlled substance in the first degree is a class A-I felony.

Sec. 220.44

Criminal sale of a controlled substance in or near school grounds.

A person is guilty of criminal sale of a controlled substance in or near school grounds when he knowingly and unlawfully sells:

1. a controlled substance in violation of any one of subdivisions one through six-a of section 220.34 of this article, when such sale takes place upon school grounds or on a school bus; or
2. a controlled substance in violation of any one of subdivisions one through eight of section 220.39 of this article, when such sale takes place upon school grounds or on a school bus; or
3. a controlled substance in violation of any one of subdivisions one through six of section 220.34 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds; or
4. a controlled substance in violation of any one of subdivisions one through eight of section 220.39 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds.
5. For purposes of subdivisions three and four of this section, "the grounds of a child day care or educational facility" means (a) in or on or within any building, structure, athletic playing field, a playground or land contained within the real property boundary line of a public or private child day care center as such term is defined in paragraph (c) of subdivision one of section three hundred ninety of the social services law, or nursery, pre-kindergarten or kindergarten, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such facility or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such facility. For the purposes of this section an "area accessible to the public" shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

6. For the purposes of this section, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility.

Criminal sale of a controlled substance in or near school grounds is a class B felony.

Sec. 220.45

Criminally possessing a hypodermic instrument.

A person is guilty of criminally possessing a hypodermic instrument when he or she knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle. It shall not be a violation of this section when a person obtains and possesses a hypodermic syringe or hypodermic needle pursuant to section thirty-three hundred eighty-one of the public health law.

Criminally possessing a hypodermic instrument is a class A misdemeanor.

Sec. 220.46

Criminal injection of a narcotic drug.

A person is guilty of criminal injection of a narcotic drug when he knowingly and unlawfully possesses a narcotic drug and he intentionally injects by means of a hypodermic syringe or hypodermic needle all or any portion of that drug into the body of another person with the latter's consent.

Criminal injection of a narcotic drug is a class E felony.

Sec. 220.48

Criminal sale of a controlled substance to a child.

A person is guilty of criminal sale of a controlled substance to a child when, being over twenty-one years old, he or she knowingly and unlawfully sells a controlled substance in violation of section 220.34 or 220.39 of this article to a person less than seventeen years old.

Criminal sale of a controlled substance to a child is a class B felony.

Sec. 220.50

Criminally using drug paraphernalia in the second degree.

A person is guilty of criminally using drug paraphernalia in the second degree when he knowingly possesses or sells:

1. Diluents, dilutants or adulterants, including but not limited to, any of the following: quinine hydrochloride, mannitol, mannite, lactose or dextrose, adapted for the dilution of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purposes of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant; or

2. Gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant; or

3. Scales and balances used or designed for the purpose of weighing or measuring controlled substances, under circumstances evincing an intent to use, or under circumstances evincing

knowledge that some person intends to use, the same for purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant.

Criminally using drug paraphernalia in the second degree is a class A misdemeanor.

Sec. 220.55

Criminally using drug paraphernalia in the first degree.

A person is guilty of criminally using drug paraphernalia in the first degree when he commits the crime of criminally using drug paraphernalia in the second degree and he has previously been convicted of criminally using drug paraphernalia in the second degree.

Criminally using drug paraphernalia in the first degree is a class D felony.

Sec. 220.60

Criminal possession of precursors of controlled substances.

A person is guilty of criminal possession of precursors of controlled substances when, with intent to manufacture a controlled substance unlawfully, he possesses at the same time:

- (a) carbamide (urea) and propanedioc and malonic acid or its derivatives; or
- (b) ergot or an ergot derivative and diethylamine or dimethylformamide or diethylamide; or
- (c) phenylacetone (1-phenyl-2 propanone) and hydroxylamine or ammonia or formamide or benzaldehyde or nitroethane or methylamine.
- (d) pentazocine and methyliodid; or
- (e) phenylacetonitrile and dichlorodiethyl methylamine or dichlorodiethyl benzylamine; or
- (f) diphenylacetonitrile and dimethylaminoisopropyl chloride; or
- (g) piperidine and cyclohexanone and bromobenzene and lithium or magnesium; or
- (h) 2,5-dimethoxy benzaldehyde and nitroethane and a reducing agent.

Criminal possession of precursors of controlled substances is a class E felony.

Sec. 220.65

Criminal sale of a prescription for a controlled substance or of a controlled substance by a practitioner or pharmacist.

A person is guilty of criminal sale of a prescription for a controlled substance or of a controlled substance by a practitioner or pharmacist when:

1. being a practitioner, as that term is defined in section thirty-three hundred two of the public health law, he or she knowingly and unlawfully sells a prescription for a controlled substance. For the purposes of this section, a person sells a prescription for a controlled substance unlawfully when he or she does so other than in good faith in the course of his or her professional practice; or
2. being a practitioner or pharmacist, as those terms are defined in section thirty-three hundred two of the public health law, he or she, acting other than in good faith, while purporting to act

within the scope of the power, authority and privileges of his or her license, as that term is defined in section thirty-three hundred two of the public health law, knowingly and unlawfully sells a controlled substance.

Criminal sale of a prescription for a controlled substance or of a controlled substance by a practitioner or pharmacist is a class C felony.

Sec. 220.70

Criminal possession of methamphetamine manufacturing material in the second degree.

A person is guilty of criminal possession of methamphetamine manufacturing material in the second degree when he or she possesses a precursor, a chemical reagent or a solvent with the intent to use or knowing another intends to use such precursor, chemical reagent, or solvent to unlawfully produce, prepare or manufacture methamphetamine.

Criminal possession of methamphetamine manufacturing material in the second degree is a class A misdemeanor.

Sec. 220.71

Criminal possession of methamphetamine manufacturing material in the first degree.

A person is guilty of criminal possession of methamphetamine manufacturing material in the first degree when he or she commits the offense of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section 220.70 of this article, and has previously been convicted within the preceding five years of criminal possession of methamphetamine manufacturing material in the second degree, as defined in section 220.70 of this article, or a violation of this section.

Criminal possession of methamphetamine manufacturing material in the first degree is a class E felony.

Sec. 220.72

Criminal possession of precursors of methamphetamine.

A person is guilty of criminal possession of precursors of methamphetamine when he or she possesses at the same time a precursor and a solvent or chemical reagent, with intent to use or knowing that another intends to use each such precursor, solvent or chemical reagent to unlawfully manufacture methamphetamine.

Criminal possession of precursors of methamphetamine is a class E felony.

Sec. 220.74

Unlawful manufacture of methamphetamine in the second degree.

A person is guilty of unlawful manufacture of methamphetamine in the second degree when he or she:

1. Commits the offense of unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article in the presence of another person under the age of sixteen, provided, however, that the actor is at least five years older than such other person under the age of sixteen; or

2. Commits the crime of unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article and has previously been convicted within the preceding five years of the offense of criminal possession of precursors of methamphetamine as defined in section 220.72 of this article, criminal possession of methamphetamine manufacturing material in the first degree as defined in section 220.71 of this article, unlawful disposal of methamphetamine

laboratory material as defined in section 220.76 of this article, unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article, unlawful manufacture of methamphetamine in the second degree as defined in this section, or unlawful manufacture of methamphetamine in the first degree as defined in section 220.75 of this article.

Unlawful manufacture of methamphetamine in the second degree is a class C felony.

Sec. 220.75

Unlawful manufacture of methamphetamine in the first degree.

A person is guilty of unlawful manufacture of methamphetamine in the first degree when such person commits the crime of unlawful manufacture of methamphetamine in the second degree, as defined in subdivision one of section 220.74 of this article, after having previously been convicted within the preceding five years of unlawful manufacture of methamphetamine in the third degree, as defined in section 220.73, unlawful manufacture of methamphetamine in the second degree, as defined in section 220.74 of this article, or unlawful manufacture of methamphetamine in the first degree, as defined in this section.

Unlawful manufacturer* of methamphetamine in the first degree is a class B felony.

Sec. 220.76

Unlawful disposal of methamphetamine laboratory material.

A person is guilty of unlawful disposal of methamphetamine laboratory material when, knowing that such actions are in furtherance of a methamphetamine operation, he or she knowingly disposes of, or possesses with intent to dispose of, hazardous or dangerous material under circumstances that create a substantial risk to human health or safety or a substantial danger to the environment.

Unlawful disposal of methamphetamine laboratory material is a class E felony.

Sec. 220.77

Operating as a major trafficker.

A person is guilty of operating as a major trafficker when:

1. Such person acts as a director of a controlled substance organization during any period of twelve months or less, during which period such controlled substance organization sells one or more controlled substances, and the proceeds collected or due from such sale or sales have a total aggregate value of seventy-five thousand dollars or more; or
2. As a profiteer, such person knowingly and unlawfully sells, on one or more occasions within six months or less, a narcotic drug, and the proceeds collected or due from such sale or sales have a total aggregate value of seventy-five thousand dollars or more.
3. As a profiteer, such person knowingly and unlawfully possesses, on one or more occasions within six months or less, a narcotic drug with intent to sell the same, and such narcotic drugs have a total aggregate value of seventy-five thousand dollars or more.

Operating as a major trafficker is a class A-I felony.

Sec. 220.78

Witness or victim of drug or alcohol overdose.

1. A person who, in good faith, seeks health care for someone who is experiencing a drug or alcohol overdose or other life threatening medical emergency shall not be charged or prosecuted for a controlled substance offense under article two hundred twenty or a marihuana offense under article two hundred twenty-one of this title, other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years under section sixty-five-c of the alcoholic beverage control law, or for possession of drug paraphernalia under article thirty-nine of the general business law, with respect to any controlled substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.

2. A person who is experiencing a drug or alcohol overdose or other life threatening medical emergency and, in good faith, seeks health care for himself or herself or is the subject of such a good faith request for health care, shall not be charged or prosecuted for a controlled substance offense under this article or a marihuana offense under article two hundred twenty-one of this title, other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years under section sixty-five-c of the alcoholic beverage control law, or for possession of drug paraphernalia under article thirty-nine of the general business law, with respect to any substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.

3. Definitions. As used in this section the following terms shall have the following meanings:

(a) "Drug or alcohol overdose" or "overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria or death, which is the result of consumption or use of a controlled substance or alcohol and relates to an adverse reaction to or the quantity of the controlled substance or alcohol or a substance with which the controlled substance or alcohol was combined; provided that a patient's condition shall be deemed to be a drug or alcohol overdose if a prudent layperson, possessing an average knowledge of medicine and health, could reasonably believe that the condition is in fact a drug or alcohol overdose and (except as to death) requires health care.

(b) "Health care" means the professional services provided to a person experiencing a drug or alcohol overdose by a health care professional licensed, registered or certified under title eight of the education law or article thirty of the public health law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services for a person experiencing a drug or alcohol overdose.

4. It shall be an affirmative defense to a criminal sale controlled substance offense under this article or a criminal sale of marihuana offense under article two hundred twenty-one of this title, not covered by subdivision one or two of this section, with respect to any controlled substance or marihuana which was obtained as a result of such seeking or receiving of health care, that:

(a) the defendant, in good faith, seeks health care for someone or for him or herself who is experiencing a drug or alcohol overdose or other life threatening medical emergency; and

(b) the defendant has no prior conviction for the commission or attempted commission of a class A-I, A-II or B felony under this article.

5. Nothing in this section shall be construed to bar the admissibility of any evidence in connection with the investigation and prosecution of a crime with regard to another defendant who does not independently qualify for the bar to prosecution or for the affirmative defense; nor with regard to other crimes committed by a person who otherwise qualifies under this section; nor shall anything in this section be construed to bar any seizure pursuant to law, including but not limited to pursuant to section thirty-three hundred eighty-seven of the public health law.

6. The bar to prosecution described in subdivisions one and two of this section shall not apply to the prosecution of a class A-I felony under this article, and the affirmative defense described in subdivision four of this section shall not apply to the prosecution of a class A-I or A-II felony under this article.

**Article 221
Offenses Involving Marihuana**

*** Sec. 221.00
Marihuana; definitions.**

Unless the context in which they are used clearly otherwise requires, the terms occurring in this article shall have the same meaning ascribed to them in article two hundred twenty of this chapter. Any act that is lawful under title five-A of article thirty-three of the public health law is not a violation of this article.

*** NB Effective until July 5, 2021**

*** Sec. 221.00
Marihuana; definitions.**

Unless the context in which they are used clearly otherwise requires, the terms occurring in this article shall have the same meaning ascribed to them in article two hundred twenty of this chapter.

*** NB Effective July 5, 2021**

**Sec. 221.05
Unlawful possession of marihuana.**

A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana.

Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of an offense defined in this article or article 220 of this chapter, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period.

**Sec. 221.10
Criminal possession of marihuana in the fifth degree.**

A person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses:

1. marihuana in a public place, as defined in section 240.00 of this chapter, and such marihuana is burning or open to public view; or

2. one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

Criminal possession of marihuana in the fifth degree is a class B misdemeanor.

Sec. 221.15

Criminal possession of marihuana in the fourth degree.

A person is guilty of criminal possession of marihuana in the fourth degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than two ounces.

Criminal possession of marihuana in the fourth degree is a class A misdemeanor.

Sec. 221.20

Criminal possession of marihuana in the third degree.

A person is guilty of criminal possession of marihuana in the third degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than eight ounces.

Criminal possession of marihuana in the third degree is a class E felony.

Sec. 221.25

Criminal possession of marihuana in the second degree.

A person is guilty of criminal possession of marihuana in the second degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than sixteen ounces.

Criminal possession of marihuana in the second degree is a class D felony.

Sec. 221.30

Criminal possession of marihuana in the first degree.

A person is guilty of criminal possession of marihuana in the first degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than ten pounds.

Criminal possession of marihuana in the first degree is a class C felony.

Sec. 221.35

Criminal sale of marihuana in the fifth degree.

A person is guilty of criminal sale of marihuana in the fifth degree when he knowingly and unlawfully sells, without consideration, one or more preparations, compounds, mixtures or

substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of two grams or less; or one cigarette containing marihuana.

Criminal sale of marihuana in the fifth degree is a class B misdemeanor.

Sec. 221.40

Criminal sale of marihuana in the fourth degree.

A person is guilty of criminal sale of marihuana in the fourth degree when he knowingly and unlawfully sells marihuana except as provided in section 221.35 of this article.

Criminal sale of marihuana in the fourth degree is a class A misdemeanor.

Sec. 221.45

Criminal sale of marihuana in the third degree.

A person is guilty of criminal sale of marihuana in the third degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

Criminal sale of marihuana in the third degree is a class E felony.

Sec. 221.50

Criminal sale of marihuana in the second degree.

A person is guilty of criminal sale of marihuana in the second degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than four ounces, or knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana to a person less than eighteen years of age.

Criminal sale of marihuana in the second degree is a class D felony.

Sec. 221.55

Criminal sale of marihuana in the first degree.

A person is guilty of criminal sale of marihuana in the first degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than sixteen ounces.

Criminal sale of marihuana in the first degree is a class C felony.

Article 240

Offenses Against Public Order

Sec. 240.00

Offenses against public order; definitions of terms.

The following definitions are applicable to this article:

1. "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

2. "Transportation facility" means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses, school buses as defined in section one hundred forty-two of the vehicle and traffic law, and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

3. "School grounds" means in or on or within any building, structure, school bus as defined in section one hundred forty-two of the vehicle and traffic law, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational or high school.

4. "Hazardous substance" shall mean any physical, chemical, microbiological or radiological substance or matter which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health.

5. "Age" means sixty years old or more.

6. "Disability" means a physical or mental impairment that substantially limits a major life activity.

Sec. 240.36

Loitering in the first degree.

A person is guilty of loitering in the first degree when he loiter or remains in any place with one or more persons for the purpose of unlawfully using or possessing a controlled substance, as defined in section 220.00 of this chapter.

Loitering in the first degree is a class B misdemeanor.

Sec. 240.40

Appearance in public under the influence of narcotics or a drug other than alcohol.

A person is guilty of appearance in public under the influence of narcotics or a drug other than alcohol when he appears in a public place under the influence of narcotics or a drug other than alcohol to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

Appearance in public under the influence of narcotics or a drug other than alcohol is a violation.

Sec. 220.78

Witness or victim of drug or alcohol overdose.

1. A person who, in good faith, seeks health care for someone who is experiencing a drug or alcohol overdose or other life threatening medical emergency shall not be charged or prosecuted for a controlled substance offense under article two hundred twenty or a marihuana offense under article two hundred twenty-one of this title, other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years under section sixty-five-c of the alcoholic beverage control law, or for possession of drug paraphernalia under article thirty-nine of the general business law, with respect to any controlled substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.

2. A person who is experiencing a drug or alcohol overdose or other life threatening medical emergency and, in good faith, seeks health care for himself or herself or is the subject of such a good faith request for health care, shall not be charged or prosecuted for a controlled substance offense under this article or a marihuana offense under article two hundred twenty-one of this title, other than an offense involving sale for consideration or other benefit or gain, or charged or prosecuted for possession of alcohol by a person under age twenty-one years under section sixty-five-c of the alcoholic beverage control law, or for possession of drug paraphernalia under article thirty-nine of the general business law, with respect to any substance, marihuana, alcohol or paraphernalia that was obtained as a result of such seeking or receiving of health care.

3. Definitions. As used in this section the following terms shall have the following meanings:

(a) "Drug or alcohol overdose" or "overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria or death, which is the result of consumption or use of a controlled substance or alcohol and relates to an adverse reaction to or the quantity of the controlled substance or alcohol or a substance with which the controlled substance or alcohol was combined; provided that a patient's condition shall be deemed to be a drug or alcohol overdose if a prudent layperson, possessing an average knowledge of medicine and health, could reasonably believe that the condition is in fact a drug or alcohol overdose and (except as to death) requires health care.

(b) "Health care" means the professional services provided to a person experiencing a drug or alcohol overdose by a health care professional licensed, registered or certified under title eight of the education law or article thirty of the public health law who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services for a person experiencing a drug or alcohol overdose.

4. It shall be an affirmative defense to a criminal sale controlled substance offense under this article or a criminal sale of marihuana offense under article two hundred twenty-one of this title, not covered by subdivision one or two of this section, with respect to any controlled substance or marihuana which was obtained as a result of such seeking or receiving of health care, that:

(a) the defendant, in good faith, seeks health care for someone or for him or herself who is experiencing a drug or alcohol overdose or other life threatening medical emergency; and

(b) the defendant has no prior conviction for the commission or attempted commission of a class A-I, A-II or B felony under this article.

5. Nothing in this section shall be construed to bar the admissibility of any evidence in connection with the investigation and prosecution of a crime with regard to another defendant who does not independently qualify for the bar to prosecution or for the affirmative defense; nor with regard to other crimes committed by a person who otherwise qualifies under this section; nor shall anything in this section be construed to bar any seizure pursuant to law, including but not limited to pursuant to section thirty-three hundred eighty-seven of the public health law.

6. The bar to prosecution described in subdivisions one and two of this section shall not apply to the prosecution of a class A-I felony under this article, and the affirmative defense described in subdivision four of this section shall not apply to the prosecution of a class A-I or A-II felony under this article.

NEW YORK STATE PUBLIC HEALTH LAW TERMS AND SCHEDULES RELATED TO CONTROLLED SUBSTANCES

Public Health Law Article 33 - Controlled Substances

Sec. 3302. Definitions of terms of general use in this article.

Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

1. "Addict" means a person who habitually uses a controlled substance for a non-legitimate or unlawful use, and who by reason of such use is dependent thereon.

2. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

3. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. No person may be authorized to so act if under title VIII of the education law such person would not be permitted to engage in such conduct. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman when acting in the usual and lawful course of the carrier's or warehouseman's business.

4. "Concentrated Cannabis" means

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.

5. "Controlled substance" means a substance or substances listed in section thirty-three hundred six of this chapter.

6. "Commissioner" means commissioner of health of the state of New York.

7. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. "Department" means the department of health of the state of New York.

9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by lawful means, including by means of the internet, and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

10. "Distribute" means to deliver a controlled substance, including by means of the internet, other than by administering or dispensing.

11. "Distributor" means a person who distributes a controlled substance.

12. "Diversion" means manufacture, possession, delivery or use of a controlled substance by a person or in a manner not specifically authorized by law.

13. "Drug" means

(a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and

(c) substances (other than food) intended to affect the structure or a function of the body of man or animal. It does not include devices or their components, parts, or accessories.

14. "Federal agency" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.

15. "Federal controlled substances act" means the Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, and any act or acts amendatory or supplemental thereto or regulations promulgated thereunder.

16. "Federal registration number" means such number assigned by the Federal agency to any person authorized to manufacture, distribute, sell, dispense or administer controlled substances.

17. "Habitual user" means any person who is, or by reason of repeated use of any controlled substance for non-legitimate or unlawful use is in danger of becoming, dependent upon such substance.

18. "Institutional dispenser" means a hospital, veterinary hospital, clinic, dispensary, maternity home, nursing home, mental hospital or similar facility approved and certified by the department as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

19. "License" means a written authorization issued by the department or the New York state department of education permitting persons to engage in a specified activity with respect to controlled substances.

20. "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of

the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) by a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

21. "Marihuana" means all parts of the plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

22. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw.

23. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 3306 of this article, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

24. "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

25. "Person" means individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

26. "Pharmacist" means any person licensed by the state department of education to practice pharmacy.

27. "Pharmacy" means any place registered as such by the New York state board of pharmacy and registered with the Federal agency pursuant to the federal controlled substances act.

28. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

29. "Practitioner" means:

A physician, dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice or research licensed pursuant to this

article. Such person shall be deemed a "practitioner" only as to such substances, or conduct relating to such substances, as is permitted by his license, permit or otherwise permitted by law.

30. "Prescribe" means a direction or authorization, by prescription, permitting an ultimate user lawfully to obtain controlled substances from any person authorized by law to dispense such substances.

31. "Prescription" shall mean an official New York state prescription, an electronic prescription, an oral prescription, an out-of-state prescription, or any one.

32. "Sell" means to sell, exchange, give or dispose of to another, or offer or agree to do the same.

33. "Ultimate user" means a person who lawfully obtains and possesses a controlled substance for his own use or the use by a member of his household or for an animal owned by him or in his custody. It shall also mean and include a person designated, by a practitioner on a prescription, to obtain such substance on behalf of the patient for whom such substance is intended.

34. "Internet" means collectively computer and telecommunications facilities which comprise the worldwide network of networks that employ a set of industry standards and protocols, or any predecessor or successor protocol to such protocol, to exchange information of all kinds. "Internet," as used in this article, also includes other networks, whether private or public, used to transmit information by electronic means.

35. "By means of the internet" means any sale, delivery, distribution, or dispensing of a controlled substance that uses the internet, is initiated by use of the internet or causes the internet to be used.

36. "Online dispenser" means a practitioner, pharmacy, or person in the United States that sells, delivers or dispenses, or offers to sell, deliver, or dispense, a controlled substance by means of the internet.

37. "Electronic prescription" means a prescription issued with an electronic signature and transmitted by electronic means in accordance with regulations of the commissioner and the commissioner of education and consistent with federal requirements. A prescription generated on an electronic system that is printed out or transmitted via facsimile is not considered an electronic prescription and must be manually signed.

38. "Electronic" means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. "Electronic" shall not include facsimile.

39. "Electronic record" means a paperless record that is created, generated, transmitted, communicated, received or stored by means of electronic equipment and includes the preservation, retrieval, use and disposition in accordance with regulations of the commissioner and the commissioner of education and in compliance with federal law and regulations.

40. "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, in accordance with regulations of the commissioner and the commissioner of education.

41. "Registry" or "prescription monitoring program registry" means the prescription monitoring program registry established pursuant to section thirty-three hundred forty-three-a of this article.

42. "Compounding" means the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug with respect to an

outsourcing facility under section 503B of the federal Food, Drug and Cosmetic Act and further defined in this section.

43. "Outsourcing facility" means a facility that:

(a) is engaged in the compounding of sterile drugs as defined in section sixty-eight hundred two of the education law;

(b) is currently registered as an outsourcing facility pursuant to article one hundred thirty-seven of the education law; and

(c) complies with all applicable requirements of federal and state law, including the Federal Food, Drug and Cosmetic Act.

Notwithstanding any other provision of law to the contrary, when an outsourcing facility distributes or dispenses any drug to any person pursuant to a prescription, such outsourcing facility shall be deemed to be providing pharmacy services and shall be subject to all laws, rules and regulations governing pharmacies and pharmacy services.

Sec. 3306.
Schedules of controlled substances.

There are hereby established five schedules of controlled substances, to be known as schedules I, II, III, IV and V respectively. Such schedules shall consist of the following substances by whatever name or chemical designation known:

Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of 3-methylfentanyl only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-{1-(-methyl-2-phenethyl) -4-piperidinyl} -N-phenylacetamide.

(2) Acetylmethadol.

(3) Allylprodine.

(4) Alphacetylmethadol (except levo- alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadylacetate or LAAM).

(5) Alphameprodine.

(6) Alphamethadol.

(7) Alpha-methylfentanyl (N-{1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl} propionanilide; 1-(1-methyl-2-phenylethyl) -4-(N-propanilido) piperidine).

(8) Alpha-methylthiofentanyl (N-{1-methyl-2)2-thienyl) ethyl-4-piperidinyl} -N-phenylpropanamide).

- (9) Beta-hydroxyfentanyl (N-{1-2 (2-hydroxy-2-phenethyl)- 4-piperidiny} -N-phenylpropanamide).
- (10) Beta-hydroxy-3-methylfentanyl (other name: N-{1-(2-hydroxy-2-phenethyl) -3-methyl -4-piperidiny} -N-phenylpropanamide).
- (11) Benzethidine.
- (12) Betacetylmethadol.
- (13) Betameprodine.
- (14) Betamethadol.
- (15) Betaprodine.
- (16) Clonitazene.
- (17) Dextromoramide.
- (18) Diampromide.
- (19) Diethylthiambutene.
- (20) Difenoxin.
- (21) Dimenoxadol.
- (22) Dimepheptanol.
- (23) Dimethylthiambutene.
- (24) Dioxaphetyl butyrate.
- (25) Dipipanone.
- (26) Ethylmethylthiambutene.
- (27) Etonitazene.
- (28) Etoxidine.
- (29) Furethidine.
- (30) Hydroxypethidine.
- (31) Ketobemidone.
- (32) Levomoramide.
- (33) Levophenacymorphan.
- (34) 3-Methylfentanyl (N-{3-methyl-1- (2- phenylethyl) -4-piperidy} -N-phenylpropanamide).
- (35) 3-Methylthiofentanyl (N-{3-methyl-1- (2-thienyl)ethyl -4-piperidiny} -N-phenylpropanamide).

- (36) Morpheridine.
- (37) MPPP (1-methyl -4-phenyl -4-propionoxypiperidine).
- (38) Noracymethadol.
- (39) Norlevorphanol.
- (40) Normethadone.
- (41) Norpipanone.
- (42) Para-fluorofentanyl (N- (4-fluorophenyl) -N-{1- (2-phenethyl) -4-piperidinyl} -propanamide.
- (43) PEPAP (1- (-2-phenethyl) -4-phenyl -4-acetoxypiperidine.
- (44) Phenadoxone.
- (45) Phenampromide.
- (46) Phenomorphan.
- (47) Phenoperidine.
- (48) Piritramide.
- (49) Proheptazine.
- (50) Properidine.
- (51) Propiram.
- (52) Racemoramide.
- (53) Thiofentanyl (N-phenyl-N-{1- (2-thienyl) ethyl -4- piperidinyl} -propanamide.
- (54) Tilidine.
- (55) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-oxide.
- (6) Cyprenorphine.

- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Drotebanol.
- (10) Etorphine (except hydrochloride salt).
- (11) Heroin.
- (12) Hydromorphanol.
- (13) Methyldesorphine.
- (14) Methyldihydromorphine.
- (15) Morphine methylbromide.
- (16) Morphine methylsulfonate.
- (17) Morphine-N-oxide.
- (18) Myrophine.
- (19) Nicocodeine.
- (20) Nicomorphine.
- (21) Normorphine.
- (22) Pholcodine.
- (23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(EXPLANATION--Within the following chemical designations, character symbol substitutions were made from the original text: "@" = Greek alpha, "&" = Greek beta, "'" = prime mark and "∧" = triangle.)

(1) 4-bromo-2, 5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2, 5-dimethoxy-@-methylphenethylamine; 4-bromo-2, 5-DMA.

(2) 2, 5-dimethoxyamphetamine Some trade or other names: 2, 5-dimethoxy-@-methylphenethylamine; 2, 5-DMA.

(3) 4-methoxyamphetamine Some trade or other names: 4-methoxy-@-methylphenethylamine; paramethoxyamphetamine, PMA.

(4) 5-methoxy-3, 4-methylenedioxy - amphetamine.

(5) 4-methyl-2, 5-dimethoxy-amphetamine Some trade and other names: 4-methyl-2, 5-dimethoxy-@-methylphenethylamine; "DOM"; and "STP".

(6) 3, 4-methylenedioxy amphetamine.

(7) 3, 4, 5-trimethoxy amphetamine.

(8) Bufotenine Some trade and other names: 3-(2-dimethylaminoethyl)-5 hydroxindole; 3-(2-dimethylaminoethyl)- 5-indolol; N, N-dimethylserotonin; -5-hydroxy-N, N-dimethyltryptamine; mappine.

(9) Diethyltryptamine Some trade and other names: N, N-diethyltryptamine; DET.

(10) Dimethyltryptamine Some trade or other names: DMT.

(11) Ibogane Some trade and other names: 7-ethyl-6, 6&, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5h-pyrido {1',2':1,2} azepino {5,4-b} indole: tabernanthe iboga.

(12) Lysergic acid diethylamide.

(13) Marihuana.

(14) Mescaline.

(15) Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetra hydro-6,6,9-trimethyl-6H-dibenfo{b,d} pyran.

(16) Peyote. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

(17) N-ethyl-3-piperidyl benzilate.

(18) N-methyl-3-piperidyl benzilate.

(19) Psilocybin.

(20) Psilocyn.

(21) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers $\Delta^3, 4$ cis or trans tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(22) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.

(23) Pyrrolidine analog of phencyclidine. Some trade or other names 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.

(24) Thiophene analog of phencyclidine. Some trade or other names: 1-{1-(2-thienyl)-cyclohexyl}-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

(25) 3,4-methylenedioxyamphetamine (MDMA).

(26) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA.

(27) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-methylenedioxy) phenethylamine, and N-hydroxy MDA.

(28) 1-{1- (2-thienyl) cyclohexyl} pyrrolidine. Some other names: TCPY.

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; Alpha-ethyl-1H-indole-3-ethanamine; 3- (2-aminobutyl) indole; Alpha-ET or AET.

(30) 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.

(31) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

(32) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Phencyclidine.

(4) Gamma hydroxybutyric acid, and salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma hydroxybutyric acid, except gamma-butyrolactone, whenever the existence of such isomers, esters and ethers and salts is possible within the specific chemical.

(5) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0) when any such substance is intended for human consumption.

(6) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glyco; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4) when any such substance is intended for human consumption.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylamine.

(2) N-ethylamphetamine.

(3) (+ -)cis-4-methylaminorex ((+ -)cis-4,5-dihydro-4-methyl -5-phenyl -2-oxazolamine).

(4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha- trimethylphenethylamine).

(5) Methcathinone (some other names: 2-(methylamino) - propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino) -1-phenylpropan-1-one; alpha-N- methylaminopropiophenone; monomethylpropion; ephedrone, N-methylcathinone, methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers.

(6) Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl -2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.

(7) Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

(8) N-benzylpiperazine (some other names: BZP; 1-benzylpiperazine), its optical isomers, salts and salts of isomers.

(9) 4-Methylmethcathinone, also known as Mephedrone.

(10) Methylenedioxypropylone, also known as MDPV.

Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

1. Raw opium.

2. Opium extracts.

3. Opium fluid.

4. Powdered opium.

5. Granulated opium.

6. Tincture of opium.

7. Codeine.

8. Ethylmorphine.
9. Etorphine hydrochloride.
10. Hydrocodone (also known as dihydrocodeinone).
11. Hydromorphone.
12. Metopon.
13. Morphine.
14. Oxycodone.
15. Oxymorphone.
16. Thebaine.
17. Dihydroetorphine.
18. Oripavine.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances including cocaine and ecgonine, their salts, isomers, and salts of isomers, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(b-1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than three hundred milligrams of dihydrocodeinone (hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than three hundred milligrams of dihydrocodeinone (hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil.

- (2) Alphaprodine.**
- (3) Anileridine.**
- (4) Bezitramide.**
- (5) Bulk dextropropoxyphene (non-dosage forms).**
- (6) Carfentanil.**
- (7) Dihydrocodeine.**
- (8) Diphenoxylate.**
- (9) Fentanyl.**
- (10) Isomethadone.**
- (11) Levo-alpha-acetylmethadol (also known as levo-alpha-acetylmethadol, levomethadylacetate or LAAM).**
- (12) Levomethorphan.**
- (13) Levorphanol.**
- (14) Metazocine.**
- (15) Methadone.**
- (16) Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.**
- (17) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic**
- (18) Pethidine (meperidine).**
- (19) Pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.**
- (20) Pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.**
- (21) Pethidine-intermediate-C, 1-methyl-4- phenylpiperidine-4-carboxylic acid.**
- (22) Phenazocine.**
- (23) Piminodine.**
- (24) Racemethorphan.**
- (25) Racemorphan.**
- (26) Sufentanil.**
- (27) Remifentanil.**
- (28) Tapentadol.**

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Amphetamine.

(2) Methamphetamine.

(3) Phenmetrazine.

(4) Methylphenidate.

(5) Lisdexamfetamine.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.

(2) Glutethimide.

(3) Pentobarbital.

(4) Secobarbital.

(f) Hallucinogenic substances.

Nabilone: Another name for nabilone: (+,-)-trans -3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo{b,d}pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

(3) Immediate precursor to fentanyl:

(i) 4-anilino-N-phenethyl-4-piperidine (ANPP).

(h) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, "anabolic steroid" shall mean any drug or hormonal substance, chemically and pharmacologically related to

testosterone (other than estrogens, progestins, corticosteroids and dehydroepiandrosterone) and includes:

- (1) 3{beta}, 17-dihydroxy-5a-androstane.
- (2) 3{alpha}, 17{beta}-dihydroxy-5a-androstane.
- (3) 5{alpha}-androstan-3,17-dione.
- (4) 1-androstenediol (3{beta},17{beta}-dihydroxy-5{alpha}-androst-1-ene).
- (5) 1-androstenediol (3{alpha},17{beta}-dihydroxy-5{alpha}-androst-1-ene).
- (6) 4-androstenediol (3{beta}, 17{beta}-dihydroxy-androst-4-ene).
- (7) 5-androstenediol (3{beta}, 17{beta}-dihydroxy-androst-5-ene).
- (8) 1-androstenedione (5{alpha}-androst-1-en-3,17-dione).
- (9) 4-androstenedione (androst-4-en-3,17-dione).
- (10) 5-androstenedione (androst-5-en-3,17-dione).
- (11) Bolasterone (7{alpha},17{alpha}-dimethyl-17{beta}-hydroxyandrost-4-en-3-one).
- (12) Boldenone (17{beta}-hydroxyandrost-1, 4,-diene-3-one).
- (13) Boldione (androsta-1,4-diene-3,17-dione).
- (14) Calusterone (7{beta}, 17{alpha}-dimethyl-17{beta}-hydroxyandrost-4-en-3-one).
- (15) Clostebol (4-chloro-17{beta}-hydroxyandrost-4-en-3-one).
- (16) Dehydrochloromethyltestosterone (4-chloro-17{beta}-hydroxy-17 {alpha}-methyl-androst-1, 4-dien-3-one).
- (17) {Delta} 1-dihydrotestosterone (a.k.a. '1-testosterone') (17 {beta}-hydroxy-5{alpha}-androst-1-en-3-one).
- (18) 4-dihydrotestosterone (17{beta}-hydroxy-androstan-3-one).
- (19) Drostanolone (17{beta}-hydroxy-2{alpha}-methyl-5{alpha} -androstan-3-one).
- (20) Ethylestrenol (17{alpha}-ethyl-17{beta}-hydroxyestr- 4-ene).
- (21) Fluoxymesterone (9-fluoro-17{alpha}-methyl-11{beta}, 17 {beta}-dihydroxyandrost-4-en-3-one).
- (22) Formebolone (2-formyl-17{alpha}-methyl-11{alpha}, 17{beta}-dihydroxyandrost-1, 4-dien-3-one).
- (23) Furazabol (17{alpha}-methyl-17{beta}-hydroxyandrostano {2, 3-c}-furazan).
- (24) 13{beta}-ethyl-17{beta}-hydroxygon-4-en-3-one.
- (25) 4-hydroxytestosterone (4, 17{beta}-dihydroxy-androst-4-en-3-one).

- (26) 4-hydroxy-19-nortestosterone (4,17{beta}-dihydroxy-estr-4-en-3-one).
- (27) desoxymethyltestosterone (17{alpha}-methyl-5{alpha}-androst-2-en-17{beta}-ol) (a.k.a., madol).
- (28) Mestanolone (17{alpha}-methyl-17{beta}-hydroxy-5-androstan-3-one).
- (29) Mesterolone (1{alpha} methyl-17{beta}-hydroxy-5{alpha}-androstan-3-one).
- (30) Methandienone (17{alpha}-methyl-17{beta}-hydroxyandrost-1, 4-dien-3-one).
- (31) Methandriol (17{alpha}-methyl-3{beta}, 17{beta}-dihydroxyandrost-5-ene).
- (32) Methenolone (1-methyl-17{beta}-hydroxy-5{alpha}-androst-1-en-3-one).
- (33) 17{alpha}-methyl-3{beta},17{beta}-dihydroxy-5a-androstane.
- (34) 17{alpha}-methyl-3{alpha}, 17{beta}-dihydroxy- 5a-androstane.
- (35) 17{alpha}-methyl-3{beta}, 17{beta}-dihydroxyandrost-4-ene.
- (36) 17{alpha}-methyl-4-hydroxynandrolone (17{alpha}-methyl-4-hydroxy-17{beta}-hydroxyestr-4-en-3-one).
- (37) Methyldienolone (17{alpha}-methyl-17{beta}-hydroxyestra-4,9(10)-dien-3-one).
- (38) Methyltrienolone (17{alpha}-methyl-17{beta}-hydroxyestra-4, 9-11-trien-3-one).
- (39) Methyltestosterone (17{alpha}-methyl-17{beta}-hydroxyandrost-4-en-3-one).
- (40) Mibolerone (7{alpha},17{alpha}-dimethyl-17{beta}-hydroxyestr-4-en-3-one).
- (41) 17{alpha}-methyl- Δ 1-dihydrotestosterone (17b{beta}-hydroxy-17{alpha}-methyl-5{alpha}-androst-1-en-3-one) (a.k.a. '17- α -methyl-1-testosterone').
- (42) Nandrolone(17{beta}-hydroxyestr-4-en-3-one).
- (43) 19-nor-4-androstenediol (3{beta},17{beta}-dihydroxyestr -4-ene).
- (44) 19-nor-4-androstenediol (3{alpha},17{beta}-dihydroxyestr-4-ene).
- (45) 19-nor-5-androstenediol (3{beta},17{beta}-dihydroxyestr -5-ene).
- (46) 19-nor-5-androstenediol (3{alpha},17{beta}-dihydroxyestr-5-ene).
- (47) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione).
- (48) 19-nor-4-androstenedione (estr-4-en-3,17-dione).
- (49) 19-nor-5-androstenedione (estr-5-en-3,17-dione).
- (50) Norbolethone (13{beta}, 17{alpha}-diethyl-17{beta} -hydroxygon-4-en-3-one).
- (51) Norclostebol (4-chloro-17{beta}-hydroxyestr-4-en-3-one).

- (52) Norethandrolone (17{alpha}-ethyl-17{beta}-hydroxyestr-4-en-3-one).
- (53) Normethandrolone (17{alpha}-methyl-17{beta} -hydroxyestr-4-en-3-one).
- (54) Oxandrolone (17{alpha}-methyl-17{beta}-hydroxy-2-oxa-{5{alpha}}-androstan-3-one).
- (55) Oxymesterone (17{alpha}-methyl-4, 17{beta}-dihydroxy androst-4-en-3-one).
- (56) Oxymetholone (17 {alpha}-methyl-2-hydroxymethylene-17 {beta}-hydroxy-{5{alpha}}-androstan-3-one).
- (57) Stanozolol (17{alpha}-methyl-17{beta}-hydroxy-{5{alpha}}-androst-2-eno{3, 2-c}-pyrazole).
- (58) Stenbolone (17{beta}-hydroxy-2-methyl-{5{alpha}}-androst-1-en-3-one).
- (59) Testolactone (13-hydroxy-3-oxo-13, 17-secoandrosta-1, 4-dien-17-oic acid lactone).
- (60) Testosterone (17{beta}-hydroxyandrost-4-en-3-one).
- (61) Tetrahydrogestrinone (13{beta}, 17{alpha}-diethyl -17{beta}-hydroxygon-4, 9, 11-trien-3-one).
- (62) Trenbolone (17{beta}-hydroxyestr-4, 9, 11-trien-3-one).
- (63) Any salt, ester or ether of a drug or substance described or listed in this subdivision.

(i) Subdivision (h) of this section shall not include any substance containing anabolic steroids expressly intended for administration through implants to cattle or other nonhuman species and that are approved by the federal food and drug administration solely for such use. Any individual who knowingly and willfully administers to himself or another person, prescribes, dispenses or distributes such substances for other than implantation to cattle or nonhuman species shall be subject to the same penalties as a practitioner who violates the provisions of this section or any other penalties prescribed by law.

Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August twenty-five, nineteen hundred seventy-one, as excepted compounds under title twenty-one, section 308.32 of the code of federal regulations and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Chlorphentermine.

(4) Clortermine.

(6) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Any compound, mixture or preparation containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital; or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital; or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(4) Chlorhexadol.

(5) Lysergic acid.

(6) Lysergic acid amide.

(7) Methyprylon.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(11) Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8i-trimethylpyrazolo-{3,4-e}{1,4}-diazepin-7(1H)-one, flupyrazapon.

(12) Gamma hydroxybutyric acid, and salt, hydroxybutyric compound, derivative or preparation of gamma hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma hydroxybutyric acid, contained in a drug product for which an application has been approved under section 505 of the federal food, drug and cosmetic act.

(13) Ketamine, its salts, isomers and salts of isomers (some other names for ketamine: (+ or -)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).

(14) Embutramide.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 1.8 grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(4) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Buprenorphine in any quantities.

(f) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product.

Some other names for dronabinol include: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo{b,d} pyran-1-o1, or (-)-delta-9-(trans) - tetrahydrocannabinol.

(g) Chorionic gonadotropin. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any amount of chorionic gonadotropin.

Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam.
- (2) Barbital.
- (3) Bromazepam.
- (4) Camazepam.
- (5) Chloral betaine.
- (6) Chloral hydrate.
- (7) Chlordiazepoxide.
- (8) Clobazam.
- (9) Clonazepam.
- (10) Clorazepate.
- (11) Clotiazepam.
- (12) Cloxazolam.
- (13) Delorazepam.
- (14) Diazepam.
- (15) Estazolam.
- (16) Ethchlorvynol.
- (17) Ethinamate.
- (18) Ethyl Loflazepate.
- (19) Fludiazepam.
- (20) Flunitrazepam.
- (21) Flurazepam.
- (22) Halazepam.
- (23) Haloxazolam.
- (24) Ketazolam.
- (25) Loprazolam.

- (26) Lorazepam.
- (27) Lormetazepam.
- (28) Mebutamate.
- (29) Medazepam.
- (30) Meprobamate.
- (31) Methohexital.
- (32) Methylphenobarbital (mephobarbital).
- (33) Nimetazepam.
- (34) Nitrazepam.
- (35) Nordiazepam.
- (36) Oxazepam.
- (37) Oxazolam.
- (38) Paraldehyde.
- (39) Petrichoral.
- (40) Phenobarbital.
- (41) Pinazepam.
- (42) Prazepam.
- (43) Temazepam.
- (44) Tetrazepam.
- (45) Triazolam.
- (46) Midazolam.
- (47) Quazepam.
- (48) Zolpidem.
- (49) Dichloralphenazone.
- (50) Zaleplon.
- (51) Zopiclone (eszopiclone).
- (52) Fospropofol.
- (53) Carisoprodol.

*** (d) Fenfluramine.** Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible:

(1) Fenfluramine.

*** NB Repealed upon the removal of fenfluramine and its salts and isomers from Schedule IV of the federal Controlled Substances Act**

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers:

(1) Cathine ((+) - norpseudoephedrine).

(2) Diethylpropion.

(3) Fencamfamin.

(4) Fenproporex.

(5) Mazindol.

(6) Mefenorex.

(7) Pemoline (including organometallic complexes and chelates thereof).

(8) Phentermine.

(9) Pipradrol.

(10) SPA((-)-1-dimethylamino-1, 2-diphenylethane).

(11) Modafinil.

(12) Sibutramine.

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine.

(2) Butorphanol (including its optical isomers).

(3) Tramadol in any quantities.

Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

(6) Not more than 0.5 milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine {N-{2-amino-4-(4-fluorobenzylamino)-phenyl}-carbamic acid ethyl ester}.

(2) Lacosamide {(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide}.

(3) Pregabalin {(S)-3-(aminomethyl)-5-methylhexanoic acid }.

NEW YORK STATE ALCOHOL BEVERAGE CONTROL LAWS

[Article 1](#) - SHORT TITLE; POLICY OF STATE AND PURPOSE OF CHAPTER; DEFINITIONS

3. Definitions. Whenever used in this chapter, unless the context requires otherwise:

1. "Alcoholic beverage" or "beverage" mean and include alcohol, spirits, liquor, wine, beer, cider and every liquid, solid, powder or crystal, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being, and any warehouse receipt, certificate, contract or other document pertaining thereto; except that confectionery containing alcohol as provided by subdivision twelve of

section two hundred of the agriculture and markets law and ice cream and other frozen desserts made with wine as provided in subdivision fifteen of section two hundred of the agriculture and markets law shall not be regulated as an "alcoholic beverage" or "beverage" within the meaning of this section where the sale, delivery or giving away is to a person aged twenty-one years or older. The sale, delivery or giving away of ice cream made with wine to a person under the age of twenty-one years may be prosecuted administratively and/or criminally in accordance with the provisions of this chapter.

2. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine from whatever source or by whatever processes produced.

3. "Beer" means and includes any fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute therefor.

3-a. "Biomass feedstock" shall mean any substance, other than oil, natural gas, coal, shale or products derived from any of these which is capable of being converted into alcohol, including but not be limited to wood and other forest materials, animal manure, municipal wastes, food crops and other agricultural materials.

3-b. "Bona fide retailer association" shall mean an association of retailers holding licenses under this chapter, organized under the non-profit or not-for-profit laws of this state, and possessing a federal tax exemption under section 501(c) of the Internal Revenue Code of the United States.

4. "Brewery" means and includes any place or premises where beer is manufactured for sale; and all offices, granaries, mashrooms, cooling-rooms, vaults, yards, and storerooms connected therewith or where any part of the process of manufacture of beer is carried on, or where any apparatus connected with such manufacture is kept or used, or where any of the products of brewing or fermentation are stored or kept, shall be deemed to be included in and to form part of the brewery to which they are attached or are appurtenant.

5. "Brewer" means any person who owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent.

6. "Board" or "local board" or "appropriate board" or "board having jurisdiction" shall mean the state liquor authority.

7. "Building containing licensed premises" shall include the licensed premises and also any part of a building in which such premises is contained and any part of any other building connected with such building by direct access or by a common entrance.

7-a. "Catering establishment" means and includes any premises owned or operated by any person, firm, association, partnership or corporation who or which regularly and in a bona fide manner furnishes for hire therein one or more ballrooms, reception rooms, dining rooms, banquet halls, dancing halls or similar places of assemblage for a particular function, occasion or event and/or who or which furnishes provisions and service for consumption or use at such function, occasion or event. Such premises must have suitable and adequate facilities and accommodations to provide food and service for not less than fifty persons at any one function, occasion or event and shall in no event be deemed to include any taxi dance hall or any other premises at which public dances are regularly scheduled to be held daily, weekly or monthly and to which the general public is invited.

7-b. (a) "Cider" means the partially or fully fermented juice of fresh, whole apples or other pome fruits, containing more than three and two-tenths per centum but not more than eight and one-half per centum

alcohol by volume: (i) to which nothing has been added to increase the alcoholic content produced by natural fermentation; and (ii) with the usual cellar treatments and necessary additions to correct defects due to climate, saccharine levels and seasonal conditions. Nothing contained in this subdivision shall be deemed to preclude the use of such methods or materials as may be necessary to encourage a normal alcoholic fermentation and to make a product that is free of microbiological activity at the time of sale. Cider may be sweetened or flavored after fermentation with fruit juice, fruit juice concentrate, sugar, maple syrup, honey, spices or other agricultural products, separately or in combination. Cider may contain retained or added carbon dioxide.

(b) In the event that an alcoholic beverage meets the definition of both a cider, as defined in this subdivision, and a wine, as defined in subdivision thirty-six of this section, the brand or trade name label owner of such alcoholic beverage shall designate whether such alcoholic beverage shall be sold as a cider or a wine for all purposes under this chapter.

7-c. "Cidery" means and includes any place or premises wherein cider is manufactured for sale.

7-d. "Farm cidery" means and includes any place or premises, located on a farm in New York state, in which New York state labelled cider is manufactured, stored and sold, or any other place or premises in New York state in which New York state labelled cider is manufactured, stored and sold.

8. "Convicted" and "conviction" include and mean a finding of guilt resulting from a plea of guilty, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof.

9. "Club" shall mean an organization of persons incorporated pursuant to the provisions of the not-for-profit corporation law or the benevolent orders law, which is the owner, lessee or occupant of a building used exclusively for club purposes, and which does not traffic in alcoholic beverages for profit and is operated solely for a recreational, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain; except that where such club is located in an office or business building, or state armory, it may be licensed as such provided it otherwise qualifies as a "club" within the meaning of this subdivision. A "luncheon club" shall mean a club which is open only on week days during the hours between eleven o'clock in the morning and three o'clock in the afternoon. A "member" of a club shall mean a person who whether a charter member or admitted in agreement with the by-laws of the club, has become a bona fide member thereof, who maintains his or her membership by the payment of his or her annual dues in a bona fide manner in accordance with the by-laws and whose name and address is entered on the list of members; or in the case of a veterans club where a person has in his or her possession an identification card indicating his or her membership in the national veterans' organization with which the club at which he or she is present is affiliated. For the purposes of this section a veterans club shall include but not be limited to the Grand Army of the Republic, the United Spanish War Veterans, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., the Marine Corps League, the Military Order of the Purple Heart, Inc., the American Legion, the Disabled American Veterans, AMVETS, American Veterans of World War II, Masonic

War Veterans of the State of New York, Inc., Veterans of World War I of the United States of America Department of New York, Inc., China-Burma-India Veterans Association, Inc., Polish-American Veterans of World War II, the Sons of Union Veterans, Vietnam Veterans of America, the Eastern Paralyzed Veterans Association, the Sons of the American Legion, or the American Legion Auxiliary. In the case of a chapter or lodge of a not-for-profit corporation or a benevolent order qualifying as an organization described in section 501(c)(8) or 501(c)(10) of the United States internal revenue code, a member of another chapter or lodge of such not-for-profit corporation or benevolent order who has in his or her possession an identification card or other proof of membership shall be deemed to be a member. A club and a luncheon club shall appoint an alcoholic beverage officer from among its members who shall be responsible for filing all applications and other documents required to be submitted to the authority. The person appointed alcoholic beverage officer shall be subject to approval by the authority.

9-a. "Custom crush facility" means a licensed winery or farm winery which obtains grapes, fruits and other plants grown exclusively in New York state from, or on behalf of, other licensed wineries or farm wineries and crushes, processes, ferments, bottles or conducts any combination of such services for such other licensed wineries or farm wineries.

10. "Distiller" means any person who owns, occupies, carries on, works, conducts or operates any distillery either by himself or by his agent.

11. "Distillery" means and includes any place or premises wherein any liquors are manufactured for sale.

11-a. "Farm distillery" means and includes any place or premises located on a farm in New York state in which liquor is manufactured and sold, or any other place or premises in New York state in which liquor is manufactured primarily from farm and food products, as defined in subdivision two of section two hundred eighty-two of the agriculture and markets law, and such liquor is sold.

12. "Drug store" means a place registered by the New York state board of pharmacy for the sale of drugs.

12-a. "Farm winery" means and includes any place or premises, located on a farm in New York state, in which wine is manufactured and sold.

12-aa. "Farm" means the land, buildings and equipment used to produce, prepare and market crops, livestock and livestock products as a commercial enterprise. A farm may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

12-aaa. "Farm brewery" means and includes any place or premises, located on a farm in New York state, in which New York state labelled beer is manufactured, stored and sold, or any other place or premises in New York state in which New York state labelled beer is manufactured, stored and sold.

12-b. "Felony" shall mean any criminal offense classified as a felony under the laws of this state or any criminal offense committed in any other state, district, or territory of the United States and classified as a felony therein which if committed within this state, would constitute a felony in this state.

12-c. "Government agency" means any department, division, board, bureau, commission, office, agency, authority or public corporation of the state or federal government or a county, city, town or village

government within the state.

13. "Grocery store" means any retail establishment where foodstuffs are regularly and customarily sold in a bona fide manner for the consumption off the premises.

14. "Hotel" shall mean a building which is regularly used and kept open as such in bona fide manner for the feeding and lodging of guests, where all who conduct themselves properly and who are able and ready to pay for such services are received if there be accommodations for them. The term "hotel" shall also include an apartment hotel wherein apartments are rented for fixed periods of time, either furnished or unfurnished, where the keeper of such hotel regularly supplies food to the occupants thereof in a restaurant located in such hotel. "Hotel" shall also mean and include buildings (commonly called a motel) upon the same lot of land and owned or in possession under a lease in writing by the same person or firm who maintains such buildings for the lodging of guests and supplies them with food from a restaurant located upon the same premises.

15. "Liquor authority" and "authority" mean the state liquor authority provided for in this chapter.

17. "License" means a license issued pursuant to this chapter.

17-a. "Seven day license" means a license issued pursuant to this chapter and where the off premise retail license holder may remain open to the consumer all seven days of the week.

18. "Licensee" means any person to whom a license has been issued pursuant to this chapter.

19. "Liquor" means and includes any and all distilled or rectified spirits, brandy, whiskey, rum, gin, cordials or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.

20. "Manufacturer" means and includes a distiller, brewer, vintner and rectifier; "Manufacture" means and includes distilling, rectifying, brewing and operating a winery.

20-a. "New York state labelled wine" means wine made from grapes or other fruits, at least seventy-five percent the volume of which were grown in New York state.

20-b. "Micro-winery" means and includes any place or premises located on a farm in New York state in which wine or cider is manufactured and sold.

20-c. "New York state labelled liquor" means liquors made from fruit, vegetables, grain and grain products, honey, maple sap or other agricultural products, at least seventy-five percent the volume of which were grown or produced in New York state.

20-d. "New York state labelled beer" means:

(a) from the effective date of this subdivision until December thirty-first, two thousand eighteen, beer made with no less than twenty percent, by weight, of its hops grown in New York state and no less than twenty percent, by weight, of all of its other ingredients, excluding water, grown in New York state;

(b) from January first, two thousand nineteen until December thirty-first, two thousand twenty-three, beer made with no less than sixty percent, by weight, of its hops grown in New York state and no less than sixty percent, by weight, of all of its other ingredients, excluding water, grown in New York state; and

(c) from January first, two thousand twenty-four and thereafter, beer made with no less than ninety percent, by weight, of its hops grown in New York state and no less than ninety percent, by weight, of all of its

other ingredients, excluding water, grown in New York state.

20-e. "New York state labelled cider" means cider made exclusively from apples or other pome fruits grown in New York state.

21. "Permittee" means any person to whom a permit has been issued pursuant to this chapter.

22. "Person" includes an individual, copartnership, corporations, society, joint stock company, alcoholic beverage officer appointed by a club or a luncheon club or limited liability company.

23. "Population" means the number of inhabitants as determined by the last preceding federal census.

24. "Rectifier" means and includes any person who rectifies, purifies or refines distilled spirits or wines by any process other than as provided for on distillery premises and every person who, without rectifying, purifying or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with water or any materials, manufactures any imitation of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters or any other name.

25. "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale.

26. "Retailer" means any person who sells at retail any beverage for the sale of which a license is required under the provisions of this chapter.

27. "Restaurant" shall mean a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods, which may be required for ordinary meals, the kitchen of which must, at all times, be in charge of a chef with the necessary help, and kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. Restaurant shall include a motion picture theatre, movie theatre or other venue that shows motion pictures that meet the definitions of restaurant and meals, and all seating is at tables where meals are served. "Meals" shall mean the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a restaurant for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this subdivision contained, however, shall be construed to require that any food be sold or purchased with any beverage.

27-a. "Roadside farm market" means any retailer authorized to sell New York state labelled wine pursuant to section seventy-six-f of this chapter.

28. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever for a consideration, and includes and means all sales made by any person, whether principal, proprietor, agent, servant or employee of any alcoholic beverage and/or a warehouse receipt pertaining thereto. "To sell" includes to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell and shall include the delivery of any alcoholic beverage in the state.

29. "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution.

30. "Traffic in" includes to manufacture and sell any alcoholic beverage at wholesale or retail.

30-a. "Transfer" means the administrative processes involved in issuing a license to a new applicant for an existing licensed business. Transfer applicants shall be under contract with the existing licensee for purchase of the existing licensed business.

31. "Vehicle" shall include any device in, upon or by which any person or property is or may be transported or drawn upon a public highway, road, street or public place.

32. "Vessel" includes any ship or boat of any kind whatsoever, whether propelled by steam or otherwise and whether used as a sea-going vessel or on inland waters which is properly equipped for the service of alcoholic beverages.

33. "Vintner" means any person who owns, occupies, carries on, works, conducts or operates any winery either by himself or by his agent.

34. "Wholesale sale" or "sale at wholesale" means a sale to any person for purposes of resale.

35. "Wholesaler" means any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of this chapter.

36. "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, or other fruits or plants with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-four per centum by volume. Wine produced from fruits or plants other than grapes shall include appropriate prefixes descriptive of the fruit or the product from which such wine was predominantly produced, and no other product shall be called "wine" unless designated as artificial or imitation wine.

36-a. "Wine product" means a beverage containing wine to which is added concentrated or unconcentrated juice, flavoring material, water, citric acid, sugar and carbon dioxide and containing not more than six per centum alcohol by volume, to which nothing other than such wine has been added to increase the alcoholic content of such beverage.

37. "Winery" means and includes any place or premises wherein wines are manufactured from any fruit or brandies distilled as the by-product of wine or other fruit or cordials compounded and also includes a winery for the manufacture of wine in any state other than New York state and which has and maintains a branch factory, office or storeroom within the state of New York and receives wine in this state consigned to a United States government bonded winery, warehouse or storeroom located within the state.

38. "Warehouse" means and includes a place in which alcoholic beverages are housed or stored.

65-A - Procuring alcoholic beverages for persons under the age of twenty-one years.

§ 65-a. Procuring alcoholic beverages for persons under the age of twenty-one years. Any person who misrepresents the age of a person under the age of twenty-one years for the purpose of inducing the sale of any alcoholic beverage, as defined in the alcoholic beverage control law, to such person, is guilty of an offense and upon conviction thereof shall be punished by a fine of not more than two hundred dollars, or by

imprisonment for not more than five days, or by both such fine and imprisonment.

65-B - Offense for one under age of twenty-one years to purchase or attempt to purchase an alcoholic beverage through fraudulent means.

§ 65-b. Offense for one under age of twenty-one years to purchase or attempt to purchase an alcoholic beverage through fraudulent means. 1.

As used in this section: (a) "A device capable of deciphering any electronically readable format" or "device" shall mean any commercial device or combination of devices used at a point of sale or entry that is capable of reading the information encoded on the magnetic strip or bar code of a driver's license or non-driver identification card issued by the commissioner of motor vehicles;

(b) "Card holder" means any person presenting a driver's license or non-driver identification card to a licensee, or to the agent or employee of such licensee under this chapter; and

(c) "Transaction scan" means the process involving a device capable of deciphering any electronically readable format by which a licensee, or agent or employee of a licensee under this chapter reviews a driver's license or non-driver identification card presented as a precondition for the purchase of an alcoholic beverage as required by subdivision two of this section or as a precondition for admission to an establishment licensed for the on-premises sale of alcoholic beverages where admission is restricted to persons twenty-one years or older.

2. (a) No person under the age of twenty-one years shall present or offer to any licensee under this chapter, or to the agent or employee of such licensee, any written evidence of age which is false, fraudulent or not actually his own, for the purpose of purchasing or attempting to purchase any alcoholic beverage.

(b) No licensee, or agent or employee of such licensee shall accept as written evidence of age by any such person for the purchase of any alcoholic beverage, any documentation other than: (i) a valid driver's license or non-driver identification card issued by the commissioner of motor vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the dominion of Canada, or (ii) a valid passport issued by the United States government or any other country, or (iii) an identification card issued by the armed forces of the United States. Upon the presentation of such driver's license or non-driver identification card issued by a governmental entity, such licensee or agent or employee thereof may perform a transaction scan as a precondition to the sale of any alcoholic beverage. Nothing in this section shall prohibit a licensee or agent or employee from performing such a transaction scan on any of the other documents listed in this subdivision if such documents include a bar code or magnetic strip that that may be scanned by a device capable of deciphering any electronically readable format.

(c) In instances where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card presented by the card holder, or if the transaction scan indicates that the information is false or fraudulent, the attempted purchase of the alcoholic beverage shall be denied.

3. A person violating the provisions of paragraph (a) of subdivision two of this section shall be guilty of a violation and shall be

sentenced in accordance with the following:

(a) For a first violation, the court shall order payment of a fine of not more than one hundred dollars and/or an appropriate amount of community service not to exceed thirty hours. In addition, the court may order completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law.

(b) For a second violation, the court shall order payment of a fine of not less than fifty dollars nor more than three hundred fifty dollars and/or an appropriate amount of community service not to exceed sixty hours. The court also shall order completion of an alcohol awareness program as referenced in paragraph (a) of this subdivision if such program has not previously been completed by the offender, unless the court determines that attendance at such program is not feasible due to the lack of availability of such program within a reasonably close proximity to the locality in which the offender resides or matriculates, as appropriate.

(c) For third and subsequent violations, the court shall order payment of a fine of not less than fifty dollars nor more than seven hundred fifty dollars and/or an appropriate amount of community service not to exceed ninety hours. The court also shall order that such person submit to an evaluation by an appropriate agency certified or licensed by the office of alcoholism and substance abuse services to determine whether the person suffers from the disease of alcoholism or alcohol abuse, unless the court determines that under the circumstances presented such an evaluation is not necessary, in which case the court shall state on the record the basis for such determination. Payment for such evaluation shall be made by such person. If, based on such evaluation, a need for treatment is indicated, such person may choose to participate in a treatment plan developed by an agency certified or licensed by the office of alcoholism and substance abuse services. If such person elects to participate in recommended treatment, the court shall order that payment of such fine and community service be suspended pending the completion of such treatment.

(d) Evaluation procedures. For purposes of this subdivision, the following shall apply:

(i) The contents of an evaluation pursuant to paragraph (c) of this subdivision shall be used for the sole purpose of determining if such person suffers from the disease of alcoholism or alcohol abuse.

(ii) The agency designated by the court to perform such evaluation shall conduct the evaluation and return the results to the court within thirty days, subject to any state or federal confidentiality law, rule or regulation governing the confidentiality of alcohol and substance abuse treatment records.

(iii) The office of alcoholism and substance abuse services shall make available to each supreme court law library in this state, or, if no supreme court law library is available in a certain county, to the county court law library of such county, a list of agencies certified to perform evaluations as required by subdivision (f) of section 19.07 of the mental hygiene law.

(iv) All evaluations required under this subdivision shall be in writing and the person so evaluated or his or her counsel shall receive a copy of such evaluation prior to its use by the court.

(v) A minor evaluated under this subdivision shall have, and shall be informed by the court of, the right to obtain a second opinion regarding his or her need for alcoholism treatment.

4. A person violating the provisions of paragraph (b) of subdivision

two of this section shall be guilty of a violation punishable by a fine of not more than one hundred dollars, and/or an appropriate amount of community service not to exceed thirty hours. In addition, the court may order completion of an alcohol training awareness program established pursuant to subdivision twelve of section seventeen of this chapter where such program is located within a reasonably close proximity to the locality in which the offender is employed or resides.

5. No determination of guilt pursuant to this section shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination.

6. In addition to the penalties otherwise provided in subdivision three of this section, if a determination is made sustaining a charge of illegally purchasing or attempting to illegally purchase an alcoholic beverage, the court may suspend such person's license to drive a motor vehicle and the privilege of an unlicensed person of obtaining such license, in accordance with the following and for the following periods, if it is found that a driver's license was used for the purpose of such illegal purchase or attempt to illegally purchase; provided, however, that where a person is sentenced pursuant to paragraph (b) or (c) of subdivision three of this section, the court shall impose such license suspension if it is found that a driver's license was used for the purpose of such illegal purchase or attempt to illegally purchase:

(a) For a first violation of paragraph (a) of subdivision two of this section, a three month suspension.

(b) For a second violation of paragraph (a) of subdivision two of this section, a six month suspension.

(c) For a third or subsequent violation of paragraph (a) of subdivision two of this section, a suspension for one year or until the holder reaches the age of twenty-one, whichever is the greater period of time.

Such person may thereafter apply for and be issued a restricted use license in accordance with the provisions of section five hundred thirty of the vehicle and traffic law.

7. (a) In any proceeding pursuant to subdivision one of section sixty-five of this article, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed the transaction scan, and that the alcoholic beverage had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense, the liquor authority shall take into consideration any written policy adopted and implemented by the seller to carry out the provisions of this chapter. Use of a transaction scan shall not excuse any licensee under this chapter, or agent or employee of such licensee, from the exercise of reasonable diligence otherwise required by this section. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any other civil or criminal proceeding, or in any other forum.

(b) A licensee or agent or employee of a licensee may electronically or mechanically record and maintain only the information from a transaction scan necessary to effectuate the purposes of this section. Such information shall be limited to the following: (i) name, (ii) date of birth, (iii) driver's license or non-driver identification number, and (iv) expiration date. The liquor authority and the state

commissioner of motor vehicles shall jointly promulgate any regulation necessary to govern the recording and maintenance of these records by a licensee under this chapter. The liquor authority and the commissioner of health shall jointly promulgate any regulations necessary to ensure quality control in the use of transaction scan devices.

8. A licensee or agent or employee of such licensee shall only use the information recorded and maintained through the use of such devices for the purposes contained in paragraph (a) of subdivision seven of this section, and shall only use such devices for the purposes contained in subdivision two of this section. No licensee or agent or employee of a licensee shall resell or disseminate the information recorded during such scan to any third person. Such prohibited resale or dissemination includes, but is not limited to, any advertising, marketing or promotional activities. Notwithstanding the restrictions imposed by this subdivision, such records may be released pursuant to a court ordered subpoena or pursuant to any other statute that specifically authorizes the release of such information. Each violation of this subdivision shall be punishable by a civil penalty of not more than one thousand dollars.

65-C - Unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years.

§ 65-c. Unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years. 1. Except as hereinafter provided, no person under the age of twenty-one years shall possess any alcoholic beverage, as defined in this chapter, with the intent to consume such beverage.

2. A person under the age of twenty-one years may possess any alcoholic beverage with intent to consume if the alcoholic beverage is given:

(a) to a person who is a student in a curriculum licensed or registered by the state education department and the student is required to taste or imbibe alcoholic beverages in courses which are a part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during class conducted pursuant to such curriculum; or

(b) to the person under twenty-one years of age by that person's parent or guardian.

3. Any person who unlawfully possesses an alcoholic beverage with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars and/or completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law and/or an appropriate amount of community service not to exceed thirty hours.

4. No such determination shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal

by reason of such determination, nor shall such determination be deemed a conviction.

5. Whenever a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law shall observe a person under twenty-one years of age openly in possession of an alcoholic beverage as defined in this chapter, with the intent to consume such beverage in violation of this section, said officer may seize the beverage, and shall deliver it to the custody of his or her department.

6. Any alcoholic beverage seized in violation of this section is hereby declared a nuisance. The official to whom the beverage has been delivered shall, no earlier than three days following the return date for initial appearance on the summons, dispose of or destroy the alcoholic beverage seized or cause it to be disposed of or destroyed. Any person claiming ownership of an alcoholic beverage seized under this section may, on the initial return date of the summons or earlier on five days notice to the official or department in possession of the beverage, apply to the court for an order preventing the destruction or disposal of the alcoholic beverage seized and ordering the return of that beverage. The court may order the beverage returned if it is determined that return of the beverage would be in the interest of justice or that the beverage was improperly seized.

NEW YORK STATE VEHICLE AND TRAFFIC LAW

Penalties for Alcohol or Drug-Related Violations in New York State

Penalties for Alcohol or Drug-Related Violations in NYS	The penalties for an alcohol or drug-related violation include the loss of driving privileges, fines, and a possible jail term. Source: New York State Department of Motor Vehicles (dmv.ny.gov)		
<i>Violation</i>	<i>Mandatory Fine</i>	<i>Maximum Jail Term</i>	<i>Mandatory Driver License Action</i>
Aggravated Driving While Intoxicated (A-DWI)	\$1,000 - \$2,500	1 year	Revoked for at least one year
Second A-DWI in 10 years (E felony)	\$1,000 - \$5,000	4 years	Revoked for at least 18 months
Third A-DWI in 10 years (D felony)	\$2,000 - \$10,000	7 years	Revoked for at least 18 months

Driving While Intoxicated (DWI) or Driving While Impaired by a Drug (DWAI-Drug)	\$500 - \$1,000	1 year	DWI-Revoked for at least six months. DWAI-Drugs - Suspended for at least six months
Second DWI/DWAI-Drug violation in 10 years (E felony)	\$1,000 - \$5,000	4 years	Revoked for at least one year
Third DWI/DWAI-Drug violation in 10 years (D felony)	\$2,000 - \$10,000	7 years	Revoked for at least one year
Driving While Ability Impaired by a Combination of Alcohol/Drugs (DWAI-Combination)	\$500 - \$1,000	1 year	Revoked for at least six months
Second DWAI/Combination in 10 years (E felony)	\$1,000 - \$5,000	4 years	Revoked for at least one year
Third DWAI/Combination in 10 years (D felony)	\$2,000 - \$10,000	7 years	Revoked for at least one year
Driving While Ability Impaired by Alcohol (DWAI)	\$300 - \$500	15 days	Suspended for 90 days
Second DWAI violation in 5 years	\$500 - \$750	30 days	Revoked for at least six months
Third or subsequent DWAI within 10 years (Misdemeanor)	\$750 - \$1,500	180 days	Revoked for at least six months
Zero Tolerance Law	\$125 civil penalty and \$100 fee to terminate suspension	None	Suspended for six months
Second Zero Tolerance Law	\$125 civil penalty and \$100 re-application fee	None	Revoked for one year or until age 21
Chemical Test Refusal	\$500 civil penalty (\$550 for commercial drivers)	None	Revoked for at least one year, 18 months for commercial drivers

Chemical Test Refusal within five years of a previous DWI-related charge/Chemical Test Refusal	\$750 civil penalty	None	Revoked for at least 18 months, one-year or until age 21 for drivers under age 21, permanent CDL revocation for commercial drivers
Chemical Test Refusal - Zero Tolerance Law	\$300 civil penalty and \$100 re-application fee	None	Revoked for at least one year
Chemical Test Refusal - Second or subsequent Zero Tolerance Law	\$750 civil penalty and \$100 re-application fee	None	Revoked for at least one year
Driving Under the Influence (Out-of-State)	N/A	N/A	Revoked for at least 90 days. If less than 21 years of age, revoked at least one year
Driving Under the Influence (Out-of-State) with any previous alcohol-drug violation	N/A	N/A	Revoked for at least 90 days (longer term with certain prior offenses). If less than 21 years of age, revoked at least one year or until age 21 (longest term)

Article 31 - (1192 - 1199) ALCOHOL AND DRUG-RELATED OFFENSES AND PROCEDURES APPLICABLE THERETO

§ 1192. Operating a motor vehicle while under the influence of alcohol or drugs. 1. Driving while ability impaired. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol.

2. Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .08 of one per centum or more 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.

2-a. Aggravated driving while intoxicated. (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.

3. Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition.

4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.

4-a. Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs.

5. Commercial motor vehicles: per se - level I. Notwithstanding the provisions of section eleven hundred ninety-five of this article, no person shall operate a commercial motor vehicle while such person has .04 of one per centum or more but not more than .06 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; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision one of this section, or of section eleven hundred ninety-two-a of this article where a person under the age of twenty-one operates a commercial motor vehicle where 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, indicates that such operator has .02 of one per centum or more but less than .04 of one per centum by weight of alcohol in such operator's blood.

6. Commercial motor vehicles; per se - level II. Notwithstanding the provisions of section eleven hundred ninety-five of this article, no person shall operate a commercial motor vehicle while such person has more than .06 of one per centum but less than .08 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; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision one of this section.

7. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic and any other parking lot. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.

8. Effect of prior out-of-state conviction. A prior out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs shall be deemed to be a prior conviction of a violation of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision two of section eleven hundred ninety-three of this article; provided, however, that such conduct, had it occurred in this state, would have constituted a misdemeanor or felony violation of any of the provisions of this section. Provided, however, that if such conduct, had it occurred in this state, would have constituted a

violation of any provisions of this section which are not misdemeanor or felony offenses, then such conduct shall be deemed to be a prior conviction of a violation of subdivision one of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action required to be taken pursuant to subdivision two of section eleven hundred ninety-three of this article.

8-a. Effect of prior finding of having consumed alcohol. A prior finding that a person under the age of twenty-one has operated a motor vehicle after having consumed alcohol pursuant to section eleven hundred ninety-four-a of this article shall have the same effect as a prior conviction of a violation of subdivision one of this section solely for the purpose of determining the length of any license suspension or revocation required to be imposed under any provision of this article, provided that the subsequent offense is committed prior to the expiration of the retention period for such prior offense or offenses set forth in paragraph (k) of subdivision one of section two hundred one of this chapter.

9. Conviction of a different charge. A driver may be convicted of a violation of subdivision one, two or three of this section, notwithstanding that the charge laid before the court alleged a violation of subdivision two or three of this section, and regardless of whether or not such conviction is based on a plea of guilty.

10. Plea bargain limitations. (a) (i) In any case wherein the charge laid before the court alleges a violation of subdivision two, three, four or four-a of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section, other than subdivision five or six, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(ii) In any case wherein the charge laid before the court alleges a violation of subdivision two, three, four or four-a of this section, no plea of guilty to subdivision one of this section shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section eleven hundred ninety-six of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section eleven hundred ninety-eight-a of this article or for other good cause shown. The provisions of this subparagraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional license unless otherwise authorized by law.

(iii) In any case wherein the charge laid before the court alleges a

violation of subdivision one of this section and the operator was under the age of twenty-one at the time of such violation, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of such subdivision; provided, however, such charge may instead be satisfied as provided in paragraph (c) of this subdivision, and, provided further that, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of subdivision one of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(b) In any case wherein the charge laid before the court alleges a violation of subdivision one or six of this section while operating a commercial motor vehicle, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may consent, and the court may allow, a disposition by plea of guilty to another charge in satisfaction of such charge.

(c) Except as provided in paragraph (b) of this subdivision, in any case wherein the charge laid before the court alleges a violation of subdivision one of this section by a person who was under the age of twenty-one at the time of commission of the offense, the court, with the consent of both parties, may allow the satisfaction of such charge by the defendant's agreement to be subject to action by the commissioner pursuant to section eleven hundred ninety-four-a of this article. In any such case, the defendant shall waive the right to a hearing under section eleven hundred ninety-four-a of this article and such waiver shall have the same force and effect as a finding of a violation of section eleven hundred ninety-two-a of this article entered after a hearing conducted pursuant to such section eleven hundred ninety-four-a. The defendant shall execute such waiver in open court, and, if represented by counsel, in the presence of his attorney, on a form to be provided by the commissioner, which shall be forwarded by the court to the commissioner within ninety-six hours. To be valid, such form shall, at a minimum, contain clear and conspicuous language advising the defendant that a duly executed waiver: (i) has the same force and effect as a guilty finding following a hearing pursuant to section eleven hundred ninety-four-a of this article; (ii) shall subject the defendant to the imposition of sanctions pursuant to such section eleven hundred ninety-four-a; and (iii) may subject the defendant to increased sanctions upon a subsequent violation of this section or section eleven hundred ninety-two-a of this article. Upon receipt of a duly executed waiver pursuant to this paragraph, the commissioner shall take such administrative action and impose such sanctions as may be required by section eleven hundred ninety-four-a of this article.

(d) In any case wherein the charge laid before the court alleges a violation of subdivision two-a of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of subdivision two, two-a or three of this section, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be

authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge, provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition. Provided, further, however, that no such plea shall be accepted by the court unless such plea includes as a condition thereof the requirement that the defendant attend and complete the alcohol and drug rehabilitation program established pursuant to section eleven hundred ninety-six of this article, including any assessment and treatment required thereby; provided, however, that such requirement may be waived by the court upon application of the district attorney or the defendant demonstrating that the defendant, as a condition of the plea, has been required to enter into and complete an alcohol or drug treatment program prescribed pursuant to an alcohol or substance abuse screening or assessment conducted pursuant to section eleven hundred ninety-eight-a of this article or for other good cause shown. The provisions of this paragraph shall apply, notwithstanding any bars to participation in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this article; provided, however, that nothing in this paragraph shall authorize the issuance of a conditional license unless otherwise authorized by law.

11. No person other than an operator of a commercial motor vehicle may be charged with or convicted of a violation of subdivision five or six of this section.

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; 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 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 responsible 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.

§ 1192-a. Operating a motor vehicle after having consumed alcohol; under the age of twenty-one; per se. No person under the age of twenty-one shall operate a motor vehicle after having consumed alcohol

as defined in this section. For purposes of this section, a person under the age of twenty-one is deemed to have consumed alcohol only if such person has .02 of one per centum or more but not more than .07 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. Any person who operates a motor vehicle in violation of this section, and who is not charged with a violation of any subdivision of section eleven hundred ninety-two of this article arising out of the same incident shall be referred to the department for action in accordance with the provisions of section eleven hundred ninety-four-a of this article. Except as otherwise provided in subdivision five of section eleven hundred ninety-two of this article, this section shall not apply to a person who operates a commercial motor vehicle. Notwithstanding any provision of law to the contrary, a finding that a person under the age of twenty-one operated a motor vehicle after having consumed alcohol in violation of this section is not a judgment of conviction for a crime or any other offense.

§ 1193. Sanctions. 1. Criminal penalties. (a) Driving while ability impaired. A violation of subdivision one of section eleven hundred ninety-two of this article shall be a traffic infraction and shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than seven hundred fifty dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment. A person who operates a vehicle in violation of such subdivision after having been convicted two or more times of a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding ten years shall be guilty of a misdemeanor, and shall be punished by a fine of not less than seven hundred fifty dollars nor more than fifteen hundred dollars, or by imprisonment of not more than one hundred eighty days in a penitentiary or county jail or by both such fine and imprisonment.

(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 also sentence

such person convicted of, or adjudicated a youthful offender for, a violation of subdivision two, two-a or three of section eleven hundred ninety-two of this article to a term 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 twelve months; provided, however, that such period of interlock restriction shall terminate upon submission of proof that such person installed and maintained an ignition interlock device for at least six months, unless the court ordered such person to install and maintain an ignition interlock device for a longer period as authorized by this subparagraph and specified in such order. The period of interlock restriction shall commence from the earlier of the date of sentencing, or the date that an ignition interlock device was installed in advance of sentencing. 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.

(ii-a) 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, three or more times within the preceding fifteen 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, or adjudicated a youthful offender for, 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 twelve months; provided, however, that such period of interlock restriction shall terminate upon submission of proof that such person installed and maintained an ignition interlock device for at least six months, unless the court ordered such person to install and maintain a ignition interlock device for a longer period as authorized by this subparagraph and specified in such order. The period of interlock restriction shall commence from the earlier of the date of sentencing, or the date that an ignition interlock device was installed in advance of sentencing. 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.

(d) Alcohol or drug related offenses; special vehicles. (1) Except as provided in subparagraph four of this paragraph, a violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a taxicab as defined in section one hundred forty-eight-a of this chapter, or livery as defined in section one hundred twenty-one-e of this chapter, and such taxicab or livery is carrying a passenger for compensation, or a truck with a GVWR of more than eighteen thousand pounds but not more than twenty-six thousand pounds and which is not a commercial motor vehicle shall be a class E felony punishable 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.

(1-a) A violation of subdivision one of section eleven hundred

ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(2) A violation of subdivision five of section eleven hundred ninety-two of this article shall be a traffic infraction punishable as provided in paragraph (a) of this subdivision. Except as provided in subparagraph three or five of this paragraph, a violation of subdivision one, two, three, four, four-a or six of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a misdemeanor. A violation of subdivision one, two, three, four or four-a of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision six of section eleven hundred ninety-two of this article shall be punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment not to exceed one hundred eighty days, or by both such fine and imprisonment. A person who operates any such vehicle in violation of such subdivision six after having been convicted of a violation of subdivision one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years shall be punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a commercial motor vehicle, or any motor vehicle registered or registerable under schedule F of subdivision seven of section four hundred one of this chapter shall be a class E felony punishable 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.

(3) A violation of subdivision one of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than fifteen hundred dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

(4) (i) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph within the preceding ten years, shall be guilty of a class E felony, which shall be punishable 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. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of two or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class E felony, which shall be punishable 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. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

(ii) A person who operates a vehicle in violation of subdivision one, two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and which is punishable as provided in subparagraph one, one-a, two or three of this paragraph after having been convicted of a violation of any such subdivision of section eleven hundred ninety-two of this article and penalized under subparagraph one, one-a, two or three of this paragraph twice within the preceding ten years, shall be guilty of a class D felony, which shall be punishable 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. A person who operates a vehicle in violation of subdivision six of section eleven hundred ninety-two of this article after having been convicted of three or more violations of subdivisions one, two, two-a, three, four, four-a or six of section eleven hundred ninety-two of this article within the preceding five years, any one of which was a misdemeanor, shall be guilty of a class D felony, which shall be punishable 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. In addition, any person sentenced pursuant to this subparagraph shall be subject to the disqualification provided in subparagraph three of paragraph (e) of subdivision two of this section.

(4-a) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a class E felony punishable 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. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a school bus as defined in section one hundred forty-two of this chapter and such school bus is carrying at least one student passenger shall be a class D felony punishable 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.

(5) A violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives, shall be a class E felony punishable by a fine of not less than one thousand dollars and such other penalties as provided for in the penal law; provided, however, that a conviction for

such violation shall not be considered a predicate felony pursuant to section 70.06 of such law, or a previous felony conviction pursuant to section 70.10 of such law. A violation of subdivision two-a of section eleven hundred ninety-two of this article wherein the violator is operating a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds which contains flammable gas, radioactive materials or explosives, shall be a class D felony punishable by a fine of not less than two thousand nor more than ten thousand dollars and such other penalties as provided for in the penal law; provided, however, that a conviction for such violation shall not be considered a predicate felony pursuant to section 70.06 of such law, or a previous felony conviction pursuant to section 70.10 of such law.

(6) The sentences required to be imposed by subparagraph one, one-a, two, three, four, four-a or five of this paragraph shall be imposed notwithstanding any contrary provision of this chapter or the penal law.

(7) Nothing contained in this paragraph shall prohibit the imposition of a charge of any other felony set forth in this or any other provision of law for any acts arising out of the same incident.

(e) Certain sentences prohibited. Notwithstanding any provisions of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of any subdivision of section eleven hundred ninety-two of this article nor shall a judge or magistrate impose a sentence of conditional discharge or probation unless such conditional discharge or probation is accompanied by a sentence of a fine as provided in this subdivision.

(f) Where the court imposes a sentence for a violation of section eleven hundred ninety-two of this article, the court may require the defendant, as a part of or as a condition of such sentence, to attend a single session conducted by a victims impact program. For purposes of this section, "victims impact program" means a program operated by a county, a city with a population of one million or more, by a not-for-profit organization authorized by any such county or city, or a combination thereof, in which presentations are made concerning the impact of operating a motor vehicle while under the influence of alcohol or drugs to one or more persons who have been convicted of such offenses. A description of any such program shall be filed with the commissioner and with the coordinator of the special traffic options program for driving while intoxicated established pursuant to section eleven hundred ninety-seven of this article, and shall be made available to the court upon request. Nothing contained herein shall be construed to require any governmental entity to create such a victim impact program.

(g) The office of probation and correctional alternatives shall recommend to the commissioner of the division of criminal justice services 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.

1-a. Additional penalties. (a) Except as provided for in paragraph (b) of this subdivision, a person who operates a vehicle in violation of subdivision two or three of section eleven hundred ninety-two of this article after having been convicted of a violation of subdivision two or three of such section within the preceding five years shall, in addition to any other penalties which may be imposed pursuant to subdivision one of this section, be sentenced to a term of imprisonment of five days or,

as an alternative to such imprisonment, be required to perform thirty days of service for a public or not-for-profit corporation, association, institution or agency as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of five days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision.

(b) A person who operates a vehicle in violation of subdivision two or three of section eleven hundred ninety-two of this article after having been convicted on two or more occasions of a violation of any of such subdivisions within the preceding five years shall, in addition to any other penalties which may be imposed pursuant to subdivision one of this section, be sentenced to a term of imprisonment of ten days or, as an alternative to such imprisonment, be required to perform sixty days of service for a public or not-for-profit corporation, association, institution or agency as set forth in paragraph (h) of subdivision two of section 65.10 of the penal law as a condition of sentencing for such violation. Notwithstanding the provisions of this paragraph, a sentence of a term of imprisonment of ten days or more pursuant to the provisions of subdivision one of this section shall be deemed to be in compliance with this subdivision.

(c) A court sentencing a person pursuant to paragraph (a) or (b) of this subdivision shall: (i) order the installation of an ignition interlock device approved pursuant to section eleven hundred ninety-eight of this article in any motor vehicle owned or operated by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to paragraph (b) of subdivision two of this section, and, upon the termination of such revocation period, for an additional period as determined by the court; and (ii) order that such person receive an assessment of the degree of their alcohol or substance abuse and dependency pursuant to the provisions of section eleven hundred ninety-eight-a of this article. Where such assessment indicates the need for treatment, such court is authorized to impose treatment as a condition of such sentence except that such court shall impose treatment as a condition of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section eleven hundred ninety-eight-a of this article. Any person ordered to install an ignition interlock device pursuant to this paragraph shall be subject to the provisions of subdivisions four, five, seven, eight and nine of section eleven hundred ninety-eight of this article.

(d) Confidentiality of records. The provisions of subdivision six of section eleven hundred ninety-eight-a of this article shall apply to the records and content of all assessments and treatment conducted pursuant to this subdivision.

2. License sanctions. (a) Suspensions. Except as otherwise provided in this subdivision, a license shall be suspended and a registration may be suspended for the following periods:

(1) Driving while ability impaired. Ninety days, where the holder is convicted of a violation of subdivision one of section eleven hundred ninety-two of this article;

(2) Persons under the age of twenty-one; driving after having consumed alcohol. Six months, where the holder has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article where such person was under

the age of twenty-one at the time of commission of such violation.

(b) Revocations. A license shall be revoked and a registration may be revoked for the following minimum periods:

(1) Driving while ability impaired; prior offense. Six months, where the holder is convicted of a violation of subdivision one of section eleven hundred ninety-two of this article committed within five years of a conviction for a violation of any subdivision of section eleven hundred ninety-two of this article.

(1-a) Driving while ability impaired; misdemeanor offense. Six months, where the holder is convicted of a violation of subdivision one of section eleven hundred ninety-two of this article committed within ten years of two previous convictions for a violation of any subdivision of section eleven hundred ninety-two of this article.

(2) 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. Six months, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. One year where the holder is convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article.

(3) 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; prior offense. One year, where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article. Eighteen months, where the holder is convicted of a violation of subdivision two-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article; or where the holder is convicted of a violation of subdivision two, three, four or four-a of section eleven hundred ninety-two of this article committed within ten years of a conviction for a violation of subdivision two-a of section eleven hundred ninety-two of this article.

(4) Special vehicles other than school buses. One year, where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article and is sentenced pursuant to subparagraph one of paragraph (d) of subdivision one of this section.

(4-a) School buses. (A) One year, where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was driving a school bus, and the holder is sentenced pursuant to subparagraph one, one-a or four-a of paragraph (d) of subdivision one of this section.

(B) Three years where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was driving a school bus, and the holder is sentenced pursuant to subparagraph four of paragraph (d) of subdivision one of this section.

(C) Notwithstanding the provisions of the opening paragraph of this paragraph (b), the commissioner shall not revoke the registration of a school bus driven in violation of section eleven hundred ninety-two of this article.

(5) Holder of a commercial driver's license. (i) Except as otherwise provided in this subparagraph, one year where the holder of a commercial

driver's license is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or if such holder is convicted of an offense consisting of operating a motor vehicle under the influence of alcohol or drugs where such conviction was had outside of this state.

(ii) Three years, where the holder is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article, such violation was committed while the holder was operating a commercial motor vehicle transporting hazardous materials or if such holder is convicted of an offense consisting of operating a motor vehicle under the influence of alcohol or drugs where such conviction was had outside of this state.

(6) Persons under the age of twenty-one. One year, where the holder is convicted of or adjudicated a youthful offender for a violation of any subdivision of section eleven hundred ninety-two of this article, or is convicted of or receives a youthful offender or other juvenile adjudication for an offense consisting of operating a motor vehicle under the influence of intoxicating liquor where the conviction, or youthful offender or other juvenile adjudication was had outside this state, where such person was under the age of twenty-one at the time of commission of such violation.

(7) Persons under the age of twenty-one; prior offense or finding. One year or until the holder reaches the age of twenty-one, whichever is the greater period of time, where the holder has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, or is convicted of, or adjudicated a youthful offender for, a violation of any subdivision of section eleven hundred ninety-two of this article, or is convicted of or receives a youthful offender or juvenile adjudication for an offense consisting of operating a motor vehicle under the influence of intoxicating liquor where the conviction, or youthful offender or other juvenile adjudication was had outside this state, where such person was under the age of twenty-one at the time of commission of such violation and has previously been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, or has previously been convicted of, or adjudicated a youthful offender for, any violation of section eleven hundred ninety-two of this article not arising out of the same incident, or has previously been convicted of or received a youthful offender or juvenile adjudication for an offense consisting of operating a motor vehicle under the influence of intoxicating liquor when the conviction, or youthful offender or other juvenile adjudication was had outside this state and not arising out of the same.

(8) Out-of-state offenses. Except as provided in subparagraph six or seven of this paragraph: (i) ninety days, where the holder is convicted of an offense consisting of operating a motor vehicle under the influence of intoxicating liquor where the conviction was had outside this state and (ii) six months, where the holder is convicted of, or receives a youthful offender or other juvenile adjudication, which would have been a misdemeanor or felony if committed by an adult, in connection with, an offense consisting of operating a motor vehicle under the influence of or while impaired by the use of drugs where the conviction or youthful offender or other juvenile adjudication was had outside this state.

(9) Effect of rehabilitation program. No period of revocation arising out of subparagraph four, five, six or seven of this paragraph may be

set aside by the commissioner for the reason that such person was a participant in the alcohol and drug rehabilitation program set forth in section eleven hundred ninety-six of this chapter.

(10) Action required by commissioner. Where a court fails to impose, or incorrectly imposes, a suspension or revocation required by this subdivision, the commissioner shall, upon receipt of a certificate of conviction filed pursuant to section five hundred fourteen of this chapter, impose such mandated suspension or revocation, which shall supersede any such order which the court may have imposed.

(11) Limitation of certain mandatory revocations. Where revocation is mandatory pursuant to subparagraph five of this paragraph for a conviction of a violation of subdivision five of section eleven hundred ninety-two of this article, such revocation shall be issued only by the commissioner and shall be applicable only to that portion of the holder's driver's license or privilege which permits the operation of commercial motor vehicles, and the commissioner shall immediately issue a license, other than a commercial driver's license, to such person provided that such person is otherwise eligible to receive such license and further provided that issuing a license to such person does not create a substantial traffic safety hazard.

(12) Permanent revocation. (a) Notwithstanding any other provision of this chapter to the contrary, whenever a revocation is imposed upon a person for the refusal to submit to a chemical test pursuant to the provisions of section eleven hundred ninety-four of this article or conviction for any violation of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed, and such person has: (i) within the previous four years been twice convicted of any provisions of section eleven hundred ninety-two of this article or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least one such conviction was for a crime, or has twice been found to have refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, or has any combination of two such convictions and findings of refusal not arising out of the same incident; or (ii) within the previous eight years been convicted three times of any provision of section eleven hundred ninety-two of this article for which a sentence of imprisonment may be imposed or a violation of the penal law for which a violation of such section eleven hundred ninety-two is an essential element and at least two such convictions were for crimes, or has been found, on three separate occasions, to have refused to submit to a chemical test pursuant to section eleven hundred ninety-four of this article, or has any combination of such convictions and findings of refusal not arising out of the same incident, such revocation shall be permanent.

(b) The permanent driver's license revocation required by clause (a) of this subparagraph shall be waived by the commissioner after a period of five years has expired since the imposition of such permanent revocation, provided that during such five-year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section five hundred eleven of this chapter or a violation of the penal law for which a violation of any subdivision of such section eleven hundred ninety-two is an essential element and either:

(i) that such person provides acceptable documentation to the

commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; or

(ii) that such person is granted a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law.

Provided, however, that the commissioner may, on a case by case basis, refuse to restore a license which otherwise would be restored pursuant to this item, in the interest of the public safety and welfare.

(c) For revocations imposed pursuant to clause (a) of this subparagraph, the commissioner may adopt rules to permit conditional or restricted operation of a motor vehicle by any such person after a mandatory revocation period of not less than three years subject to such criteria, terms and conditions as established by the commissioner.

(d) Upon (i) a finding of refusal after having been convicted three times within four years of a violation of any subdivision of section eleven hundred ninety-two of this article or of the penal law for which a violation of any subdivision of such section eleven hundred ninety-two is an essential element or any combination of three such convictions not arising out of the same incident within four years or (ii) a fourth conviction of any subdivision of section eleven hundred ninety-two of this article after having been convicted of any such subdivision of such section eleven hundred ninety-two or of the penal law for which a violation of any of such subdivisions of such section eleven hundred ninety-two is an essential element or any combination of three such convictions not arising out of the same incident within four years or (iii) a finding of refusal after having been convicted four times within eight years of a violation of any subdivision of section eleven hundred ninety-two of this article or of the penal law for which a violation of any of such subdivisions of such section eleven hundred ninety-two is an essential element or any combination of four such convictions not arising out of the same incident within eight years or (iv) a fifth conviction of any subdivision of section eleven hundred ninety-two of this article after having been convicted of such subdivision or of the penal law for which a violation of any of such subdivisions of such section eleven hundred ninety-two is an essential element or any combination of four such convictions not arising out of the same incident within eight years, such revocation shall be permanent.

(e) The permanent driver's license revocation required by clause (d) of this subparagraph may be waived by the commissioner after a period of eight years has expired since the imposition of such permanent revocation provided:

(i) that during such eight-year period such person has not been found to have refused a chemical test pursuant to section eleven hundred ninety-four of this article while operating a motor vehicle and has not been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article or section five hundred eleven of this chapter or a violation of the penal law for which a violation of any such subdivisions of such section eleven hundred ninety-two is an essential element; and

(ii) that such person provides acceptable documentation to the commissioner that such person has voluntarily enrolled in and successfully completed an appropriate rehabilitation program; and

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law.

Notwithstanding the provisions of this clause, nothing contained in

this clause shall be deemed to require the commissioner to restore a license to an applicant who otherwise has complied with the requirements of this item, in the interest of the public safety and welfare.

(f) Nothing contained in this subparagraph shall be deemed to reduce a license revocation period imposed pursuant to any other provision of law.

(c) Reissuance of licenses; restrictions. (1) Except as otherwise provided in this paragraph, where a license is revoked pursuant to paragraph (b) of this subdivision, no new license shall be issued after the expiration of the minimum period specified in such paragraph, except in the discretion of the commissioner.

(2) Where a license is revoked pursuant to subparagraph two, three or eight of paragraph (b) of this subdivision for a violation of subdivision four of section eleven hundred ninety-two of this article, and where the individual does not have a driver's license or the individual's license was suspended at the time of conviction or youthful offender or other juvenile adjudication, the commissioner shall not issue a new license nor restore the former license for a period of six months after such individual would otherwise have become eligible to obtain a new license or to have the former license restored; provided, however, that during such delay period the commissioner may issue a restricted use license pursuant to section five hundred thirty of this chapter.

(3) In no event shall a new license be issued where a person has been twice convicted of a violation of subdivision three, four or four-a of section eleven hundred ninety-two of this article or of driving while intoxicated or of driving while ability is impaired by the use of a drug or of driving while ability is impaired by the combined influence of drugs or of alcohol and any drug or drugs where physical injury, as defined in section 10.00 of the penal law, has resulted from such offense in each instance.

(d) Suspension or revocation; sentencing. (1) Notwithstanding anything to the contrary contained in a certificate of relief from disabilities or a certificate of good conduct issued pursuant to article twenty-three of the correction law, where a suspension or revocation, other than a revocation required to be issued by the commissioner, is mandatory pursuant to paragraph (a) or (b) of this subdivision, the magistrate, justice or judge shall issue an order suspending or revoking such license upon sentencing, and the license holder shall surrender such license to the court. Except as hereinafter provided, such suspension or revocation shall take effect immediately.

(2) Except where the license holder has been charged with a violation of article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident or convicted of such violation or a violation of any subdivision of section eleven hundred ninety-two of this article within the preceding five years, the judge, justice or magistrate may issue an order making said license suspension or revocation take effect twenty days after the date of sentencing. The license holder shall be given a copy of said order permitting the continuation of driving privileges for twenty days after sentencing, if granted by the court. The court shall forward to the commissioner the certificates required in sections five hundred thirteen and five hundred fourteen of this chapter, along with a copy of any order issued pursuant to this paragraph and the license, within ninety-six hours of sentencing.

(e) Special provisions. (1) Suspension pending prosecution; procedure.

a. Without notice, pending any prosecution, the court shall suspend such license, where the holder has been charged with a violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and either (i) a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law arising out of the same incident, or (ii) has been convicted of any violation under section eleven hundred ninety-two of this article within the preceding five years.

b. The suspension under the preceding clause shall occur no later than twenty days after the holder's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the holder operated a motor vehicle in violation of subdivision two, two-a, three, four or four-a of section eleven hundred ninety-two of this article and either (i) the person had been convicted of any violation under such section eleven hundred ninety-two of this article within the preceding five years; or (ii) that the holder committed a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law. At such time the holder shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon a pending charge of a violation of a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the holder committed a felony under article one hundred twenty or one hundred twenty-five of the penal law and the holder has not been previously convicted of any violation of section eleven hundred ninety-two of this article within the preceding five years the court shall promptly notify the commissioner and direct restoration of such license to the license holder unless such license is suspended or revoked pursuant to any other provision of this chapter.

(2) Bail forfeiture. A license shall be suspended where the holder forfeits bail upon a charge of a violation of any subdivision of section eleven hundred ninety-two of this article. Such suspension shall not be terminated until the holder submits to the jurisdiction of the court in which the bail was forfeited.

(3) Permanent disqualification from operating certain motor vehicles.
a. Except as otherwise provided herein, in addition to any revocation set forth in subparagraph four or five of paragraph (b) of this subdivision, any person sentenced pursuant to subparagraph three of paragraph (d) of subdivision one of this section shall be permanently disqualified from operating any vehicle set forth in such paragraph. In addition, the commissioner shall not issue such person a license valid for the operation of any vehicle set forth therein by such person. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of five years has expired from such sentencing provided:

(i) that during such five year period such person has not violated any of the provisions of section eleven hundred ninety-two of this article or any alcohol or drug related traffic offense in this state or in any jurisdiction outside this state;

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

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law.

b. Any person who holds a commercial driver's license and is convicted of a violation of any subdivision of section eleven hundred ninety-two of this article who has had a prior finding of refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this article or has had a prior conviction of any of the following offenses: any violation of section eleven hundred ninety-two of this article; any violation of subdivision one or two of section six hundred of this chapter; or has a prior conviction of any felony involving the use of a motor vehicle pursuant to paragraph (a) of subdivision one of section five hundred ten-a of this chapter, shall be permanently disqualified from operating a commercial motor vehicle. The commissioner may waive such disqualification and prohibition hereinbefore provided after a period of ten years has expired from such sentence provided:

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

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

(iii) after such documentation is accepted, that such person is granted a certificate of relief from disabilities or a certificate of good conduct pursuant to article twenty-three of the correction law.

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

(4) Youthful offenders. Where a youth is determined to be a youthful offender, following a conviction of a violation of section eleven hundred ninety-two of this article for which a license suspension or revocation is mandatory, the court shall impose such suspension or revocation as is otherwise required upon conviction and, further, shall notify the commissioner of said suspension or revocation and its finding that said violator is granted youthful offender status as is required pursuant to section five hundred thirteen of this chapter.

(5) Probation. When a license to operate a motor vehicle has been revoked pursuant to this chapter, and the holder has been sentenced to a period of probation pursuant to section 65.00 of the penal law for a violation of any provision of this chapter, or any other provision of the laws of this state, and a condition of such probation is that the holder thereof not operate a motor vehicle or not apply for a license to operate a motor vehicle during the period of such condition of probation, the commissioner may not restore such license until the

period of the condition of probation has expired.

(6) Application for new license. Where a license has been revoked pursuant to paragraph (b) of this subdivision, or where the holder is subject to a condition of probation as provided in subparagraph five of this paragraph, application for a new license may be made within forty-five days prior to the expiration of such minimum period of revocation or condition of probation, whichever expires last.

(7) Suspension pending prosecution; excessive blood alcohol content.

a. Except as provided in clause a-1 of this subparagraph, a court shall suspend a driver's license, pending prosecution, of any person charged with a violation of subdivision two, two-a, three or four-a of section eleven hundred ninety-two of this article who, at the time of arrest, is alleged to have had .08 of one percent or more by weight of alcohol in such driver's blood as shown by chemical analysis of blood, breath, urine or saliva, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article.

a-1. A court shall suspend a class DJ or MJ learner's permit or a class DJ or MJ driver's license, pending prosecution, of any person who has been charged with a violation of subdivision one, two, two-a and/or three of section eleven hundred ninety-two of this article.

b. The suspension occurring under clause a of this subparagraph shall occur no later than at the conclusion of all proceedings required for the arraignment and the suspension occurring under clause a-1 of this subparagraph shall occur immediately after the holder's first appearance before the court on the charge which shall, whenever possible, be the next regularly scheduled session of the court after the arrest or at the conclusion of all proceedings required for the arraignment; provided, however, that if the results of any test administered pursuant to section eleven hundred ninety-four of this article are not available within such time period, the complainant police officer or other public servant shall transmit such results to the court at the time they become available, and the court shall, as soon as practicable following the receipt of such results and in compliance with the requirements of this subparagraph, suspend such license. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe either that (a) the holder operated a motor vehicle while such holder had .08 of one percent or more by weight of alcohol in his or her blood as was 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 (b) the person was the holder of a class DJ or MJ learner's permit or a class DJ or MJ driver's license and operated a motor vehicle while such holder was in violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article. At the time of such license suspension the holder shall be entitled to an opportunity to make a statement regarding these two issues and to present evidence tending to rebut the court's findings.

c. Nothing contained in this subparagraph shall be construed to prohibit or limit a court from imposing any other suspension pending prosecution required or permitted by law.

d. Notwithstanding any contrary provision of this chapter, if any suspension occurring under this subparagraph has been in effect for a period of thirty days, the holder may be issued a conditional license, in accordance with section eleven hundred ninety-six of this article, provided the holder of such license is otherwise eligible to receive

such conditional license. A conditional license issued pursuant to this subparagraph shall not be valid for the operation of a commercial motor vehicle. The commissioner shall prescribe by regulation the procedures for the issuance of such conditional license.

e. If the court finds that the suspension imposed pursuant to this subparagraph will result in extreme hardship, the court must issue such suspension, but may grant a hardship privilege, which shall be issued on a form prescribed by the commissioner. For the purposes of this clause, "extreme hardship" shall mean the inability to obtain alternative means of travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. The burden of proving extreme hardship shall be on the licensee who may present material and relevant evidence. A finding of extreme hardship may not be based solely upon the testimony of the licensee. In no event shall arraignment be adjourned or otherwise delayed more than three business days solely for the purpose of allowing the licensee to present evidence of extreme hardship. The court shall set forth upon the record, or otherwise set forth in writing, the factual basis for such finding. The hardship privilege shall permit the operation of a vehicle only for travel to or from the licensee's employment, or to or from necessary medical treatment for the licensee or a member of the licensee's household, or if the licensee is a matriculating student enrolled in an accredited school, college or university travel to or from such licensee's school, college or university if such travel is necessary for the completion of the educational degree or certificate. A hardship privilege shall not be valid for the operation of a commercial motor vehicle.

(f) Notice of charges to parent or guardian. Notwithstanding the provisions of subdivision two of section eighteen hundred seven of this chapter, upon the first scheduled appearance of any person under eighteen years of age who resides within the household of his or her parent or guardian upon a charge of a violation of subdivision one, two and/or three of section eleven hundred ninety-two of this article, the local criminal court before which such first appearance is scheduled shall forthwith transmit written notice of such appearance or failure to make such appearance to the parent or guardian of such minor person; provided, however, that if an arraignment and conviction of such person follows such appearance upon the same day, or in case such person waives arraignment and enters a plea of guilty to the offense as charged in accordance with the provisions of section eighteen hundred five of this chapter, transmittal of notice of his or her conviction as provided in section five hundred fourteen of this chapter shall be sufficient and the notice required by this paragraph need not be given; provided further that the failure of a local criminal court to transmit the notice required by this paragraph shall in no manner affect the validity of a conviction subsequently obtained.

§ 1194. Arrest and testing. 1. Arrest and field testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of subdivision one of section eleven hundred

ninety-two of this article, if such violation is coupled with an accident or collision in which such person is involved, which in fact has been committed, though not in the police officer's presence, when the officer has reasonable cause to believe that the violation was committed by such person.

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

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

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

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

(3) for the purposes of this paragraph, "reasonable grounds" to believe that a person has been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was driving in violation of such subdivision. Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vehicle driven by the operator, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a motor vehicle after having consumed alcohol at the time of the incident; or

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

(b) Report of refusal. (1) If: (A) such person having been placed under arrest; or (B) after a breath test indicates the presence of

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

(2) The report of the police officer shall set forth reasonable grounds to believe such arrested person or such detained person under the age of twenty-one had been driving in violation of any subdivision of section eleven hundred ninety-two or eleven hundred ninety-two-a of this article, that said person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision three of this section. The report shall be presented to the court upon arraignment of an arrested person, provided, however, in the case of a person under the age of twenty-one, for whom a test was authorized pursuant to the provisions of subparagraph two or three of paragraph (a) of this subdivision, and who has not been placed under arrest for a violation of any of the provisions of section eleven hundred ninety-two of this article, such report shall be forwarded to the commissioner within forty-eight hours in a manner to be prescribed by the commissioner, and all subsequent proceedings with regard to refusal to submit to such chemical test by such person shall be as set forth in subdivision three of section eleven hundred ninety-four-a of this article.

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

(4) The court or the police officer, in the case of a person under the age of twenty-one alleged to be driving after having consumed alcohol, shall provide such person with a scheduled hearing date, a waiver form, and such other information as may be required by the commissioner. If a hearing, as provided for in paragraph (c) of this subdivision, or

subdivision three of section eleven hundred ninety-four-a of this article, is waived by such person, the commissioner shall immediately revoke the license, permit, or non-resident operating privilege, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

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

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

under any provision of this article, provided that the subsequent offense or refusal is committed or occurred prior to the expiration of the retention period for such prior refusal as set forth in paragraph (k) of subdivision one of section two hundred one of this chapter.

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

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

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

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

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

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

commissioner under any circumstances.

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

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

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

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

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

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

(b) When authorized. Upon refusal by any person to submit to a chemical test or any portion thereof as described above, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law,

requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of reasonable cause to believe that:

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

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

b. a breath test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol has been consumed by such person; and

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

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

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

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

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

may present sworn allegations of fact in support of the applicant's statement.

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

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

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

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

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

4. Testing procedures. (a) Persons authorized to withdraw blood; immunity; testimony. (1) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcoholic or drug content therein: (i) a physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the department of health; or (ii) under the supervision and at the direction of a physician, registered physician assistant or certified nurse practitioner acting within his or her lawful scope of practice, or upon the express consent of the person eighteen years of age or older from whom such blood is to be withdrawn: a clinical laboratory technician or clinical laboratory technologist licensed pursuant to article one hundred sixty-five of the education law; a phlebotomist; or

a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(2) No person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person, and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to this section.

(3) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under subparagraph two of this paragraph, may maintain such action against the state if any person entitled to withdraw blood pursuant to paragraph (a) hereof acted at the request of a police officer employed by the state, or against the appropriate political subdivision of the state if such person acted at the request of a police officer employed by a political subdivision of the state. No action shall be maintained pursuant to this subparagraph unless notice of claim is duly filed or served in compliance with law.

(4) Notwithstanding the foregoing provisions of this paragraph an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to subparagraph one of this paragraph or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this paragraph to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence or bad faith on the part of such person.

(5) The testimony of any person other than a physician, entitled to withdraw blood pursuant to subparagraph one of this paragraph, in respect to any such withdrawal of blood made by such person may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(6) The provisions of subparagraphs two, three and four of this paragraph shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to a court order in accordance with subdivision three of this section.

(b) Right to additional test. The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

(c) Rules and regulations. The department of health shall issue and file rules and regulations approving satisfactory techniques or methods of conducting chemical analyses of a person's blood, urine, breath or saliva and to ascertain the qualifications and competence of individuals to conduct and supervise chemical analyses of a person's blood, urine, breath or saliva. If the analyses were made by an individual possessing a permit issued by the department of health, this shall be presumptive evidence that the examination was properly given. The provisions of this paragraph do not prohibit the introduction as evidence of an analysis made by an individual other than a person possessing a permit issued by the department of health.

§ 1194-a. Driving after having consumed alcohol; under twenty-one; procedure. 1. Chemical test report and hearing. (a) Whenever a chemical

test of the breath, blood, urine or saliva of an operator who is under the age of twenty-one indicates that such person has operated a motor vehicle in violation of section eleven hundred ninety-two-a of this article, and such person is not charged with violating any subdivision of section eleven hundred ninety-two arising out of the same incident, the police officer who administered the test shall forward a report of the results of such test to the department within twenty-four hours of the time when such results are available in a manner prescribed by the commissioner, and the operator shall be given a hearing notice as provided in subdivision one-a of this section, to appear before a hearing officer in the county where the chemical test was administered, or in an adjoining county under such circumstances as prescribed by the commissioner, on a date to be established in accordance with a schedule promulgated by the commissioner. Such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date that the chemical test was administered, provided, however, where the commissioner determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings pursuant to this chapter, such hearing shall be scheduled at the next hearing date for such particular location. When providing the operator with such hearing notice, the police officer shall also give to the operator, and shall, prior to the commencement of the hearing, provide to the department, copies of the following reports, documents and materials: any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity. The report of the police officer shall be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute verification of the report.

(b) Every person under the age of twenty-one who is alleged to have operated a motor vehicle after having consumed alcohol as set forth in section eleven hundred ninety-two-a of this article, and who is not charged with violating any subdivision of section eleven hundred ninety-two of this article arising out of the same incident, is entitled to a hearing before a hearing officer in accordance with the provisions of this section. Unless otherwise provided by law, the license or permit to drive or any non-resident operating privilege of such person shall not be suspended or revoked prior to the scheduled date for such hearing.

(i) The hearing shall be limited to the following issues: (1) did such person operate the motor vehicle; (2) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of section eleven hundred ninety-four of this article; (3) was such person less than twenty-one years of age at the time of operation of the motor vehicle; (4) was the chemical test properly administered in accordance with the provisions of section eleven hundred ninety-four of this article; (5) did the test find that such person had

driven after having consumed alcohol as defined in section eleven hundred ninety-two-a of this article; and (6) did the police officer make a lawful stop of such person. The burden of proof shall be on the police officer to prove each of these issues by clear and convincing evidence.

(ii) Every person who is entitled to a hearing pursuant to this subdivision has the right to be present at the hearing; the right to be represented by attorney, or in the hearing officer's discretion, by any other person the operator chooses; the right to receive and review discovery materials as provided in this subdivision; the right not to testify; the right to present evidence and witnesses in his own behalf, the right to cross examine adverse witnesses, and the right to appeal from an adverse determination in accordance with article three-A of this chapter. Any person representing the operator must conform to the standards of conduct required of attorneys appearing before state courts, and failure to conform to these standards will be grounds for declining to permit his continued appearance in the hearing.

(iii) Hearings conducted pursuant to this subdivision shall be in accordance with this subdivision and with the provisions applicable to the adjudication of traffic infractions pursuant to the following provisions of part 124 of title fifteen of the codes, rules and regulations of the state of New York: paragraph (b) of section 124.1 regarding the opening statement; paragraph (b) of section 124.2 regarding the right to representation and to remain silent and paragraphs (a) through (e) of section 124.4 regarding the conduct of the hearing, procedure and recusal; provided, however, that nothing contained in this subparagraph shall be deemed to preclude a hearing officer from changing the order of a hearing conducted pursuant to this subdivision as justice may require and for good cause shown.

(iv) The rules governing receipt of evidence in a court of law shall not apply in a hearing conducted pursuant to this subdivision except as follows:

(1) on the merits of the charge, and whether or not a party objects, the hearing officer shall exclude from consideration the following: a privileged communication; evidence which, for constitutional reasons, would not be admissible in a court of law; evidence of prior misconduct, incompetency or illness, except where such evidence would be admissible in a court of law; evidence which is irrelevant or immaterial;

(2) no negative inference shall be drawn from the operator's exercising the right not to testify.

(v) If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds all of the issues set forth in this subdivision in the affirmative, the hearing officer shall suspend or revoke the license or permit to drive or non-resident operating privilege of such person in accordance with the time periods set forth in subdivision two of section eleven hundred ninety-three of this article. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds any of said issues in the negative, the hearing officer must find that the operator did not drive after having consumed alcohol.

(vi) A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to the provisions of this section may appeal the finding of the hearing officer in accordance with the provisions of article three-A of this chapter.

(c) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner shall suspend the license or permit to drive or

non-resident operating privilege until the operator petitions the commissioner and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's license or permit to drive or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner. If such a request by the operator for an adjournment is granted, the commissioner shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's license or permit to drive or non-resident operating privilege may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial traffic safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

If a police officer does not appear for a hearing, the hearing officer shall have the authority to dismiss the charge. Any person may waive the right to a hearing under this subdivision, in a form and manner prescribed by the commissioner, and may enter an admission of guilt, in person or by mail, to the charge of operating a motor vehicle in violation of section eleven hundred ninety-two-a of this article. Such admission of guilt shall have the same force and effect as a finding of guilt entered following a hearing conducted pursuant to this subdivision.

1-a. Hearing notice. The hearing notice issued to an operator pursuant to subdivision one of this section shall be in a form as prescribed by the commissioner. In addition to containing information concerning the time, date and location of the hearing, and such other information as the commissioner deems appropriate, such hearing notice shall also contain the following information: the date, time and place of the offense charged; the procedures for requesting an adjournment of a scheduled hearing as provided in this section, the operator's right to a hearing conducted pursuant to this section and the right to waive such hearing and plead guilty, either in person or by mail, to the offense charged.

2. Civil penalty. Unless otherwise provided, any person whose license, permit to drive, or any non-resident operating privilege is suspended or revoked pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of one hundred twenty-five dollars, which shall be distributed in accordance with the provisions of subdivision nine of section eighteen hundred three of this chapter.

3. Refusal report and hearing. (a) Any person under the age of twenty-one who is suspected of operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter, and who is not charged with violating any subdivision of section eleven hundred ninety-two of this article arising out of the same incident, and who has been requested to submit to a chemical test pursuant to paragraph (a) of subdivision two of section eleven hundred ninety-four of this article and after having been informed that his license or permit to drive and any non-resident operating privilege shall be revoked for refusal to submit to such chemical test or any portion thereof, whether or not there is a finding of driving after having consumed alcohol, and such person refuses to submit to such

chemical test or any portion thereof, shall be entitled to a hearing in accordance with a schedule promulgated by the commissioner, and such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date of such refusal, provided, however, where the commissioner determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings pursuant to this chapter, such hearing shall be scheduled at the next hearing date for such particular location.

(b) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner shall suspend the license or permit to drive or non-resident operating privilege until the operator petitions the commissioner and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's license or permit to drive or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner. If such a request by the operator for an adjournment is granted, the commissioner shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's license or permit to drive or non-resident operating privilege may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial traffic safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

If a police officer does not appear for a hearing, the hearing officer shall have the authority to dismiss the charge. Any person may waive the right to a hearing under this subdivision.

(c) The hearing on the refusal to submit to a chemical test pursuant to this subdivision shall be limited to the following issues: (1) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of section eleven hundred ninety-four of this article; (2) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the revocation of such person's license or permit to drive or nonresident operating privilege, whether or not such person is found to have operated a motor vehicle after having consumed alcohol; (3) did such person refuse to submit to such chemical test or any portion thereof; (4) did such person operate the motor vehicle; (5) was such person less than twenty-one years of age at the time of operation of the motor vehicle; (6) did the police officer make a lawful stop of such person. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds on any one said issue in the negative, the hearing officer shall not revoke the operator's license or permit to drive or non-resident operating privilege and shall immediately terminate any outstanding suspension of the operator's license, permit to drive or non-resident operating privilege arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner, finds all of the issues in the affirmative, such hearing officer shall

immediately revoke the license or permit to drive or any non-resident operating privilege in accordance with the provisions of paragraph (d) of subdivision two of section eleven hundred ninety-four of this article. A person who has had a license or permit to drive or non-resident operating privilege suspended or revoked pursuant to the provisions of this section may appeal the findings of the hearing officer in accordance with the provisions of article three-A of this chapter.

§ 1195. Chemical test evidence. 1. Admissibility. Upon the trial of any action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any subdivision of section eleven hundred ninety-two of this article, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of section eleven hundred ninety-four of this article.

2. Probative value. The following effect shall be given to evidence of blood-alcohol content, as determined by such tests, of a person arrested for violation of section eleven hundred ninety-two of this article:

(a) Evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a motor vehicle was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition;

(b) Evidence that there was more than .05 of one per centum but less than .07 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol; and

(c) Evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol.

3. Suppression. A defendant who has been compelled to submit to a chemical test pursuant to the provisions of subdivision three of section eleven hundred ninety-four of this article may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the order was obtained and the test administered in violation of the provisions of such subdivision or any other applicable law.

§ 1196. Alcohol and drug rehabilitation program. 1. Program establishment. There is hereby established an alcohol and drug rehabilitation program within the department of motor vehicles. The commissioner shall establish, by regulation, the instructional and rehabilitative aspects of the program. Such program shall consist of at least fifteen hours and include, but need not be limited to, classroom instruction in areas deemed suitable by the commissioner. No person shall be required to attend or participate in such program or any aspect thereof for a period exceeding eight months except upon the

recommendation of the department of mental hygiene or appropriate health officials administering the program on behalf of a municipality.

2. Curriculum. The form, content and method of presentation of the various aspects of such program shall be established by the commissioner. In the development of the form, curriculum and content of such program, the commissioner may consult with the commissioner of mental health, the director of the division of alcoholism and alcohol abuse, the director of the division of substance abuse services and any other state department or agency and request and receive assistance from them. The commissioner is also authorized to develop more than one curriculum and course content for such program in order to meet the varying rehabilitative needs of the participants.

3. Where available. A course in such program shall be available in at least every county in the state, except where the commissioner determines that there is not a sufficient number of alcohol or drug-related traffic offenses in a county to mandate the establishment of said course, and that provisions be made for the residents of said county to attend a course in another county where a course exists.

4. Eligibility. Participation in the program shall be limited to those persons convicted of alcohol or drug-related traffic offenses or persons who have been adjudicated youthful offenders for alcohol or drug-related traffic offenses, or persons found to have been operating a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this article, who choose to participate and who satisfy the criteria and meet the requirements for participation as established by this section and the regulations promulgated thereunder; provided, however, in the exercise of discretion, the judge imposing sentence may prohibit the defendant from enrolling in such program. The commissioner or deputy may exercise discretion, to reject any person from participation referred to such program and nothing herein contained shall be construed as creating a right to be included in any course or program established under this section. In addition, no person shall be permitted to take part in such program if, during the five years immediately preceding commission of an alcohol or drug-related traffic offense or a finding of a violation of section eleven hundred ninety-two-a of this article, such person has participated in a program established pursuant to this article or been convicted of a violation of any subdivision of section eleven hundred ninety-two of this article other than a violation committed prior to November first, nineteen hundred eighty-eight, for which such person did not participate in such program. In the exercise of discretion, the commissioner or a deputy shall have the right to expel any participant from the program who fails to satisfy the requirements for participation in such program or who fails to satisfactorily participate in or attend any aspect of such program. Notwithstanding any contrary provisions of this chapter, satisfactory participation in and completion of a course in such program shall result in the termination of any sentence of imprisonment that may have been imposed by reason of a conviction therefor; provided, however, that nothing contained in this section shall delay the commencement of such sentence.

5. Effect of completion. Except as provided in subparagraph nine of paragraph (b) of subdivision two of section eleven hundred ninety-three or in subparagraph three of paragraph (d) of subdivision two of section eleven hundred ninety-four of this article, upon successful completion of a course in such program as certified by its administrator, a participant may apply to the commissioner on a form provided for that

purpose, for the termination of the suspension or revocation order issued as a result of the participant's conviction which caused the participation in such course. In the exercise of discretion, upon receipt of such application, and upon payment of any civil penalties for which the applicant may be liable, the commissioner is authorized to terminate such order or orders and return the participant's license or reinstate the privilege of operating a motor vehicle in this state. However, the commissioner shall not issue any new license nor restore any license where said issuance of restoral is prohibited by subdivision two of section eleven hundred ninety-three of this article.

6. Fees. The commissioner shall establish a schedule of fees to be paid by or on behalf of each participant in the program, and may, from time to time, modify same. Such fees shall defray the ongoing expenses of the program. Provided, however, that pursuant to an agreement with the department a municipality, department thereof, or other agency may conduct a course in such program with all or part of the expense of such course and program being borne by such municipality, department or agency. In no event shall such fee be refundable, either for reasons of the participant's withdrawal or expulsion from such program or otherwise.

7. Conditional license. (a) Notwithstanding any inconsistent provision of this chapter, participants in the program, except those penalized under paragraph (d) of subdivision one of section eleven hundred ninety-three of this article for any violation of subdivision two, three, or four of section eleven hundred ninety-two of this article, may, in the commissioner's discretion, be issued a conditional driver's license, or if the holder of a license issued by another jurisdiction valid for operation in this state, a conditional privilege of operating a motor vehicle in this state. Such a conditional license or privilege 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 an activity which is an authorized part of the alcohol and drug rehabilitation program and at which his attendance is required, (4) 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, (5) to or from court ordered probation activities, (6) to and from a motor vehicle office for the transaction of business relating to such license or program, (7) for a three hour consecutive daytime period, chosen by the administrators of the program, on a day during which the participant is not engaged in usual employment or vocation, (8) 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, and (9) enroute to and from a place, including a school, at which a child or children of the holder are cared for on a regular basis and which is necessary for the holder to maintain such holder's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training. Such license or privilege shall remain in effect during the term of the suspension or revocation of the participant's license or privilege unless earlier revoked by the commissioner.

(b) The conditional license or privilege described in paragraph (a) of this subdivision shall be in a form prescribed by the commissioner, and shall have indicated thereon the conditions imposed by such paragraph.

(c) Upon receipt of a conditional license issued pursuant to this section, any order issued by a judge, justice or magistrate pursuant to paragraph (c) of subdivision two of section eleven hundred ninety-three of this article shall be surrendered to the department.

(d) The commissioner shall require applicants for a conditional license to pay a fee of seventy-five dollars for processing costs. Such fees assessed under this subdivision shall be paid to the commissioner for deposit to the general fund and shall be in addition to any fees established by the commissioner pursuant to subdivision six of this section to defray the costs of the alcohol and drug rehabilitation program.

(e) The conditional license or privileges described in this subdivision may be revoked by the commissioner, for sufficient cause including, but not limited to, failure to register in the program, failure to attend or satisfactorily participate in the sessions, conviction of any traffic infraction other than one involving parking, stopping or standing or conviction of any alcohol or drug-related traffic offense, misdemeanor or felony. In addition, the commissioner shall have the right, after a hearing, to revoke the conditional license or privilege upon receiving notification or evidence that the offender is not attempting in good faith to accept rehabilitation. In the event of such revocation, the fee described in subdivision six of this section shall not be refunded.

(f) It shall be a traffic infraction for the holder of a conditional license or privilege to operate a motor vehicle upon a public highway for any use other than those authorized pursuant to paragraph (a) of this subdivision. When a person is convicted of this offense, the sentence of the court must be a fine of not less than two hundred dollars nor more than five hundred dollars or a term of imprisonment of not more than fifteen days or both such fine and imprisonment. Additionally, the conditional license or privileges described in this subdivision shall be revoked by the commissioner upon receiving notification from the court that the holder thereof has been convicted of this offense.

(g) Notwithstanding anything to the contrary contained in a certificate of relief from disabilities or a certificate of good conduct issued pursuant to article twenty-three of the correction law, any conditional license or privilege issued to a person convicted of a violation of any subdivision of section eleven hundred ninety-two of this article shall not be valid for the operation of any commercial motor vehicle. In addition, no such conditional license or privilege shall be valid for the operation of a taxicab as defined in this chapter.

(h) Notwithstanding any inconsistent provision of this chapter, the conditional license described in this subdivision may, pursuant to regulations established by the commissioner, be issued to a person whose license has been suspended pending prosecution pursuant to subparagraph seven of paragraph (e) of subdivision two of section eleven hundred ninety-three of this article.

Orangetown Town Code Relating to Alcohol and Controlled Substances

§ 7A-8.2 Alcoholic beverages.

The consumption, possession, carrying or transport of alcoholic beverages is prohibited on any Town parkland, playground, recreation area, Town land, public way, sidewalks, streets, roads or highways as further outlined in Chapter 10, Drinking in Public, of the Orangetown Code, except within Town-owned golf courses, where there shall be no such prohibition, so long as the alcoholic beverages were procured from the Town-licensed operator of the food and beverage establishment located at the Town-owned golf course and in compliance with the said Town-licensed operator's New York State issued liquor license.

§ 10-1 Title.

This local law shall be called the "Public Drinking Law."

§ 10-2 Purpose.

[Amended 8-18-1986 by L.L. No. 2, 1986]

This local law is intended to preserve the public peace, good order, safety and welfare of the people of the Town of Orangetown and to regulate the consumption of alcoholic beverages on public sidewalks, streets, highways, parking lots, public parks or on grounds owned or controlled by a local School Board within the Town of Orangetown.

§ 10-3 Definitions.

[Amended 8-18-1986 by L.L. No. 2, 1986]

As used in this local law, the following terms shall have the meanings indicated:

ALCOHOLIC BEVERAGE Any spirits, wine, beer, ale or other liquid containing more than 1/2 of 1% of alcohol by volume, which is fit for beverage purposes or intended for beverage purposes.

§ 10-4 Prohibitions.

[Added 10-12-1971 by L.L. No. 12, 1971; amended 8-18-1986 by L.L. No. 2, 1986]

A. Except as provided in § 10-4B, no person shall have, possess, carry or transport any alcoholic beverage in an open bottle or open container in or upon any public sidewalk, street, highway, parking lot or public park in the unincorporated portion of the Town of Orangetown or on any grounds owned by or under the control of a public school district within the Town of Orangetown.

B. Exclusions. This local law shall not apply in the following instances:

(1) If any organization desires to dispense alcoholic beverages on public property in the Town of Orangetown, it must apply to the Town Board of the Town of Orangetown for permission to do so, not less than 15 days prior to the date it desires to dispense said beverages. No fees shall be charged for the granting of this permission, and said permission, if granted, shall be contingent upon said organization securing a proper license from the appropriate Alcoholic Beverage Control Board to dispense alcoholic beverages on said property. This license shall be displayed to the Town Board. No alcoholic beverages shall be consumed, other than on those premises described in the letter of permission issued by the Town Board.

(2) To any person who is within 50 feet of his residence or 50 feet of the residence of which he is a guest.

§ 10-5 Presumptive evidence of violation.

[Added 8-18-1986 by L.L. No. 2, 1986[1]]

An open bottle or open container in which there is an alcoholic beverage, in any vehicle, shall be presumptive evidence that the same is in possession of all occupants thereof and in violation hereof.

[1] Editor's Note: This ordinance also provided that former § 10-5, Penalties for offenses, be renumbered as § 10-6. Former § 10-6, When effective, was renumbered as § 10-7.

§ 10-6 Penalties for offenses.

[Amended 10-12-1971 by L.L. No. 12, 1971; 10-16-1995 by L.L. No. 15, 1995]

Any person who violates this local law shall be guilty of an offense and shall be punishable by not more than 15 days in jail or a fine of not more than \$250, or both, for each violation of this local law.

§ 10-7

When effective.

This local law shall take effect immediately upon adoption.