

S8913 MANNION Same as [A 9554](#) Magnarelli

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ON FILE: 04/28/22 Vehicle and Traffic Law

TITLE....Relates to procedures relating to driving while ability impaired by drugs

04/28/22 REFERRED TO TRANSPORTATION

MANNION, ADDABBO, JORDAN, KAMINSKY, TEDISCO, THOMAS

Amd §§114-a, 1194 & 1193, add §§119-b & 120-a, V & T L

Alters the definition of "drug" in the vehicle and traffic law to include any substance or combination of substances that impair, to any extent, physical or mental abilities; defines impairment and intoxication; provides that refusal to submit to a breath test and/or oral/bodily fluid test shall be a traffic infraction; makes related provisions.

STATE OF NEW YORK

8913

IN SENATE

April 28, 2022

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to procedures relating to driving while ability impaired by drugs

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

1 Section 1. Section 114-a of the vehicle and traffic law, as amended by
2 chapter 92 of the laws of 2021, is amended to read as follows:

3 § 114-a. Drug. The term "drug" when used in this chapter, means and
4 includes any substance listed in section thirty-three hundred six of the
5 public health law and cannabis and concentrated cannabis as defined in
6 section 222.00 of the penal law and any substance or combination of
7 substances that impair, to any extent, physical or mental abilities.

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

10 § 119-b. Impaired. Impairment is reached when a driver has voluntarily
11 consumed or ingested a substance or combination of substances to the
12 extent that the driver has impaired, to any extent, the physical and
13 mental abilities which a driver is expected to possess in order to oper-
14 ate a vehicle as a reasonable and prudent driver.

15 § 3. The vehicle and traffic law is amended by adding a new section

120-a to read as follows:

§ 120-a. Intoxication. Intoxication is a greater degree of impairment which is reached when a driver has voluntarily consumed or ingested a substance or combination of substances to the extent that the driver is incapable, to a substantial extent, of employing the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

§ 4. Subdivisions 1, 2 and 3 of section 1194 of the vehicle and traffic law, as added by chapter 47 of the laws of 1988, paragraph (a) of subdivision 2 as amended by chapter 196 of the laws of 1996, paragraphs (b) and (c) of subdivision 2 as amended by chapter 489 of the laws of 2017, clause (A) of subparagraph 1, subparagraphs 2 and 3 of paragraph (b), subparagraphs 1, 2 and 3 of paragraph (c) of subdivision 2 as

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

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amended by chapter 27 of the laws of 2018, subparagraphs 1 and 2 of paragraph (d) of subdivision 2 as amended by chapter 732 of the laws of 2006, and item (iii) of clause c of subparagraph 1 of paragraph (d) of subdivision 2 as amended by section 37 of part LL of chapter 56 of the laws of 2010, are amended to read as follows:

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 and/or oral/bodily fluid test to be administered by the police officer. If such test indicates that such operator has consumed alcohol or a drug or drugs, the police officer may request such operator to submit to a chemical test and/or an evaluation conducted by a drug recognition expert in the manner set forth in subdivision two of this section.

(c) Refusal to submit to a breath test and/or oral/bodily fluid test pursuant to paragraph (b) of this subdivision shall be a traffic infraction.

2. Chemical tests and drug recognition evaluations. (a) When authorized. Any person who operates a motor vehicle in this state shall be deemed to have given consent to an evaluation conducted by a certified drug recognition expert, and/or a chemical test of one or more of the following: breath, blood, urine, or ~~[saliva]~~ oral/bodily fluid, 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]~~ oral/bodily fluid 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

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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 and/or an evaluation conducted by a certified drug recognition expert is authorized pursuant to this paragraph may be temporarily detained by the police solely for the purpose of requesting or administering such chemical test and/or an evaluation conducted by a certified drug recognition expert 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.

(a-1) For the purposes of this section the driver shall not be deemed to consent to answer custodial questions as part of an evaluation conducted by a certified drug recognition expert pursuant to paragraph (a) of this subdivision and declining to answer such questions shall not constitute a refusal to submit to the evaluation when the driver submits to the other portions of such evaluation and no report of refusal shall be made pursuant to paragraph (b) of this subdivision and the driver's license shall not be revoked pursuant to paragraphs (c) and (d) of this subdivision solely on the basis of the driver declining to answer such custodial questions.

(b) Report of refusal. (1) If: (A) such person having been placed under arrest; or (B) after a breath and/or oral/bodily fluid test indicates the presence of alcohol and/or a drug or drugs in the person's system; or (C) 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/or an evaluation conducted by a certified drug recognition expert 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, and/or an evaluation conducted by a certified drug recognition expert 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,]~~ and/or an evaluation conducted by a certified drug recognition expert or any portion thereof 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

50 was made. Such report may be verified by having the report sworn to, or
51 by affixing to such report a form notice that false statements made
52 therein are punishable as a class A misdemeanor pursuant to section
53 210.45 of the penal law and such form notice together with the
54 subscription of the deponent shall constitute a verification of the
55 report.
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1 (2) The report of the police officer shall set forth reasonable
2 grounds to believe such arrested person or such detained person under
3 the age of twenty-one had been driving in violation of any subdivision
4 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
5 this article, that said person had refused to submit to such chemical
6 test, [~~and that no chemical test was administered pursuant to the~~
7 ~~requirements of subdivision three of this section~~] or an evaluation
8 conducted by a certified drug recognition expert or any portion thereof.
9 The report shall be presented to the court upon arraignment of an
10 arrested person, provided, however, in the case of a person under the
11 age of twenty-one, for whom a test was authorized pursuant to the
12 provisions of subparagraph two or three of paragraph (a) of this subdivi-
13 sion, and who has not been placed under arrest for a violation of any
14 of the provisions of section eleven hundred ninety-two of this article,
15 such report shall be forwarded to the commissioner within forty-eight
16 hours in a manner to be prescribed by the commissioner, and all subse-
17 quent proceedings with regard to refusal to submit to such chemical test
18 and/or an evaluation conducted by a certified drug recognition expert by
19 such person shall be as set forth in subdivision three of section eleven
20 hundred ninety-four-a of this article.

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

31 (4) The court or the police officer, in the case of a person under the
32 age of twenty-one alleged to be driving after having consumed alcohol,
33 shall provide such person with a scheduled hearing date, a waiver form,
34 and such other information as may be required by the commissioner. If a
35 hearing, as provided for in paragraph (c) of this subdivision, or subdivi-
36 sion three of section eleven hundred ninety-four-a of this article, is
37 waived by such person, the commissioner shall immediately revoke the
38 license, permit, or non-resident operating privilege, as of the date of
39 receipt of such waiver in accordance with the provisions of paragraph
40 (d) of this subdivision.

41 (c) Hearings. Any person whose license or permit to drive or any non-
42 resident driving privilege has been suspended pursuant to paragraph (b)
43 of this subdivision is entitled to a hearing in accordance with a hear-
44 ing schedule to be promulgated by the commissioner. If the department
45 fails to provide for such hearing fifteen days after the date of the
46 arraignment of the arrested person, the license, permit to drive or
47 non-resident operating privilege of such person shall be reinstated
48 pending a hearing pursuant to this section. The hearing shall be limited
49 to the following issues: (1) did the police officer have reasonable
50 grounds to believe that such person had been driving in violation of any
51 subdivision of section eleven hundred ninety-two of this article; (2)
52 did the police officer make a lawful arrest of such person; (3) was such
53 person given sufficient warning, in clear or unequivocal language, prior
54 to such refusal that such refusal to submit to such chemical test or any
55 portion thereof and/or an evaluation conducted by a certified drug

1 suspension and subsequent revocation of such person's license or operat-
2 ing privilege whether or not such person is found guilty of the charge
3 for which the arrest was made; and (4) did such person refuse to submit
4 to such chemical test or any portion thereof and/or an evaluation
5 conducted by a certified drug recognition expert or any portion thereof.
6 A refusal to answer custodial questions shall not be considered a
7 refusal for the purposes of this section pursuant to paragraph (a-1) of
8 this subdivision. If, after such hearing, the hearing officer, acting on
9 behalf of the commissioner, finds on any one of said issues in the nega-
10 tive, the hearing officer shall immediately terminate any suspension
11 arising from such refusal. If, after such hearing, the hearing officer,
12 acting on behalf of the commissioner finds all of the issues in the
13 affirmative, such officer shall immediately revoke the license or permit
14 to drive or any non-resident operating privilege in accordance with the
15 provisions of paragraph (d) of this subdivision. A person who has had a
16 license or permit to drive or non-resident operating privilege suspended
17 or revoked pursuant to this subdivision may appeal the findings of the
18 hearing officer in accordance with the provisions of article three-A of
19 this chapter. Any person may waive the right to a hearing under this
20 section. Failure by such person to appear for the scheduled hearing
21 shall constitute a waiver of such hearing, provided, however, that such
22 person may petition the commissioner for a new hearing which shall be
23 held as soon as practicable.

24 (d) Sanctions. (1) Revocations. a. Any license which has been revoked
25 pursuant to paragraph (c) of this subdivision shall not be restored for
26 at least one year after such revocation, nor thereafter, except in the
27 discretion of the commissioner. However, no such license shall be
28 restored for at least eighteen months after such revocation, nor there-
29 after except in the discretion of the commissioner, in any case where
30 the person has had a prior revocation resulting from refusal to submit
31 to a chemical test and/or an evaluation conducted by a certified drug
32 recognition expert or any portion thereof, or has been convicted of or
33 found to be in violation of any subdivision of section eleven hundred
34 ninety-two or section eleven hundred ninety-two-a of this article not
35 arising out of the same incident, within the five years immediately
36 preceding the date of such revocation; provided, however, a prior find-
37 ing that a person under the age of twenty-one has refused to submit to a
38 chemical test and/or an evaluation conducted by a certified drug recog-
39 inition expert or any portion thereof pursuant to subdivision three of
40 section eleven hundred ninety-four-a of this article shall have the same
41 effect as a prior finding of a refusal pursuant to this subdivision
42 solely for the purpose of determining the length of any license suspen-
43 sion or revocation required to be imposed under any provision of this
44 article, provided that the subsequent offense or refusal is committed or
45 occurred prior to the expiration of the retention period for such prior
46 refusal as set forth in paragraph (k) of subdivision one of section two
47 hundred one of this chapter.

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

3 is the greater period of time, nor thereafter, except in the discretion
4 of the commissioner.

5 c. Any commercial driver's license which has been revoked pursuant to
6 paragraph (c) of this subdivision based upon a finding of refusal to
7 submit to a chemical test and/or an evaluation conducted by a certified
8 drug recognition expert or any portion thereof, where such finding
9 occurs within or outside of this state, shall not be restored for at
10 least eighteen months after such revocation, nor thereafter, except in
11 the discretion of the commissioner, but shall not be restored for at
12 least three years after such revocation, nor thereafter, except in the
13 discretion of the commissioner, if the holder of such license was oper-
14 ating a commercial motor vehicle transporting hazardous materials at the
15 time of such refusal. However, such person shall be permanently disqual-
16 ified from operating a commercial motor vehicle in any case where the
17 holder has a prior finding of refusal to submit to a chemical test
18 and/or an evaluation thereof conducted by a certified drug recognition
19 expert or any portion thereof pursuant to this section or has a prior
20 conviction of any of the following offenses: any violation of section
21 eleven hundred ninety-two of this article; any violation of subdivision
22 one or two of section six hundred of this chapter; or has a prior
23 conviction of any felony involving the use of a motor vehicle pursuant
24 to paragraph (a) of subdivision one of section five hundred ten-a of
25 this chapter. Provided that the commissioner may waive such permanent
26 revocation after a period of ten years has expired from such revocation
27 provided:

28 (i) that during such ten year period such person has not been found to
29 have refused a chemical test or an evaluation conducted by a certified
30 drug recognition expert or any portion thereof pursuant to this section
31 and has not been convicted of any one of the following offenses: any
32 violation of section eleven hundred ninety-two of this article; refusal
33 to submit to a chemical test or an evaluation conducted by a certified
34 drug recognition expert or any portion thereof pursuant to this section;
35 any violation of subdivision one or two of section six hundred of this
36 chapter; or has a prior conviction of any felony involving the use of a
37 motor vehicle pursuant to paragraph (a) of subdivision one of section
38 five hundred ten-a of this chapter;

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

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

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

50 (2) Civil penalties. Except as otherwise provided, any person whose
51 license, permit to drive, or any non-resident operating privilege is
52 revoked pursuant to the provisions of this section shall also be liable
53 for a civil penalty in the amount of five hundred dollars except that if
54 such revocation is a second or subsequent revocation pursuant to this
55 section issued within a five year period, or such person has been
56 convicted of a violation of any subdivision of section eleven hundred
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1 ninety-two of this article within the past five years not arising out of
2 the same incident, the civil penalty shall be in the amount of seven
3 hundred fifty dollars. Any person whose license is revoked pursuant to
4 the provisions of this section based upon a finding of refusal to submit
5 to a chemical test and/or an evaluation conducted by a certified drug
6 recognition expert or any portion thereof while operating a commercial
7 motor vehicle shall also be liable for a civil penalty of five hundred

8 fifty dollars except that if such person has previously been found to
9 have refused a chemical test and/or an evaluation conducted by a certi-
10 fied drug recognition expert or any portion thereof pursuant to this
11 section while operating a commercial motor vehicle or has a prior
12 conviction of any of the following offenses while operating a commercial
13 motor vehicle: any violation of section eleven hundred ninety-two of
14 this article; any violation of subdivision two of section six hundred of
15 this chapter; or has a prior conviction of any felony involving the use
16 of a commercial motor vehicle pursuant to paragraph (a) of subdivision
17 one of section five hundred ten-a of this chapter, then the civil penal-
18 ty shall be seven hundred fifty dollars. No new driver's license or
19 permit shall be issued, or non-resident operating privilege restored to
20 such person unless such penalty has been paid. All penalties collected
21 by the department pursuant to the provisions of this section shall be
22 the property of the state and shall be paid into the general fund of the
23 state treasury.

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

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

32 (f) Evidence. Evidence of a refusal to submit to such chemical test or
33 any portion thereof or an evaluation conducted by a drug recognition
34 expert or any portion thereof shall be admissible in any trial, proceed-
35 ing or hearing based upon a violation of the provisions of section elev-
36 en hundred ninety-two of this article but only upon a showing that the
37 person was given sufficient warning, in clear and unequivocal language,
38 of the effect of such refusal and that the person persisted in the
39 refusal. Evidence of a refusal shall be admissible pursuant to this
40 section regardless of the time of the refusal.

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

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

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

3 (1) such person was the operator of a motor vehicle and in the course
4 of such operation ~~[a person other than the operator was killed or~~
5 ~~suffered serious physical injury as defined in section 10.00 of the~~
6 ~~penal law]~~ the motor vehicle was involved in a crash; or personal injury
7 has been caused to another person, due to an incident involving the
8 motor vehicle operated by such person or such person has a previous
9 conviction for a violation of any subdivision of section eleven hundred
10 ninety-two of this article; and

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

b. a breath test and/or oral/bodily fluid test administered by a police officer in accordance with paragraph (b) of subdivision one of this section indicates that alcohol and/or a drug or drugs 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 and/or an evaluation conducted by a certified drug recognition expert, 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 and/or a drug or drugs in or around the vehicle driven by the operator; the odor of cannabis or burnt cannabis; 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]~~ the motor vehicle was involved in a crash; or personal injury has been caused to another person, due to an incident involving the motor vehicle

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operated by such person and/or such person has a previous arrest for a violation of any subdivision of section eleven hundred ninety-two of this article; 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 long-hand 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 or her blood ~~[and]~~ and/or oral/bodily fluids and ordering the withdrawal of a blood and/or oral/bodily fluid 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 and/or oral/bodily fluid 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.

§ 5. The subparagraph heading and clauses a and b of subparagraph 7 of paragraph (e) of subdivision 2 of section 1193 of the vehicle and traffic law, the subparagraph heading as added by chapter 312 of the laws of 1994, clause a as amended by chapter 732 of the laws of 2006, and clause b as separately amended by chapters 3 and 571 of the laws of 2002, are amended to read as follows:

Suspension pending prosecution; excessive blood alcohol content or impairment by a drug or drugs. 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, four 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 or is alleged to have been impaired by the ingestion of a drug or drugs as shown by chemical analysis of blood, breath, urine or ~~[saliva]~~ oral/bodily fluid, or by an evaluation conducted by a certified drug recognition expert, or any portion thereof, made pursuant to subdivision two or three of section eleven hundred ninety-four of this article, or the driver makes a statement admitting to driving while intoxicated by alcohol or while impaired by a drug or drugs.

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

23 before the court on the charge which shall, whenever possible, be the
24 next regularly scheduled session of the court after the arrest or at the
25 conclusion of all proceedings required for the arraignment; provided,
26 however, that if the results of any test administered pursuant to
27 section eleven hundred ninety-four of this article are not available
28 within such time period, the complainant police officer or other public
29 servant shall transmit such results to the court at the time they become
30 available, and the court shall, as soon as practicable following the
31 receipt of such results and in compliance with the requirements of this
32 subparagraph, suspend such license. In order for the court to impose
33 such suspension it must find that the accusatory instrument conforms to
34 the requirements of section 100.40 of the criminal procedure law and
35 there exists reasonable cause to believe either that (a) the holder
36 operated a motor vehicle while such holder had .08 of one percent or
37 more by weight of alcohol or was impaired by the ingestion of a drug or
38 drugs in his or her blood as was shown by chemical analysis of such
39 person's blood, breath, urine or [~~saliva~~] oral/bodily fluid, or by an
40 evaluation conducted by a certified drug recognition expert, or any
41 portion thereof, made pursuant to the provisions of section eleven
42 hundred ninety-four of this article or the driver makes a statement
43 admitting to driving while intoxicated by alcohol or while impaired by a
44 drug or drugs; or (b) the person was the holder of a class DJ or MJ
45 learner's permit or a class DJ or MJ driver's license and operated a
46 motor vehicle while such holder was in violation of subdivision one, two
47 and/or three of section eleven hundred ninety-two of this article. At
48 the time of such license suspension the holder shall be entitled to an
49 opportunity to make a statement regarding these two issues and to pres-
50 ent evidence tending to rebut the court's findings.
51 § 6. This act shall take effect on the first of November next succeed-
52 ing the date on which it shall have become a law.

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

BILL NUMBER: S8913

SPONSOR: MANNION

TITLE OF BILL:

An act to amend the vehicle and traffic law, in relation to procedures relating to driving while ability impaired by drugs

PURPOSE OF THE BILL:

To update and modernize New York's laws regarding driving while impaired by drugs.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1: Amends Section 114-a of the Vehicle and Traffic Law by adding to the definition of "drug" to include "any substance or combination of substances that impair, to any extent, physical or mental abilities".

Section 2: Adds a new definition of "impairment".

Section 3: Adds a new definition of "intoxication".

Section 4: Amends Section 1194 of the Vehicle and Traffic Law to update the procedures for field testing of drivers suspected of being under the influence of drugs to include the use of oral/bodily fluid tests. Refusal to submit to such field tests is specified to be a traffic infraction. Evaluations by a drug recognition expert are added to the deem consent and evidentiary testing provisions. Provides that drivers who refuse examination by a drug recognition expert would face a loss of driving privileges similar to refusing a chemical test for alcohol. This section also allows a court to order a chemical test in crashes involving personal injury and/or a driver with a previous arrest for drunk/drugged driving. Additionally, it allows the "the odor of cannabis or burnt cannabis" to be used to support "reasonable cause" in an application for a court order to compel submission to a chemical test.

Section 5: Subparagraph (7) of paragraph (e) or subdivision (2) of section 1193 of the Vehicle and Traffic Law are amended to update the law regarding suspension of licenses pending prosecution to reflect updates to the definitions of driving while under the influence of drugs, and provide for such suspensions for alleged drugged drivers under designated circumstances.

Section 6: Establishes the effective date.

JUSTIFICATION:

The rising number of roadway fatalities was described by U.S. Transportation Secretary Pete Buttigieg as a national crisis on March 2, 2022. The National Highway Traffic Safety Administration (NHTSA) reported in June of 2021 that nationally 56% of drivers involved in serious injury and fatal crashes tested positive for at least one drug. In New York 400 of fatal and injury crashes in 2020 were drug-related. With the legalization of adult use cannabis and the continued problems associated with "synthetic drugs", New York's laws regarding driving under the influence of drugs need to be updated to ensure public safety on the roads. New York is only one of a handful of states that requires a drug to be listed in statute to trigger a drugged driving violation. The list does not keep pace with the proliferation of rapidly changing synthetic drugs. The result is impaired drivers are allowed to endanger themselves and others with impunity. This bill would correct this by amending the definition of drug in the Vehicle and Traffic Law to include "any substance or combination of substances that impair, to any extent, physical or mental abilities". This language would combat the growing number of synthetic drugs that have the chemical composition constantly changed to avoid enforcement.

The terms "impaired" and "intoxicated" have distinct meanings but have not been statutorily defined leading to uncertainty. This bill codifies the definitions enunciated more than 40 years ago by the Court of Appeals in *People v. Cruz*, 48 N.Y.2d 419 (1979) and *People v. Ardila*, 85 N.Y.2d 846 (1995) and extends them to all impairing substances. Courts and practitioners had been familiar with the application of these terms until a recent Appellate Division decision conflated them in *People v. Caden N.*, 189 A.D.3d 84 (3rd Dept.2020). This legislation will re-establish "impaired" and "intoxicated" as separate standards.

The two standards are necessary to recognize the distinct and scientifically supported danger of drug impaired driving.

This legislation also updates New York law regarding field testing for drugged driving to include the use of oral/bodily fluids. This testing screens for the recent use of multiple types of drugs. Scientifically establishing recency will assist law enforcement to properly identify actually impaired drivers. Oral fluid testing has been the subject of dozens of studies and pilot programs over more than a decade. NHTSA published an evaluation of On-Site Oral Fluid Drug Screening Technology in April 2021 and identified methods that meet established accuracy and sensitivity standards. Non-invasive oral fluid testing will reduce the number of dangerously impaired drivers on New York's roadways. Vehicle and Traffic Law section 1194(1)(b) requires drivers to submit to a field test at the request of a police officer. Section 1800(a) makes it a traffic infraction to violate any of the provisions of the Vehicle and Traffic Law. Recent court decisions have invalidated charging a traffic infraction for refusing to submit to a field test. There is no longer a consequence for violating this mandatory public safety provision. This bill provides that refusing to submit to a field test is a traffic infraction.

Drug recognition evaluations were developed fifty years ago and validated in the 1980s. Certified Drug Recognition Experts (DREs) determine whether a driver's impairment is due to drug use rather than neurological conditions, illness, or disease. A DRE evaluation helps to insure that drivers who are actually impaired by cannabis and drugs are charged as New York State law requires. The mere presence of a drug in a driver's system is not sufficient. The mere presence of a drug in a driver's system is not sufficient. A driver who refuses to submit to a drug recognition evaluation, a chemical test (or a field test) hampers the investigation that will either support an arrest or exonerate the driver. This bill provides the same license revocation for refusing a DRE exam that already exists for refusing a chemical test.

It is well-settled that states have a paramount interest in preserving public highway safety. Administrative license sanctions encouraging testing are commonplace and appropriate tools in New York's efforts to prevent impaired driving and save lives. This legislation corrects disparate court decisions that provide different standards for consenting to a chemical test and refusing. The public safety policy of encouraging testing is not served by a time limit for refusals. A refusal at any time after arrest will result in a license revocation and shall be admissible in any trial, proceeding or hearing.

Additionally, the bill expands the circumstances where a court can order a compulsory chemical test in a suspected drunk or drugged driving crash. Currently, it can only be done in crashes where there is death or serious physical injury. The new statute includes language from the Leaving the Scene of an Incident statute and expands compulsory tests supported by probable cause to any crash with personal injury and/or where the driver has a history of convictions for impaired driving.

Finally, it updates the law regarding suspension of licenses pending prosecution by adding drugged drivers with charges supported by testing or admissions. The provision reflects the bill's updates to the definitions of driving while under the influence of drugs. This is done to keep dangerous drivers off the road pending prosecution.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

This act shall take effect on the first of November next succeeding the date on which it shall have become a law.