APPENDIX B

(***Selected Sections of the New York State Penal Law and Vehicle and Traffic Law***)

§ 120.00 Assault in the third degree

A person is guilty of assault in the third degree when:
1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
2. He recklessly causes physical injury to another person; or
3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.
Assault in the third degree is a class A misdemeanor.

§ 120.13 Menacing in the first degree
A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree within the preceding ten years.
Menacing in the first degree is a class E felony.

§ 120.14 Menacing in the second degree
A person is guilty of menacing in the second degree when:
1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or
3. He or she commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, section 530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.
Menacing in the second degree is a class A misdemeanor.

§ 120.15 Menacing in the third degree
A person is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury.
Menacing in the third degree is a class B misdemeanor.

§ 120.16 Hazing in the first degree
A person is guilty of hazing in the first degree when, in the course of another person's initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury.
Hazing in the first degree is a class A misdemeanor.

§ 120.20 Reckless endangerment in the second degree

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.
Reckless endangerment in the second degree is a class A misdemeanor.

§ 130.55 Sexual abuse in the third degree

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

§ 130.60 Sexual abuse in the second degree

A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or

2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

§ 130.65 Sexual abuse in the first degree

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. By forcible compulsion; or

2. When the other person is incapable of consent by reason of being physically helpless; or

3. When the other person is less than eleven years old.

Sexual abuse in the first degree is a class D felony.

§ 135.05 Unlawful imprisonment in the second degree

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

§ **140.05 Trespass**

A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises.

Trespass is a violation.

§ 140.10 Criminal trespass in the third degree

A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property

(a) which is fenced or otherwise enclosed in a manner designed to exclude intruders; or

(b) where the building is utilized as an elementary or secondary school in violation of conspicuously posted rules or regulations governing entry and use thereof; or

(c) located within a city with a population in excess of one million and where the building or real property is utilized as an elementary or secondary school in violation of a personally communicated request to leave the premises from a principal, custodian or other person in charge thereof; or

(d) located outside of a city with a population in excess of one million and where the building or real property is utilized as an elementary or secondary school in violation of a personally communicated request to leave the premises from a principal, custodian, school board member or trustee, or other person in charge thereof; or

(e) where the building is used as a public housing project in violation of conspicuously posted rules or regulations governing entry and use thereof; or

(f) where a building is used as a public housing project in violation of a personally communicated request to leave the premises from a housing police officer or other person in charge thereof; or

(g) where the property consists of a right-of-way or yard of a railroad or rapid transit railroad which has been designated and conspicuously posted as a no-trespass railroad zone, pursuant to section eighty-three-b of the railroad law, by the city or county in which such property is located.

Criminal trespass in the third degree is a class B misdemeanor.

§ 140.15 Criminal trespass in the second degree

A person is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a dwelling.

Criminal trespass in the second degree is a class A misdemeanor.

§ 140.35 Possession of burglar's tools

A person is guilty of possession of burglar's tools when he possesses any tool, instrument or other article adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises, or offenses involving larceny by a physical taking, or offenses involving theft of services as defined in subdivisions four, five and six of section 165.15, under circumstances evincing an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Possession of burglar's tools is a class A misdemeanor.

§ 145.00 Criminal mischief in the fourth degree

A person is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable ground to believe that he has such right, he:

1. Intentionally damages property of another person; or

2. Intentionally participate [FN1] in the destruction of an abandoned building as defined in section one thousand nine hundred seventy-one-a of the real property actions and proceedings law; or

3. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal mischief in the fourth degree is a class A misdemeanor.

§ 145.14 Criminal tampering in the third degree

A person is guilty of criminal tampering in the third degree when, having no right to do so nor any reasonable ground to believe that he has such right, he tampers with property of another person with intent to cause substantial inconvenience to such person or to a third person.

Criminal tampering in the third degree is a class B misdemeanor.

§ 145.15 Criminal tampering in the second degree

A person is guilty of criminal tampering in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, he tampers or makes connection with property of a gas, electric, sewer, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality or district; except that in any prosecution under this section, it is an affirmative defense that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Criminal tampering in the second degree is a class A misdemeanor.

§ 145.25 Reckless endangerment of property

A person is guilty of reckless endangerment of property when he recklessly engages in conduct which creates a substantial risk of damage to the property of another person in an amount exceeding two hundred fifty dollars.

Reckless endangerment of property is a class B misdemeanor.

§ 155.25 Petit larceny

A person is guilty of petit larceny when he steals property.
Petit larceny is a class A misdemeanor.

§ 156.05 Unauthorized use of a computer

A person is guilty of unauthorized use of a computer when he knowingly uses or causes to be used a computer or computer service without authorization and the computer utilized is equipped or programmed with any device or

coding system, a function of which is to prevent the unauthorized use of said computer or computer system.
Unauthorized use of a computer is a class A misdemeanor.

§ 156.10 Computer trespass

A person is guilty of computer trespass when he knowingly uses or causes to be used a computer or computer service without authorization and:
1. he does so with an intent to commit or attempt to commit or further the commission of any felony; or
2. he thereby knowingly gains access to computer material.
Computer trespass is a class E felony.

§ 156.20 Computer tampering in the fourth degree

A person is guilty of computer tampering in the fourth degree when he uses or causes to be used a computer or computer service and having no right to do so he intentionally alters in any manner or destroys computer data or a computer program of another person.
Computer tampering in the fourth degree is a class A misdemeanor.

§ 156.25 Computer tampering in the third degree

A person is guilty of computer tampering in the third degree when he commits the crime of computer tampering in the fourth degree and:
1. he does so with an intent to commit or attempt to commit or further the commission of any felony; or
2. he has been previously convicted of any crime under this article or subdivision eleven of section 165.15 of this chapter; or
3. he intentionally alters in any manner or destroys computer material; or
4. he intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding one thousand dollars.
Computer tampering in the third degree is a class E felony.

§ 156.26 Computer tampering in the second degree

A person is guilty of computer tampering in the second degree when he commits the crime of computer tampering in the fourth degree and he intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding three thousand dollars.
Computer tampering in the second degree is a class D felony.

§ **156.27 Computer tampering in the first degree**
A person is guilty of computer tampering in the first degree when he commits the crime of computer tampering in the fourth degree and he intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding fifty thousand dollars.
Computer tampering in the first degree is a class C felony.

§ 165.05 Unauthorized use of a vehicle in the third degree

A person is guilty of unauthorized use of a vehicle in the third degree when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent; or

2. Having custody of a vehicle pursuant to an agreement between himself or another and the owner thereof whereby

he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

3. Having custody of a vehicle pursuant to an agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

For purposes of this section "a gross deviation from the agreement" shall consist of, but not be limited to, circumstances wherein a person who having had custody of a vehicle for a period of fifteen days or less pursuant to a written agreement retains possession of such vehicle for at least seven days beyond the period specified in the agreement and continues such possession for a period of more than two days after service or refusal of attempted service of a notice in person or by certified mail at an address indicated in the agreement stating (i) the date and time at which the vehicle was to have been returned under the agreement; (ii) that the owner does not consent to the continued withholding or retaining of such vehicle and demands its return; and that continued withholding or retaining of the vehicle may constitute a class A misdemeanor punishable by a fine of up to one thousand dollars or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.

Unauthorized use of a vehicle in the third degree is a class A misdemeanor.

§ 165.10 Auto stripping in the second degree

A person is guilty of auto stripping in the second degree when:

1. He or she commits the offense of auto stripping in the third degree and when he or she has been previously convicted within the last five years of having violated the provisions of section 165.09 or this section; or
2. He or she removes or intentionally destroys, defaces, disguises, or alters any part of two or more vehicles, other than abandoned vehicles, as defined in subdivision one of section one thousand two hundred twenty-four of the vehicle and traffic law, without the permission of the owner, and the value of the parts of vehicles removed, destroyed, defaced, disguised, or altered exceeds an aggregate value of one thousand dollars.

Auto stripping in the second degree is a class E felony.

§ 165.15 Theft of services

A person is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card or debit card which he knows to be stolen.
2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or
3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or
4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, or any gas, steam, sewer, water, electrical, telegraph or telephone service which is provided for a charge or compensation, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means

of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) offering for sale or otherwise making available, to anyone other than the provider of a telecommunications service for such service provider's own use in the provision of its service, any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, or (c) any misrepresentation of fact which he knows to be false, or (d) any other artifice, trick, deception, code or device. For the purposes of this subdivision the telecommunications decoder or descrambler described in paragraph (b) above or the device described in paragraph (d) above shall not include any non-decoding and non-descrambling channel frequency converter or any television receiver-type accepted by the federal communications commission. In any prosecution under this subdivision, proof that telecommunications equipment, including, without limitation, any cable television converter, descrambler, or related equipment, has been tampered with or otherwise intentionally prevented from performing its functions of control of service delivery without the consent of the supplier of the service, or that telecommunications equipment, including, without limitation, any cable television converter, descrambler, receiver, or related equipment, has been connected to the equipment of the supplier of the service without the consent of the supplier of the service, shall be presumptive evidence that the resident to whom the service which is at the time being furnished by or through such equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved. In any prosecution under this subdivision, proof that any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, has been offered for sale or otherwise made available by anyone other than the supplier of such service shall be presumptive evidence that the person offering such equipment for sale or otherwise making it available has, with intent to avoid payment by himself or another person of the lawful charge for such service, obtained or attempted to obtain such service for himself or another person or avoided or attempted to avoid payment therefor by himself or another person; or

5. With intent to avoid payment by himself or another person of the lawful charge for any telephone service which is provided for a charge or compensation he (a) sells, offers for sale or otherwise makes available, without consent, an existing, canceled or revoked access device; or (b) uses, without consent, an existing, canceled or revoked access device; or (c) knowingly obtains any telecommunications service with fraudulent intent by use of an unauthorized, false, or fictitious name, identification, telephone number, or access device. For purposes of this subdivision access device means any telephone calling card number, credit card number, account number, mobile identification number, electronic serial number or personal identification number that can be used to obtain telephone service.

6. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. In any prosecution under this subdivision, proof that a meter or related equipment has been tampered with or otherwise intentionally prevented from performing its measuring function without the consent of the supplier of the service shall be presumptive evidence that the person to whom the service which is at the time being furnished by or through such meter or related equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such meter or related equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

7. He knowingly accepts or receives the use and benefit of service, including gas, steam or electricity service, which should pass through a meter but has been diverted therefrom, or which has been prevented from being correctly registered by a meter provided therefor, or which has been diverted from the pipes, wires or conductors of the supplier thereof. In any prosecution under this subdivision proof that service has been intentionally diverted from passing through a meter, or has been intentionally prevented from being correctly registered by a meter provided therefor, or has been intentionally diverted from the pipes, wires or conductors of the supplier thereof, shall be presumptive evidence that the person who accepts or receives the use and benefit of such service has done so

with knowledge of the condition so existing; or

8. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

9. With intent to avoid payment of the lawful charge for admission to any theater or concert hall, or with intent to avoid payment of the lawful charge for admission to or use of a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure, he obtains or attempts to obtain such admission without payment of the lawful charge therefor.

10. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

11. With intent to avoid payment by himself or another person of the lawful charge for use of any computer or computer service which is provided for a charge or compensation he uses, causes to be used or attempts to use a computer or computer service and avoids or attempts to avoid payment therefor. In any prosecution under this subdivision proof that a person overcame or attempted to overcome any device or coding system a function of which is to prevent the unauthorized use of said computer or computer service shall be presumptive evidence of an intent to avoid payment for the computer or computer service.

Theft of services is a class A misdemeanor, provided, however, that theft of cable television service as defined by the provisions of paragraphs (a), (c) and (d) of subdivision four of this section, and having a value not in excess of one hundred dollars by a person who has not been previously convicted of theft of services under subdivision four of this section is a violation, that theft of services under subdivision nine of this section by a person who has not been previously convicted of theft of services under subdivision nine of this section is a violation and provided further, however, that theft of services of any telephone service under paragraph (a) or (b) of subdivision five of this section having a value in excess of one thousand dollars or by a person who has been previously convicted within five years of theft of services under paragraph (a) of subdivision five of this section is a class E felony.

§ 165.17 Unlawful use of credit card, debit card or public benefit card

A person is guilty of unlawful use of credit card, debit card or public benefit card when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card, debit card or public benefit card which he knows to be revoked or canceled.

Unlawful use of a credit card, debit card or public benefit card is a class A misdemeanor.

§ 165.25 Jostling

A person is guilty of jostling when, in a public place, he intentionally and unnecessarily:

1. Places his hand in the proximity of a person's pocket or handbag; or

2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag.

Jostling is a class A misdemeanor.

§ 165.40 Criminal possession of stolen property in the fifth degree

A person is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

Criminal possession of stolen property in the fifth degree is a class A misdemeanor.

§ 170.05 Forgery in the third degree

A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument.

Forgery in the third degree is a class A misdemeanor.

§ 190.25 Criminal impersonation in the second degree

A person is guilty of criminal impersonation in the second degree when he:

1. Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another; or

2. Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another; or

3. (a) Pretends to be a public servant, or wears or displays without authority any uniform, badge, insignia or facsimile thereof by which such public servant is lawfully distinguished, or falsely expresses by his words or actions that he is a public servant or is acting with approval or authority of a public agency or department; and (b) so acts with intent to induce another to submit to such pretended official authority, to solicit funds or to otherwise cause another to act in reliance upon that pretense.

Criminal impersonation in the second degree is a class A misdemeanor.

§ 195.05. Obstructing governmental administration in the second degree

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

Obstructing governmental administration is a class A misdemeanor.

§ 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 knowingly and unlawfully possesses a controlled substance.

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

§ 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.

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

§ 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.

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

§ 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.

§ 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 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 two 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.

§ 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 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. 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.

§ 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.

§ 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.

§ 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
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.

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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 240.20 Disorderly conduct

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a violation.

§ 240.25 Harassment in the first degree

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, [FN1] as amended, the railway labor act, [FN2] as amended, or the federal employment labor management act, [FN3] as amended.

Harassment in the first degree is a class B misdemeanor.

§ 240.26 Harassment in the second degree

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, [FN1] as amended, the railway labor act, [FN2] as amended, or the federal employment labor management act, [FN3] as amended.

Harassment in the second degree is a violation.

§ 240.30 Aggravated harassment in the second degree

A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or

alarm another person, he or she:

1. Communicates, or causes a communication to be initiated by mechanical or electronic means or otherwise, with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or
2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or
3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of the race, color, religion or national origin of such person; or
4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.

Aggravated harassment in the second degree is a class A misdemeanor.

§ 240.35 Loitering

A person is guilty of loitering when he:

1. Loiters, remains or wanders about in a public place for the purpose of begging; or
2. Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or
3. Loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature; or
4. Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities; or
5. Loiters or remains in or about school grounds, a college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same; or
6. Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing or playing any musical instrument; or
7. Loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence; or [FN1]

Loitering is a violation.

§ 240.36 Loitering in the first degree

A person is guilty of loitering in the first degree when he loiters 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.

§ 240.46 Criminal nuisance in the first degree

A person is guilty of criminal nuisance in the first degree when he knowingly conducts or maintains any premises, place or resort where persons come or gather for purposes of engaging in the unlawful sale of controlled substances in violation of section 220.39, 220.41, or 220.43 of this chapter, and thereby derives the benefit from such unlawful conduct.

Criminal nuisance in the first degree is a class E felony.

§ 240.55 Falsely reporting an incident in the second degree

A person is guilty of falsely reporting an incident in the second degree when, knowing the information reported, conveyed or circulated to be false or baseless, he or she:
1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire or an explosion under circumstances in which it is not unlikely that public alarm or inconvenience will result;
2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire or an explosion which did not in fact occur or does not in fact exist; or
3. Reports, by word or action, to the statewide central register of child abuse and maltreatment, as defined in title six of article six of the social services law, an alleged occurrence or condition of child abuse or maltreatment which did not in fact occur or exist.
Falsely reporting an incident in the second degree is a class A misdemeanor.

§ 260.20 Unlawfully dealing with a child in the first degree

A person is guilty of unlawfully dealing with a child in the first degree when:

1. He knowingly permits a child less than eighteen years old to enter or remain in or upon a place, premises or establishment where sexual activity as defined by article one hundred thirty, two hundred thirty or two hundred sixty- three of this chapter or activity involving controlled substances as defined by article two hundred twenty of this chapter or involving marihuana as defined by article two hundred twenty-one of this chapter is maintained or conducted, and he knows or has reason to know that such activity is being maintained or conducted; or

2. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a person less than twenty-one years old; except that this subdivision does not apply to the parent or guardian of such a person or to a person who gives or causes to be given any such alcoholic beverage to a person under the age of twenty-one years, who is a student in a curriculum licensed or registered by the state education department, where the tasting or imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.

It is no defense to a prosecution pursuant to subdivision two of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.
Unlawfully dealing with a child in the first degree is a class A misdemeanor.

§ 260.21 Unlawfully dealing with a child in the second degree

A person is guilty of unlawfully dealing with a child in the second degree when:

1. Being an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:
(a) The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or
(b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or
(c) Otherwise permitted by law to do so; or
(d) The establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are sold, served, given away or consumed at such establishment during such period. The state liquor authority shall be notified in writing

by the licensee of such establishment, of the intended closing of such establishment, to conduct any such activity or entertainment, not less than ten days prior to any such closing; or

2. He marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing; or

3. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subdivision three of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the second degree is a class B misdemeanor.

§ 265.01 Criminal possession of a weapon in the fourth degree

A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star"; or

(2) He possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or

(3) He knowingly has in his possession a rifle, shotgun or firearm in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, without the written authorization of such educational institution; or

(4) He possesses a rifle or shotgun and has been convicted of a felony or serious offense; or

(5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

(7) He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.

(8) He possesses any armor piercing ammunition with intent to use the same unlawfully against another.

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

§ 265.05 Unlawful possession of weapons by persons under sixteen

It shall be unlawful for any person under the age of sixteen to possess any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air, or any gun or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges or ammunition therefor, or any dangerous knife; provided that the possession of rifle or shotgun or ammunition therefor by the holder of a hunting license or permit issued pursuant to article eleven of the environmental conservation law and used in accordance with said law shall not be governed by this section.

A person who violates the provisions of this section shall be adjudged a juvenile delinquent.

§ 270.00 Unlawfully dealing with fireworks and dangerous fireworks

1. Definition of "fireworks" and "dangerous fireworks". The term "fireworks," as used in this section, is defined and declared to be and to include any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are

used, firecrackers, sparklers or other combustible or explosive of like construction, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance and the term "dangerous fireworks" means any fireworks capable of causing serious physical injury and which are: firecrackers containing more than fifty milligrams of any explosive substance, torpedoes, skyrockets and rockets including all devices which employ any combustible or explosive substance and which rise in the air during discharge, Roman candles, bombs, sparklers more than ten inches in length or one-fourth of one inch in diameter, or chasers including all devices which dart or travel about the surface of the ground during discharge. "Fireworks" and "dangerous fireworks" shall not be deemed to include (1) flares of the type used by railroads or any warning lights commonly known as red flares, or marine distress signals of a type approved by the United States coast guard or (2) toy pistols, toy canes, toy guns or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty- hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times, or (3) bank security devices which contain not more than fifty grams of any compound or substance or any combination thereof, together with an igniter not exceeding 0.2 gram, capable of producing a lachrymating and/or visible or audible effect, where such device is stored or used only by banks, national banking associations, trust companies, savings banks, savings and loan associations, industrial banks, or credit unions, or by any manufacturer, wholesaler, dealer, jobber or common carrier for such devices and where the total storage on any one premises does not exceed one hundred devices.

2. Offense. (a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00; (i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

(ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor;

(b) (i) Except as herein otherwise stated, or except where a permit is obtained pursuant to section 405.00, any person who shall possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation.

(ii) A person who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen is guilty of a class A misdemeanor.

(iii) A person who has previously been convicted of a violation of subparagraph (ii) of this paragraph within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.

(c) Possession of fireworks or dangerous fireworks valued at fifty dollars or more shall be a presumption that such fireworks were intended to be offered or exposed for sale.

3. The provisions of this section shall not apply to articles of the kind and nature herein mentioned, while in possession of railroads and transportation agencies for the purpose of transportation to points without the state, the shipment of which is not prohibited by the interstate commerce commission regulations as formulated and published from time to time, unless the same be held voluntarily by such railroads or transportation companies as warehousemen for delivery to points within the state; provided, that none of the provisions of this section shall apply to signaling devices used by railroad companies or motor vehicles referred to in subdivision seventeen of section three hundred seventy-five of the vehicle and traffic law, or to high explosives for blasting or similar purposes; provided that none of the provisions of this section shall apply to fireworks or dangerous fireworks and the use thereof by the army and navy departments of the state and federal government; nor shall anything in this act contained be construed to prohibit any manufacturer, wholesaler, dealer or jobber from manufacturing, possessing or selling at wholesale such fireworks or dangerous fireworks to municipalities, religious or civic organizations, fair

associations, amusement parks, or other organizations or groups of individuals authorized to possess and use fireworks or dangerous fireworks under this act, or the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports, or for dog trials or dog training, or the use, or the storage, transportation or sale for use of fireworks or dangerous fireworks in the preparation for or in connection with television broadcasts; nor shall anything in this act contained be construed to prohibit the manufacture of fireworks or dangerous fireworks, nor the sale of any kind of fireworks or dangerous fireworks, provided the same are to be shipped directly out of the state.

4. Sales of ammunition not prohibited. Nothing contained in this section shall be construed to prevent, or interfere in any way with, the sale of ammunition for revolvers or pistols of any kind, or for rifles, shot guns, or other arms, belonging or which may belong to any persons whether as sporting or hunting weapons or for the purpose of protection to them in their homes, or, as they may go abroad; and manufacturers are authorized to continue to manufacture, and wholesalers and dealers to continue to deal in and freely to sell ammunition to all such persons for such purposes.

5. Notwithstanding the provisions of subdivision four of this section, it shall be unlawful for any dealer in firearms to sell any ammunition designed exclusively for use in a pistol or revolver to any person, not authorized to possess a pistol or revolver. The violation of this section shall constitute a class B misdemeanor.

NEW YORK STATE VEHICLE AND TRAFFIC LAW

§ 511. Operation while license or privilege is suspended or revoked; aggravated unlicensed operation

1. Aggravated unlicensed operation of a motor vehicle in the third degree.

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that such person's license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner.

(b) Aggravated unlicensed operation of a motor vehicle in the third degree is a misdemeanor. When a person is convicted of this offense, the sentence of the court must be: (i) a fine of not less than two hundred dollars nor more than five hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

(c) When a person is convicted of this offense with respect to the operation of a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than fifteen hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

2. Aggravated unlicensed operation of a motor vehicle in the second degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the second degree when such person commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and

(i) has previously been convicted of an offense that consists of or includes the elements comprising the offense committed within the immediately preceding eighteen months; or

(ii) the suspension or revocation is based upon a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this chapter, a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter or upon a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this chapter; or

(iii) the suspension was a mandatory suspension pending prosecution of a charge of a violation of section eleven hundred ninety-two of this chapter ordered pursuant to paragraph (e) of subdivision two of section eleven hundred ninety-three of this chapter or other similar statute; or

(iv) such person has in effect three or more suspensions, imposed on at least three separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

(b) Aggravated unlicensed operation of a motor vehicle in the second degree is a misdemeanor. When a person is convicted of this crime under subparagraph (i) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars; and (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section. When a person is convicted of this crime under subparagraph (ii), (iii) or (iv) of paragraph (a) of this

subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than one thousand dollars; and (ii) a term of imprisonment of not less than seven days nor more than one hundred eighty days, or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section.

3. Aggravated unlicensed operation of a motor vehicle in the first degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the first degree when such person: (i) commits the offense of aggravated unlicensed operation of a motor vehicle in the second degree as provided in subparagraph (ii), (iii) or (iv) of paragraph (a) of subdivision two of this section and is operating a motor vehicle while under the influence of alcohol or a drug in violation of subdivision one, two, three, four or five of section eleven hundred ninety-two of this chapter; or

(ii) is operating a motor vehicle while such person has in effect ten or more suspensions, imposed on at least ten separate dates for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

(b) Aggravated unlicensed operation of a motor vehicle in the first degree is a class E felony. When a person is convicted of this crime, the sentence of the court must be: (i) a fine in an amount not less than five hundred dollars nor more than five thousand dollars; and (ii) a term of imprisonment as provided in the penal law, or (iii) where appropriate and a term of imprisonment is not required by the penal law, a sentence of probation as provided in subdivision six of this section, or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law.

4. Defense. In any prosecution under this section or section five hundred eleven-a of this chapter, it is a defense that the person operating the motor vehicle has at the time of the offense a license issued by a foreign country, state, territory or federal district, which license is valid for operation in this state in accordance with the provisions of section two hundred fifty of this chapter.

5. Limitation on pleas. Where an accusatory instrument charges a violation of this section, any plea of guilty entered in satisfaction of such charge must include at least a plea of guilty of one of the offenses defined by this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, that if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may set forth upon the record the basis for such determination and consent to a disposition by plea of guilty to another charge in satisfaction of such charge, and the court may accept such plea.

6. Sentence of probation. In any case where a sentence of probation is authorized by this section, the court may in its discretion impose such sentence, provided however, if the court is of the opinion that a program of alcohol or drug treatment may be effective in assisting in prevention of future offenses of a similar nature upon imposing such sentence, the court shall require as a condition of the sentence that the defendant participate in such a program.

7. Exceptions. When a person is convicted of a violation of subdivision one of [FN1] two of this section, and the suspension was issued pursuant to subdivision four-e of section five hundred ten of this article due to a support arrears, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit. The sentencing court shall take the satisfaction of arrears into account when imposing a sentence for any such conviction.

§ 511-a. Facilitating aggravated unlicensed operation of a motor vehicle

1. A person is guilty of the offense of facilitating aggravated unlicensed operation of a motor vehicle in the third degree when such person consents to the operation upon a public highway of a motor vehicle registered in such person's name knowing or having reason to know that the operator of such vehicle is a person whose license or privilege of operating such motor vehicle in this state or privilege of obtaining a license issued to operate such motor vehicle by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner and the vehicle is operated upon a public highway by such person.

2. Facilitating aggravated unlicensed operation of a motor vehicle in the third degree is a traffic infraction. When a person is convicted thereof the sentence of the court must be: (i) a fine of not less than two hundred dollars nor more than five hundred dollars or (ii) a term of imprisonment of not more than fifteen days, or (iii) both.

3. A person is guilty of facilitating aggravated unlicensed operation of a motor vehicle in the second degree when such person:

(a) commits the offense of facilitating aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section after having been convicted of such offense within the preceding eighteen months; or

(b) consents to the operation upon a public highway of a motor vehicle registered in such person's name knowing or having reason to know that the operator of such vehicle is a person who has in effect three or more suspensions, imposed on at least three separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter; or

(c) commits the crime of facilitating aggravated unlicensed operation of a motor vehicle in the third degree after having been convicted of such an offense two or more times within the preceding five years.

For purposes of this subdivision, "motor vehicle" shall mean any vehicle for hire, including a taxicab, livery, as defined in section one hundred twenty- one-e of this chapter, coach, limousine, van or wheelchair accessible van, tow truck, bus or commercial motor vehicle as defined [FN1] section five hundred nine-a of this chapter.

Facilitating aggravated unlicensed operation of a motor vehicle in the second degree is a misdemeanor. When a person is convicted of this crime pursuant to paragraphs (a) or (b) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars, nor more than seven hundred fifty dollars; or (ii) a term of imprisonment not to exceed sixty days; or (iii) both a fine and imprisonment; or (iv) where appropriate, a sentence of probation; or (v) a term of imprisonment as a condition of a sentence of probation as provided in the penal law. When a person is convicted of this crime pursuant to paragraph (c) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred, nor more than one thousand dollars; or (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) both a fine and imprisonment; or (iv) where appropriate, a sentence of probation; or (v) a term of imprisonment as a condition of probation as provided in the penal law.

4. A person is guilty of facilitating aggravated unlicensed operation of a motor vehicle in the first degree when such person consents to the operation upon a public highway of a motor vehicle registered in such person's name knowing or having reason to know that the operator of such vehicle is a person who has in effect ten or more suspensions, imposed on at least ten separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

For purposes of this subdivision, "motor vehicle" shall mean any vehicle for hire, including a taxicab, livery, as defined in section one hundred twenty- one-e of this chapter, coach, limousine, van or wheelchair accessible van, tow truck, bus or commercial motor vehicle as defined in section five hundred nine- a of this chapter.

Facilitating aggravated unlicensed operation of a motor vehicle in the first degree is a class E felony. When a person is convicted of this crime, the sentence of the court must be: (i) a fine in an amount not less than one thousand dollars nor more than five thousand dollars; and (ii) a term of imprisonment as provided in the penal law; or (iii) where appropriate, a sentence of probation; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law.

5. Upon a conviction of a violation of subdivision three or four of this section the commissioner shall revoke the registration of the motor vehicle for which the defendant's consent is given and shall only be restored pursuant to the provisions of subdivision five of section five hundred ten of this article. If such defendant is a corporation, partnership, association or other group, none of its officers, principals, directors or stockholders owning more than ten percent of the outstanding stock of the corporation shall be eligible to register the motor vehicle.

§ 511-b. Seizure and redemption of unlawfully operated vehicles

1. Upon making an arrest or upon issuing a summons or an appearance ticket for the crime of aggravated unlicenced operation of a motor vehicle in the first or second degree committed in his presence, an officer shall remove or arrange for the removal of the vehicle to a garage, automobile pound, or other place of safety where it shall remain impounded, subject to the provisions of this section if: (a) the operator is the registered owner of the vehicle or the vehicle is not properly registered; or (b) proof of financial security is not produced; or (c) where a person other than the operator is the registered owner and, such person or another properly licensed and authorized to possess and operate the vehicle is not present. The vehicle shall be entered into the New York statewide police information network as an impounded vehicle and the impounding police department shall promptly notify the owner and the local authority that the vehicle has been impounded.

2. A motor vehicle so impounded shall be in the custody of the local authority and shall not be released unless:

(a) The person who redeems it has furnished satisfactory evidence of registration and financial security;

(b) Payment has been made for the reasonable costs of removal and storage of the motor vehicle. The registered owner of the vehicle shall be responsible for such payment provided, however, that if he was not the operator at the time of the offense he shall have a cause of action against such operator to recover such costs. Payment prior to release of the vehicle shall not be required in cases where the impounded vehicle was stolen or was rented or leased pursuant to a written agreement for a period of thirty days or less, however the operator of such a vehicle shall be liable for the costs of removal and storage of the vehicle to any entity rendering such service.

(c) Where the motor vehicle was operated by a person who at the time of the offense was the owner thereof, (i) satisfactory evidence that the registered owner or other person seeking to redeem the vehicle has a license or privilege to operate a motor vehicle in this state, and (ii) (A) satisfactory evidence that the criminal action founded upon the charge of aggravated unlicensed operation of a motor vehicle has been terminated and that any fine imposed as a result of a conviction thereon has been paid, or (B) a certificate issued by the court in which the criminal action was commenced ordering release of the vehicle prior to the judgment or compliance therewith in the interest of justice, or (C) a certificate issued by the district attorney or other officer authorized to prosecute such charge waiving the requirement that the vehicle be held as security for appearance before and compliance with the judgment of the court.

3. When a vehicle seized and impounded pursuant to this section has been in the custody of the local authority for thirty days, such authority shall make inquiry in the manner prescribed by the commissioner as to the name and address of the owner and any lienholder and upon receipt of such information shall notify the owner and the lienholder, if any, at his last known address by certified mail, return receipt requested, that if the vehicle is not retrieved pursuant to subdivision two of this section within thirty days from the date the notice is given, it will be forfeited. If the vehicle was registered in New York the last known address shall be that address on file with the commissioner. If the vehicle was registered out-of-state or never registered, notification shall be made in the manner prescribed by the commissioner.

4. A motor vehicle that has been seized and not retrieved pursuant to the foregoing provisions of this section shall be forfeited to the local authority upon expiration of the period of the notice set forth in subdivision three of this section provided, however, in computing such period, the period of time during which a criminal prosecution is or was pending against the owner for a violation of this section shall be excluded. A proceeding to decree such

forfeiture and to recover towing and storage costs, if any, to the extent such costs exceed the fair market value of the vehicle may be brought by the local authority in the court in which the criminal action for aggravated unlicenced operation of a motor vehicle was commenced by petition for an order decreeing forfeiture of the motor vehicle accompanied by an affidavit attesting to facts showing that forfeiture is warranted. If the identity and address of the owner and/or lienholder is known to the local authority, ten days notice shall be given to such party, who shall have an opportunity to appear and be heard prior to entry of an order decreeing forfeiture. Where the court is satisfied that forfeiture of a motor vehicle is warranted in accordance with this section, it shall enter an order decreeing forfeiture of such vehicle. Provided, however, that the court at any time prior to entry of such an order may authorize release of the vehicle in accordance with subdivision two of this section upon a showing of good cause for failure to retrieve same prior to commencement of the proceeding to decree forfeiture, but if the court orders release of the motor vehicle as herein provided and the vehicle is not redeemed within ten days from the date of such order, the vehicle shall be deemed to have been abandoned and the court upon application of the local authority must enter an order decreeing its forfeiture.

5. A motor vehicle forfeited in accordance with the provisions of this section shall be and become the property of the local authority, subject however to any lien that was recorded prior to the seizure.

6. For the purposes of this section, the term "local authority" means the municipality in which the motor vehicle was seized; except that if the motor vehicle was seized on property of the New York state thruway authority or property under the jurisdiction of the office of parks, recreation and historic preservation, the department of transportation, or a public authority or commission, the term "local authority" means such authority, office, department, or commission. A county may provide by local law that the county may act as the agent for a local authority under this section.

7. When a vehicle has been seized and impounded pursuant to this section, the local authority or any person having custody of the vehicle shall make the vehicle available or grant access to it to any owner or any person designated or authorized by such owner for the purpose of (i) taking possession of any personal property found within the vehicle and (ii) obtaining proof of registration, financial security, title or documentation in support thereof.

§ 511-c. Seizure and forfeiture of vehicles used in the unlicensed operation of a motor vehicle under certain circumstances

1. For purposes of this section:

(a) The term "owner" shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of this chapter.

(b) The term "security interest" shall mean a security interest as defined in subdivision (k) of section two thousand one hundred one of this chapter.

(c) The term "termination of the criminal proceeding" shall mean the earliest of (i) thirty-one days following the imposition of sentence; or (ii) the date of acquittal of a person arrested for an offense; or (iii) where leave to file new charges or to resubmit the case to a new grand jury is required and has not been granted, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury; or (iv) where leave to file new charges or to resubmit the case to a new grand jury is not required, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury; or (v) six months from the issuance of an "adjournment in contemplation of dismissal" order pursuant to section 170.55 of the criminal procedure law, where the case is not restored to the court's calendar within the applicable six-month period; or (vi) the date when, prior to the filing of an accusatory instrument against a person arrested for an offense, the prosecuting authority elects not to prosecute such person.

2. Any motor vehicle which has been or is being used in violation of paragraph (a) of subdivision three of section five hundred eleven of this article may be seized by any peace officer, acting pursuant to his or her special duties, or police officer, and forfeited as hereinafter provided in this section.

3. A vehicle may be seized upon service of a notice of violation upon the owner or operator of a vehicle. The seized motor vehicle shall be delivered by the officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers, Rochester and Buffalo the seized motor vehicle shall be delivered to the custody of the police department of such cities and such motor vehicle seized by a member or members of the state police shall be delivered to the custody of the superintendent of state police, together with a report of all the facts and circumstances of the seizure. Within one business day after the seizure, notice of such violation and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the department of motor vehicles or, for vehicles not registered in New York state, such equivalent record in such state of registration.

4. (a) The attorney general in seizures by members of the state police, or the district attorney of the county wherein the seizure is made, if elsewhere than in the cities of New York, Yonkers, Rochester or Buffalo, or where the seizure is made in such cities, the corporation counsel of the city shall inquire into the facts of the seizure so reported to him or her. If it appears that there is a basis for the commencement and prosecution of a forfeiture proceeding pursuant to this section, any such forfeiture proceeding shall be commenced in supreme court not later than twenty days after the date of receipt of a written demand by a person claiming ownership of the motor vehicle accompanied by the documentation required to be presented upon release of the vehicle pursuant to subparagraphs (i), (ii), and (iv) of paragraph (a) of subdivision five of this section.

(b) Where forfeiture proceedings are commenced and prosecuted pursuant to this section, the motor vehicle which is the subject of such proceedings shall remain in the custody of such district attorney, police department or superintendent of state police, as applicable, pending the final determination of such proceedings.

(c) To the extent applicable, the procedures of article thirteen-A of the civil practice law and rules shall govern proceedings and actions under this section.

5. A motor vehicle seized pursuant to this section shall be released when:

(a)(i) Such attorney general, district attorney or corporation counsel has made a determination not to institute forfeiture proceedings pursuant to this section or the time period within which a forfeiture proceeding could have been commenced pursuant to this section has elapsed and no such forfeiture proceeding was commenced or the criminal proceeding has been terminated in favor of the accused, as defined in subdivision three of section 160.50 of the criminal procedure law; and

(ii) The person seeking to claim the motor vehicle has furnished satisfactory evidence of registration and financial security and, if the person was the operator of the vehicle at the time of the violation of paragraph (a) of subdivision three of section five hundred eleven of this article, satisfactory evidence of payment of any fines or penalties imposed in connection therewith; and

(iii) Payment has been made for the reasonable costs of removal and storage of the motor vehicle. The owner of the motor vehicle shall be responsible for such payment provided, however, that if he or she was not the operator at the time of the offense, such person shall have a cause of action against such operator to recover such costs. Payment prior to release of the motor vehicle shall not be required in cases where the seized motor vehicle was stolen or rented or leased pursuant to a written agreement for a period of thirty days or less, however the operator of such a motor vehicle shall be liable for the costs of removal and storage of the motor vehicle to any entity rendering such service; and

(iv) If the motor vehicle is held as evidence, the person seeking to claim the motor vehicle has presented a release

from the prosecuting authority providing that the motor vehicle is not needed as evidence.

(b)(i) Pending completion of forfeiture proceedings which have been commenced, the person seeking to claim the motor vehicle has posted a bond in a form satisfactory to such attorney general, district attorney or corporation counsel in an amount that shall not exceed an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle; and

(ii) The persons seeking to claim the motor vehicle has [FN1] furnished satisfactory evidence of registration and financial security.

6. Where a demand for the return of a motor vehicle is not made within ninety days after the termination of the criminal proceeding founded upon the charge of aggravated unlicensed operation of a motor vehicle in the first degree, such motor vehicle shall be deemed to be abandoned. Such vehicle shall be disposed of by the county, cities of New York, Yonkers, Rochester or Buffalo or the state, as applicable, in accordance with section twelve hundred twenty-four of this chapter or as otherwise provided by law.

7. Notice of the institution of the forfeiture proceeding shall be served:

(a) By personal service pursuant to the civil practice law and rules upon all owners of the seized motor vehicle listed in the records maintained by the department, or for vehicles not registered in New York state, in the records maintained by the state of registration; and

(b) By first class mail upon all individuals who have notified such attorney general, district attorney or corporation counsel that they are an owner of the vehicle and upon all persons holding a security interest in such motor vehicle which security interest has been filed with the department pursuant to the provisions of title ten of this chapter, at the address set forth in the records of such department, or for motor vehicles not registered in New York state, all persons holding a security interest in such motor vehicle which security interest has been filed with such state of registration, at the address provided by such state of registration.

8. Any owner who receives notice of the institution of a forfeiture action who claims an interest in the motor vehicle subject to forfeiture shall assert a claim for the recovery of the motor vehicle or satisfaction of the owner's interest in such motor vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action shall assert a claim for the satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. If the action relates to a vehicle in which a person holding a security interest has intervened pursuant to this subdivision, the burden shall be upon the designated official to prove by clear and convincing evidence that such intervenor knew that such vehicle was or would be used for the commission of a violation of subparagraph (ii) of paragraph (a) of subdivision three of section five hundred eleven of the vehicle and traffic law and either (a) knowingly and unlawfully benefited from such conduct or (b) voluntarily agreed to the use of the vehicle for the commission of such violation by consent freely given. For purposes of this subdivision, such intervenor knowingly and unlawfully benefited from the commission of such violation when he or she derived in exchange for permitting the use of such vehicle by a person or persons committing such specified violation a substantial benefit that would otherwise not have accrued as a result of the lawful use of such vehicle. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

9. No motor vehicle shall be forfeited under this section to the extent of the interest of a person who claims an interest in the motor vehicle, where such person pleads and proves that:

(a) The use of such motor vehicle for the conduct that was the basis for a seizure occurred without the knowledge of such person, or if such person had knowledge of such use, without the consent of such person, and that such person

did not knowingly obtain such interest in the motor vehicle in order to avoid the forfeiture of such vehicle; or

(b) The conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the motor vehicle, while such motor vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

10. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the designated official who instituted the action, or a defendant may apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice.

(b) Such application for the relief provided in paragraph (a) of this subdivision must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) of this subdivision must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) of this subdivision if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

11. The district attorney, police department or superintendent of state police having custody of the seized motor vehicle, after such judicial determination of forfeiture, shall, by a public notice of at least twenty days, sell such forfeited motor vehicle at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made, provided, however, that the net proceeds of the sale of a motor vehicle seized in the cities of New York, Yonkers, Rochester and Buffalo shall be paid into the respective general funds of such cities, and provided further that the net proceeds of the sale of a motor vehicle seized by the state police shall be paid into the state police seized assets account.

12. In any action commenced pursuant to this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited motor vehicle, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited motor vehicle, after deduction of the lawful expenses incurred by the county, cities of New York, Yonkers, Rochester or Buffalo or the state, as applicable, and storage of the motor vehicle between the time of seizure and the date of sale.

13. At any time within two years after the seizure, any person claiming an interest in a motor vehicle which has been forfeited pursuant to this section who was not sent notice of the commencement of the forfeiture action pursuant to subdivision seven of this section, or who did not otherwise receive actual notice of the forfeiture action, may assert in an action commenced before the justice of the supreme court before whom the forfeiture action was held such claim as could have been asserted in the forfeiture action pursuant to this section. The court may grant the

relief sought upon such terms and conditions as it deems reasonable and just if the person claiming an interest in the motor vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action, and establishes either of the affirmative defenses set forth in subdivision nine of this section.

14. No action under this section for wrongful seizure shall be instituted unless such action is commenced within two years after the time when the motor vehicle was seized.

§ 511-d. Aggravated failure to answer appearance tickets or pay fines imposed

1. A person is guilty of the offense of aggravated failure to answer appearance tickets or pay fines imposed when such person has in effect twenty or more suspensions, imposed on at least twenty separate dates, for failure to answer, appear or pay a fine pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

2. A person may be prosecuted for a violation of this section in any court of competent jurisdiction in any county: (a) in which more than ten tickets which resulted in suspension for failures to answer, appear or pay fines were issued, or (b) in which the twentieth or any subsequent ticket which resulted in a suspension for failure to answer, appear or pay a fine was issued. The provisions of this subdivision shall not apply to any suspension which has been terminated prior to the defendant's being charged with a violation of this section.

3. Aggravated failure to answer appearance tickets or pay fines imposed is a misdemeanor. When a person is convicted of this crime, the sentence of the court must be: (i) a fine of not less than five hundred dollars; or (ii) a term of imprisonment of not more than one hundred eighty days; or (iii) both such fine and imprisonment.

§ 600. Leaving scene of an incident without reporting

1. a. Any person operating a motor vehicle who, knowing or having cause to know that damage has been caused to the real property or to the personal property, not including animals, of another, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the damage occurred, stop, exhibit his license and insurance identification card for such vehicle, when such card is required pursuant to articles six and eight of this chapter, and give his name, residence, including street and number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy, and license number to the party sustaining the damage, or in case the person sustaining the damage is not present at the place where the damage occurred then he shall report the same as soon as physically able to the nearest police station, or judicial officer.
b. It shall be the duty of any member of a law enforcement agency who is at the scene of the accident to request the said operator or operators of the motor vehicles, when physically capable of doing so, to exchange the information required hereinabove and such member of a law enforcement agency shall assist such operator or operators in making such exchange of information in a reasonable and harmonious manner.

A violation of the provisions of paragraph a of this subdivision shall constitute a traffic infraction punishable by a fine of up to two hundred fifty dollars or a sentence of imprisonment for up to fifteen days or both such fine and imprisonment.

2. a. Any person operating a motor vehicle who, knowing or having cause to know that personal injury has been caused to another person, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the said personal injury occurred, stop, exhibit his license and insurance identification card for such vehicle, when such card is required pursuant to articles six and eight of this chapter, and give his name, residence, including street and street number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy and license number, to the injured party, if practical, and also to a police officer, or in the event that no police officer is in the vicinity of the

place of said injury, then, he shall report said incident as soon as physically able to the nearest police station or judicial officer.

b. It shall be the duty of any member of a law enforcement agency who is at the scene of the accident to request the said operator or operators of the motor vehicles, when physically capable of doing so, to exchange the information required hereinabove and such member of a law enforcement agency shall assist such operator or operators in making such exchange of information in a reasonable and harmonious manner.

The first violation of the provisions of paragraph a of this subdivision shall constitute a class B misdemeanor punishable by a fine of not less than two hundred fifty nor more than five hundred dollars in addition to any other penalties provided by law. Any subsequent violation shall constitute a class A misdemeanor punishable by a fine of not less than five hundred nor more than one thousand dollars in addition to any other penalties provided by law. Any violation of the provisions of this subdivision, other than mere failure of an operator to exhibit his license and insurance identification card for such vehicle, where the personal injury involved results in death or serious physical injury, as defined in section 10.00 of the penal law, shall constitute a class E felony.

§ 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 .10 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.
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.
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 .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; 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 .07 of one per centum but less than .10 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 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; provided, however, that such conduct, had it occurred in this state, would have constituted a violation of any of the provisions of this section. This subdivision shall only apply to convictions occurring on or after November twenty-ninth, nineteen hundred eighty-five.

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) In any case wherein the charge laid before the court alleges a violation of subdivision two, three or four 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. 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 is [FN1] 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.

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. In every case where a person is charged with a violation of subdivision two, three or four 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 if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a "D" if someone other than the person charged was killed and such notation shall be in the form of a "S.P.I." if someone other than the person charged suffered serious physical injury; provided, however, that the failure to make such notation shall in no way affect a charge for a violation of subdivision two, three or four of this section.

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.