

2597

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

Introduced by Sens. FUSCHILLO, BONACIC, DILAN, HUNTLEY, JOHNSON, KLEIN, LARKIN, NOZZOLIO, SALAND, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the penal law, in relation to driving while intoxicated

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (c) of subdivision 1 of section 1193 of the vehicle and traffic law is amended by adding a new subparagraph (iv) to read as follows:

2 (IV) IN CALCULATING THE TEN YEAR PERIOD UNDER ITEM (I) OF CLAUSE B OF
3 SUBPARAGRAPH THREE OF PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION,
4 ANY PERIOD OF TIME DURING WHICH THE PERSON WAS INCARCERATED FOR ANY
5 REASON BETWEEN THE TIME OF COMMISSION OF THE PREVIOUS VIOLATION OF
6 SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED
7 NINETY-TWO OF THIS ARTICLE OR OF VEHICULAR ASSAULT IN THE SECOND OR
8 FIRST DEGREE, AS DEFINED, RESPECTIVELY, IN SECTIONS 120.03 AND 120.04
9 AND AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THE
10 PENAL LAW OR OF VEHICULAR MANSLAUGHTER IN THE SECOND OR FIRST DEGREE, AS
11 DEFINED, RESPECTIVELY, IN SECTIONS 125.12 AND 125.13 AND AGGRAVATED
12 VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF SUCH LAW, AND THE
13 TIME OF COMMISSION OF THE PRESENT OFFENSE SHALL BE EXCLUDED AND SUCH TEN
14 YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME
15 SERVED UNDER SUCH INCARCERATION.

16 S 2. Subdivision 1-a of section 1193 of the vehicle and traffic law,
17 as added by chapter 691 of the laws of 2002, paragraph (c) as amended by
18 chapter 669 of the laws of 2007, paragraph (d) as added by chapter 732
19 of the laws of 2006, is amended to read as follows:

20 1-a. Additional penalties. (a) Except as provided for in [paragraph]
21 PARAGRAPHS (A-1), (b) AND (B-1) of this subdivision, a person who oper-
22 ates a vehicle in violation of subdivision two [or], TWO-A, three, FOUR
23 [] is old law to be omitted.

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

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1 OR FOUR-A of section eleven hundred ninety-two of this article after
2 having been convicted of a violation of subdivision two [or], TWO-A,
3 three, FOUR OR FOUR-A of such section within the preceding [five] TEN
4 years shall, in addition to any other penalties which may be imposed
5 pursuant to subdivision one of this section, be sentenced to a term of
6 imprisonment of [five] NOT LESS THAN THIRTY days [or, as an alternative
7 to such imprisonment, be required to perform thirty days of service for
8 a public or not-for-profit corporation, association, institution or
9 agency as set forth in paragraph (h) of subdivision two of section 65.10
10 of the penal law as a condition of sentencing for such violation].
11 Notwithstanding the provisions of this paragraph, a sentence of a term
12 of imprisonment of [five] THIRTY days or more pursuant to the provisions
13 of subdivision one of this section shall be deemed to be in compliance
14 with this subdivision. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE
15 CONSTRUED TO LIMIT OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDI-
16 TIONAL PENALTY, CONDITION, LICENSE SUSPENSION OR REVOCATION OR SCREENING
17 OR ASSESSMENT OF SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

18 (A-1) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION
19 TWO-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AFTER HAVING
20 BEEN CONVICTED OF A VIOLATION OF SUCH SUBDIVISION WITHIN THE PRECEDING
21 TEN YEARS SHALL, IN ADDITION TO ANY PENALTIES WHICH MAY BE IMPOSED
22 PURSUANT TO SUBDIVISION ONE OF THIS SECTION, BE SENTENCED TO A TERM OF
23 IMPRISONMENT OF NOT LESS THAN ONE HUNDRED EIGHTY DAYS. NOTHING
24 CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT OR PROHIBIT A
25 COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDITION, LICENSE
26 SUSPENSION OR REVOCATION OR SCREENING OR ASSESSMENT OF SANCTION OF ANY
27 KIND REQUIRED OR PERMITTED BY LAW.

28 (b) [A] EXCEPT AS PROVIDED IN PARAGRAPH (B-1) OF THIS SUBDIVISION, A
29 person who operates a vehicle in violation of subdivision two [or],
30 TWO-A, three, FOUR OR FOUR-A of section eleven hundred ninety-two of
31 this article after having been convicted on two or more occasions of a
32 violation of [any of such subdivisions] SUBDIVISION TWO, TWO-A, THREE,
33 FOUR OR FOUR-A OF SUCH SECTION within the preceding [five] TEN years
34 shall, in addition to any other penalties which may be imposed pursuant
35 to subdivision one of this section, be sentenced to a term of imprison-
36 ment of [ten] NOT LESS THAN NINETY days [or, as an alternative to such
37 imprisonment, be required to perform sixty days of service for a public
38 or not-for-profit corporation, association, institution or agency as set
39 forth in paragraph (h) of subdivision two of section 65.10 of the penal
40 law as a condition of sentencing for such violation]. Notwithstanding
41 the provisions of this paragraph, a sentence of a term of imprisonment
42 of [ten] NINETY days or more pursuant to the provisions of subdivision
43 one of this section shall be deemed to be in compliance with this subdi-
44 vision. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT
45 OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDI-
46 TION, LICENSE SUSPENSION OR REVOCATION OR SCREENING OR ASSESSMENT OF
47 SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

48 (B-1) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION
49 TWO-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AFTER HAVING
50 BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SUCH SUBDIVISION WITHIN THE
51 PRECEDING TEN YEARS SHALL, IN ADDITION TO ANY PENALTIES WHICH MAY BE
52 IMPOSED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, BE SENTENCED TO A
53 TERM OF IMPRISONMENT OF NOT LESS THAN ONE YEAR. NOTHING CONTAINED IN
54 THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT OR PROHIBIT A COURT FROM
55 IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDITION, LICENSE SUSPENSION OR

1 REVOCATION OR SCREENING OR ASSESSMENT OF SANCTION OF ANY KIND REQUIRED
2 OR PERMITTED BY LAW.

3 (c) A court sentencing a person WHO HAS BEEN CONVICTED OF OPERATING A
4 VEHICLE IN VIOLATION OF SUBDIVISION TWO, TWO-A, THREE OR AN ALCOHOL-RE-
5 LATED VIOLATION OF SUBDIVISION FOUR-A OF SECTION ELEVEN HUNDRED NINETY-
6 TWO OF THIS ARTICLE pursuant to paragraph (a) [or], (A-1), (b) OR (B-1)
7 of this subdivision shall: (i) order the installation of an ignition
8 interlock device approved pursuant to section eleven hundred ninety-
9 eight of this article in any motor vehicle owned or operated by the
10 person so sentenced. Such devices shall remain installed during any
11 period of license revocation required to be imposed pursuant to para-
12 graph (b) of subdivision two of this section, and, upon the termination
13 of such revocation period, for an additional period as determined by the
14 court; and (ii) order that such person receive an assessment of the
15 degree of their alcohol or substance abuse and dependency pursuant to
16 the provisions of section eleven hundred ninety-eight-a of this article.
17 Where such assessment indicates the need for treatment, such court is
18 authorized to impose treatment as a condition of such sentence except
19 that such court shall impose treatment as a condition of a sentence of
20 probation or conditional discharge pursuant to the provisions of subdi-
21 vision three of section eleven hundred ninety-eight-a of this article.
22 Any person ordered to install an ignition interlock device pursuant to
23 this paragraph shall be subject to the provisions of subdivisions four,
24 five, seven, eight and nine of section eleven hundred ninety-eight of
25 this article. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO
26 LIMIT OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY,
27 CONDITION, LICENSE SUSPENSION OR REVOCATION OR SCREENING OR ASSESSMENT
28 OF SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

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

33 (E) IN CALCULATING THE TEN YEAR PERIOD UNDER PARAGRAPHS (A), (A-1),
34 (B) AND (B-1) OF THIS SUBDIVISION, ANY PERIOD OF TIME DURING WHICH THE
35 PERSON WAS INCARCERATED FOR ANY REASON BETWEEN THE TIME OF COMMISSION OF
36 THE PREVIOUS VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A
37 OF SECTION ELEVEN HUNDRED AND NINETY-TWO OF THIS ARTICLE AND THE TIME OF
38 COMMISSION OF THE PRESENT OFFENSE SHALL BE EXCLUDED AND SUCH TEN YEAR
39 PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED
40 UNDER SUCH INCARCERATION.

41 S 3. Paragraph (a) of subdivision 1 of section 70.06 of the penal law,
42 as amended by chapter 410 of the laws of 1979, is amended to read as
43 follows:

44 (a) A second felony offender is a person, other than a second violent
45 felony offender as defined in section 70.04, who stands convicted of a
46 felony [defined in this chapter], other than a class A-I felony, after
47 having previously been subjected to one or more predicate felony
48 convictions as defined in paragraph (b) of this subdivision.

49 S 4. This act shall take effect on the first of November next succeed-
50 ing the date on which it shall have become a law.