S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GUNTHER, GALEF, MOLINARO, JAFFEE, FIELDS, TITUS, ESPAILLAT, DelMONTE, MAISEL, ORTIZ, HOOPER, SPANO, ALFANO, WALKER, MILLER, SALADINO -- Multi-Sponsored by -- M. of A. AUBRY, BACALLES, BARRA, BENJAMIN, CONTE, CROUCH, GORDON, GREENE, MAGNARELLI, McKEVITT, MILLMAN, PHEFFER, SWEENEY -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to requiring all individuals convicted of an alcohol related offense to participate in the ignition interlock device program

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

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

1. Applicability. The provisions of this section shall apply throughout the state to [each person required or otherwise ordered by a court as a condition of probation to install and operate an ignition interlock device in any vehicle which he or she owns or operates] ALL PERSONS CONVICTED OF A VIOLATION OF THIS SECTION OR SECTION ELEVEN HUNDRED NINETY-EIGHT-A OF THIS ARTICLE.

2. Requirements. (a) In addition to any other penalties prescribed by law, the court [may] SHALL require that any person who has been convicted of a violation of [subdivision two, two-a or three of] section eleven hundred ninety-two OR ELEVEN HUNDRED NINETY-TWO-A of this article, or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of section eleven hundred ninety-two of this article is an essential element, [and who has been sentenced to a period of probation,] install and maintain, as a condition of SUCH SENTENCE OR probation, a functioning ignition interlock device in accordance with the provisions of this section; provided,

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

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however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein.

(b) Nothing contained in this section shall prohibit a court, upon application by a probation department, from modifying the conditions of probation of any person convicted of any violation set forth in paragraph (a) of this subdivision [prior to the effective date of this section], REGARDLESS OF WHEN SUCH PERSON'S PROBATION WAS ORDERED to require the installation and maintenance of a functioning ignition interlock device, and such person shall thereafter be subject to the provisions of this section.

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

(a) [If the court imposed the use of an ignition interlock device as a condition of probation it] THE COURT shall require [the] ANY person REQUIRED TO USE AN IGNITION INTERLOCK DEVICE to provide proof of compliance with this section to the court and the probation department where such person is under probation supervision. If the person fails to provide for such proof of installation, absent a finding by the court of good cause for that failure which is entered in the record, the court MAY IMPOSE ADDITIONAL NINETY DAY SENTENCES EACH TIME THE PERSON SO FAILS TO COMPLY WITH THE COURT'S ORDER OR may revoke, modify, or terminate the person's sentence of probation as provided under law.

S 2. Paragraph (c) of subdivision 1-a of section 1193 of the vehicle and traffic law, as amended by chapter 669 of the laws of 2007, is amended to read as follows:

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

S 3. This act shall take effect on the ninetieth day after it shall have become a law; provided that the amendments to section 1198 of the vehicle and traffic law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.