

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:

1 Section 1. Subdivisions 1 and 2 and paragraph (a) of subdivision 4 of
2 section 1198 of the vehicle and traffic law, as amended by chapter 669
3 of the laws of 2007, are amended to read as follows:
4 1. Applicability. The provisions of this section shall apply through-
5 out the state to [each person required or otherwise ordered by a court
6 as a condition of probation to install and operate an ignition interlock
7 device in any vehicle which he or she owns or operates] ALL PERSONS
8 CONVICTED OF A VIOLATION OF THIS SECTION OR SECTION ELEVEN HUNDRED NINE-
9 TY-EIGHT-A OF THIS ARTICLE.
10 2. Requirements. (a) In addition to any other penalties prescribed by
11 law, the court [may] SHALL require that any person who has been
12 convicted of a violation of [subdivision two, two-a or three of] section
13 eleven hundred ninety-two OR ELEVEN HUNDRED NINETY-TWO-A of this arti-
14 cle, or any crime defined by this chapter or the penal law of which an
15 alcohol-related violation of any provision of section eleven hundred
16 ninety-two of this article is an essential element, [and who has been
17 sentenced to a period of probation,] install and maintain, as a condi-
18 tion of SUCH SENTENCE OR probation, a functioning ignition interlock
19 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.

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3 been revoked except as provided herein.

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

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

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

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

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

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