

8650

2009-2010 Regular Sessions

I N A S S E M B L Y

June 2, 2009

Introduced by M. of A. GIANARIS, PAULIN, DenDEKKER, HOOPER, COLTON, HOYT, GUNTHER, ALESSI, SPANO, DelMONTE -- Multi-Sponsored by -- M. of A. CASTRO, GALEF, JAFFEE, JOHN, LANCMAN, MAYERSOHN, MILLMAN, SCHIMEL, TITONE, WEISENBERG -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law and the executive law, in relation to the imposition of a sentence of alcohol and controlled substance monitoring upon conviction of an alcohol-related offense

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

1 Section 1. Section 1193 of the vehicle and traffic law is amended by
2 adding a new subdivision 1-b to read as follows:
3 1-B. ALCOHOL AND CONTROLLED SUBSTANCE MONITORING. (A) IN ADDITION TO
4 ANY OTHER SANCTIONS PROVIDED BY THIS SECTION, THE COURT SHALL UPON
5 CONVICTION OF A PERSON OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE
6 OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR VEHICULAR
7 ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.03 OF THE PENAL
8 LAW, OR VEHICULAR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION
9 120.04 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN
10 SECTION 120.04-A OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE
11 SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, OR VEHICU-
12 LAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE
13 PENAL LAW, OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14
14 OF THE PENAL LAW, WHEN SUCH COURT SENTENCES SUCH PERSON TO A PERIOD OF
15 PROBATION, MAKE A CONDITION OF SUCH PROBATION THE WEARING OF A SECURE
16 CONTINUOUS REMOTE ALCOHOL MONITOR FOR THE DETECTION OF THE USE OF ALCO-
17 HOL OR A CONTROLLED SUBSTANCE BY THE SENTENCED PERSON; PROVIDED, HOWEV-
18 ER, SUCH COURT SHALL NOT AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY
19 ANY SUCH PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE
20 HAS BEEN SUSPENDED OR REVOKED.

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

LBD10153-02-9

1 (B) A COURT SHALL CONDITION ANY BOND OR PRE-TRIAL RELEASE FOR A CHARGE
2 OF ANY OF THE OFFENSES LISTED IN PARAGRAPH (A) OF THIS SUBDIVISION UPON
3 THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR, AND THE
4 PAYMENT OF THE ASSOCIATED COSTS AND EXPENSES. FURTHERMORE, THE COURT
5 SHALL CONDITION THE SUSPENDED IMPOSITION OF SENTENCE OR SUSPENDED
6 EXECUTION OF SENTENCE UPON SUCH WEARING, AND THE PAYMENT OF THE ASSOCI-
7 ATED COSTS AND EXPENSES. A COURT MAY WAIVE A FINE OR BOND IN LIEU OF
8 PARTICIPATION IN THE ALCOHOL AND CONTROLLED SUBSTANCE MONITORING ESTAB-
9 LISHED PURSUANT TO THIS SUBDIVISION. IN ADDITION, A COURT MAY WAIVE THE
10 PAYMENT OF THE ASSOCIATED COST AND EXPENSE OF SUCH PROGRAM WHERE THE
11 PROBATIONER OR DEFENDANT MEETS THE ELIGIBILITY REQUIREMENTS FOR A PUBLIC
12 DEFENDER.

13 (C) THE FAILURE OF ANY PERSON TO COMPLY WITH THE REQUIREMENTS OF THE
14 ALCOHOL AND CONTROLLED SUBSTANCE MONITORING PROGRAM SHALL RESULT IN THE
15 ISSUANCE OF A REVOCATION ORDER. NO PROVISION OF THIS SUBDIVISION SHALL
16 AUTHORIZE A COURT TO SENTENCE ANY PERSON TO A PERIOD OF PROBATION FOR
17 SUBJECTING HIM OR HER TO THE PROGRAM ESTABLISHED BY THIS SUBDIVISION,
18 UNLESS SUCH PERSON WOULD OTHERWISE HAVE BEEN ELIGIBLE TO BE SENTENCED TO
19 PROBATION.

20 (D) EVERY PERSON SENTENCED PURSUANT TO THIS SUBDIVISION SHALL PROVIDE
21 PROOF OF COMPLIANCE TO THE SENTENCING COURT IN SUCH MANNER AND AT SUCH
22 TIMES AS THE COURT SHALL REQUIRE.

23 (E) ALL COSTS AND EXPENSES COLLECTED PURSUANT TO THIS SUBDIVISION
24 SHALL BE PAID IN THE TREASURY OF THE COUNTY OR CITY OF NEW YORK, THE
25 PROCEEDS OF WHICH SHALL BE USED SOLELY FOR THE PURPOSE OF DEFRAYING
26 RECURRING COSTS INCLUDING MAINTAINING EQUIPMENT, FUNDING SUPPORT
27 SERVICES AND ENSURING COMPLIANCE.

28 S 2. Section 243 of the executive law is amended by adding a new
29 subdivision 5 to read as follows:

30 5. THE DIRECTOR SHALL PROMULGATE RULES AND REGULATIONS FOR THE ADMIN-
31 ISTRATION OF ALCOHOL AND CONTROLLED SUBSTANCE MONITORING PURSUANT TO
32 SUBDIVISION ONE-B OF SECTION ELEVEN HUNDRED NINETY-THREE OF THE VEHICLE
33 AND TRAFFIC LAW. SUCH RULES AND REGULATIONS SHALL:

34 (A) PROVIDE FOR PROCEDURES AND APPARATUS FOR TESTING THE ELECTRONIC
35 MONITORING DEVICES;

36 (B) SET PARTICIPATION AND USER FEES, PROVIDED, THAT SUCH USER FEES
37 SHALL NOT BE LESS THAN THE PRO RATA COST OF THE PURCHASE AND USE OF THE
38 SECURE CONTINUOUS REMOTE ALCOHOL MONITOR; AND

39 (C) REQUIRE THE SUBMISSION OF REPORTS AND INFORMATION BY LOCAL
40 PROBATION DEPARTMENTS.

41 S 3. This act shall take effect immediately, except that section two
42 of this act shall take effect on the first of January next succeeding
43 the date on which this act shall have become a law.