

547

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to creating a 24/7 sobriety pilot program; making an appropriation therefor; and providing for the repeal of such provisions upon expiration thereof

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

- 1 Section 1. The executive law is amended by adding a new section 231 to
2 read as follows:
- 3 S 231. 24/7 SOBRIETY PILOT PROGRAM. 1. THERE IS HEREBY ESTABLISHED A
4 "24/7 SOBRIETY" PILOT PROGRAM TO BE ADMINISTERED IN TEN COUNTIES IN THIS
5 STATE AS DETERMINED BY THE SUPERINTENDENT. THIS PROGRAM SHALL PROVIDE
6 FOR EITHER TWICE-DAILY CHEMICAL TESTING OF PARTICIPANTS OR A SECURE
7 CONTINUOUS REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM FOR THOSE WHO HAVE BEEN
8 CONVICTED OF CERTAIN OFFENSES THAT INVOLVE DRIVING WHILE INTOXICATED OR
9 UNDER THE INFLUENCE OF CONTROLLED SUBSTANCES.
- 10 2. THE SUPERINTENDENT SHALL DEVELOP AN APPLICATION PROCESS FOR PARTIC-
11 IPATION BY UP TO TEN COUNTIES IN THIS STATE. A COUNTY MAY APPLY FOR
12 PARTICIPATION THROUGH ITS COUNTY SHERIFF'S OFFICE. A COUNTY SHERIFF MAY
13 DESIGNATE AN ALTERNATE ENTITY TO PROVIDE THE SERVICES REQUIRED BY THE
14 PROGRAM. THE SUPERINTENDENT SHALL MAKE GRANTS FROM AMOUNTS APPROPRIATED
15 THEREFOR TO A PARTICIPATING COUNTY TO OFFSET COSTS ASSOCIATED WITH
16 PARTICIPATION INCLUDING EQUIPMENT, STAFFING AND ADMINISTRATION.
- 17 3. A COURT WITH JURISDICTION IN A PARTICIPATING COUNTY MAY REQUIRE
18 THAT ANY PERSON WHO HAS BEEN CONVICTED OF A SECOND VIOLATION OF SUBDIVI-
19 SION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE
20 VEHICLE AND TRAFFIC LAW, OR ANY CRIME DEFINED BY SUCH CHAPTER OR THE
21 PENAL LAW OF WHICH AN ALCOHOL-RELATED VIOLATION OF ANY PROVISION OF
22 SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW IS AN
23 ESSENTIAL ELEMENT, WITHIN A FIVE YEAR PERIOD, AND WHO HAS BEEN SENTENCED

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

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1 TO A PERIOD OF PROBATION, AS A CONDITION OF SUCH PROBATION, TO SUBMIT TO
2 TWICE DAILY CHEMICAL TESTING OR BE FITTED WITH A SECURE CONTINUOUS
3 REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM FOR THE DETECTION OF ALCOHOL OR
4 CONTROLLED SUBSTANCES, IN ACCORDANCE WITH THE PROVISIONS OF THIS
5 SECTION; PROVIDED, HOWEVER, THE COURT MAY NOT AUTHORIZE THE OPERATION OF
6 A MOTOR VEHICLE BY ANY PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A
7 MOTOR VEHICLE HAS BEEN REVOKED. IF TWICE A DAY TESTING IS ORDERED, THE
8 SHERIFF, OR DESIGNATED ENTITY, SHALL ESTABLISH THE TESTING LOCATIONS AND
9 TIMES FOR EACH COUNTY BUT SHALL HAVE AT LEAST TWO LOCATIONS WITH TWO
10 DAILY TESTING TIMES APPROXIMATELY TWELVE HOURS APART. IF A SECURE
11 CONTINUOUS REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM IS UTILIZED, THE SHER-
12 IFF, OR DESIGNATED ENTITY, SHALL ENSURE THE USERS COMPLIANCE BY RANDOM,
13 UNSCHEDULED HOME VISITS.

14 4. THE COURT MAY CONDITION ANY BOND OR PRE-TRIAL RELEASE UPON PARTIC-
15 IPATION IN THE 24/7 SOBRIETY PILOT PROGRAM AND PAYMENT OF ASSOCIATED
16 COSTS AND EXPENSES. THE COURT MAY CONDITION THE GRANTING OF A SUSPENDED
17 IMPOSITION OF SENTENCE, SUSPENDED EXECUTION OF SENTENCE, OR PROBATION
18 UPON PARTICIPATION IN THE 24/7 SOBRIETY PILOT PROGRAM AND PAYMENT OF
19 ASSOCIATED COSTS AND EXPENSES. THE COURT MAY WAIVE BOND OR FINE IN LIEU
20 OF PARTICIPATION IN THE 24/7 SOBRIETY PILOT PROGRAM. THE COURT MAY ALSO
21 WAIVE THE EXPENSE OF THIS PROGRAM IN CASES WHERE A DEFENDANT OR PROBA-
22 TIONER MEETS THE REQUIREMENTS FOR A PUBLIC DEFENDER. THE FAILURE TO
23 COMPLY WITH THE REQUIREMENTS OF THIS PROGRAM MAY RESULT IN THE REVOKA-
24 TION ORDER ISSUED BY THE COURT. NOTHING CONTAINED IN THIS SECTION SHALL
25 AUTHORIZE A COURT TO SENTENCE ANY PERSON TO A PERIOD OF PROBATION FOR
26 THE PURPOSE OF SUBJECTING SUCH PERSON TO THE PROVISIONS OF THIS SECTION,
27 UNLESS SUCH PERSON WOULD HAVE OTHERWISE BEEN SO SENTENCED TO A PERIOD OF
28 PROBATION.

29 5. THE SUPERINTENDENT SHALL PROMULGATE RULES AND REGULATIONS FOR THE
30 ADMINISTRATION OF THE 24/7 SOBRIETY PILOT PROGRAM TO:

31 (A) REGULATE THE NATURE AND MANNER OF TESTING;

32 (B) PROVIDE FOR PROCEDURES AND APPARATUS FOR TESTING INCLUDING ELEC-
33 TRONIC MONITORING DEVICES;

34 (C) SET PARTICIPATION AND USER FEES; HOWEVER, USER FEES FOR TWICE A
35 DAY TESTING SHALL NOT BE LESS THAN ONE DOLLAR PER TEST AND PARTICIPATION
36 WITH SECURE CONTINUOUS REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM SHALL NOT
37 BE LESS THAN THE STATE'S EXPENSE FOR USING SUCH UNIT; AND

38 (D) REQUIRE THE SUBMISSION OF REPORTS AND INFORMATION BY LAW ENFORCE-
39 MENT AGENCIES WITHIN THIS STATE.

40 6. ALL FEES COLLECTED IN THE ADMINISTRATION OF THIS PROGRAM SHALL BE
41 PAID INTO THE TREASURY OF THE PARTICIPATING COUNTY, OR COLLECTED BY THE
42 ENTITY DESIGNATED BY THE SHERIFF, THE PROCEEDS OF WHICH SHALL BE APPLIED
43 AND USED ONLY TO DEFRAY RECURRING COSTS INCLUDING MAINTAINING EQUIPMENT,
44 FUNDING SUPPORT SERVICES AND ENSURING COMPLIANCE.

45 7. IF A COURT IMPOSES PARTICIPATION IN THE 24/7 SOBRIETY PILOT PROGRAM
46 AS A CONDITION OF PROBATION IT SHALL REQUIRE THE PERSON TO PROVIDE PROOF
47 OF COMPLIANCE WITH THIS SECTION TO THE COURT AND THE PROBATION OFFICER
48 AS SET FORTH IN THE ORDER OF PROBATION. IF THE PERSON FAILS TO PROVIDE
49 FOR SUCH PROOF OF COMPLIANCE, ABSENT A FINDING BY THE COURT OF GOOD
50 CAUSE FOR THAT FAILURE WHICH IS ENTERED IN THE RECORD, THE COURT MAY
51 REVOKE, MODIFY, OR TERMINATE THE PERSON'S SENTENCE OF PROBATION AS
52 PROVIDED BY LAW.

53 8. THE SUPERINTENDENT SHALL PREPARE AN EVALUATIVE REPORT AS TO THE
54 EFFECTIVENESS, RELIABILITY AND IMPACT OF THE 24/7 SOBRIETY PILOT PROGRAM
55 AS A SENTENCING AND PROBATION OPTION. SUCH REPORT SHALL BE SUBMITTED TO
56 THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF

1 THE ASSEMBLY NO LATER THAN THE FIRST DAY OF SEPTEMBER, TWO THOUSAND TEN
2 AND AN UPDATED REPORT NO LATER THAN THE FIRST DAY OF SEPTEMBER, TWO
3 THOUSAND TWELVE. IN ADDITION, SUCH REPORT AND REPORT UPDATE SHALL
4 INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING INFORMATION: (A) RECORD OF
5 OFFENDERS, INCLUDING THE NUMBER OF PRIOR ALCOHOL OR DRUG-RELATED
6 CONVICTIONS RELATING TO THE OPERATION OF A VEHICLE; (B) RECORD OF ANY
7 VIOLATIONS OF PROBATION; (C) ANY OTHER INFORMATION DETERMINED NECESSARY
8 AND RELEVANT TO THE IMPLEMENTATION OF THIS SECTION.

9 S 2. The sum of two million dollars (\$2,000,000), or so much thereof
10 as may be necessary, is hereby appropriated to the division of state
11 police out of any moneys in the state treasury in the general fund to
12 the credit of the local assistance account, not otherwise appropriated,
13 and made immediately available, for the purpose of carrying out the
14 provisions of this act. Such moneys shall be payable on the audit and
15 warrant of the comptroller on vouchers certified or approved by the
16 superintendent of state police in the manner prescribed by law.

17 S 3. This act shall take effect on the first of January next succeed-
18 ing the date on which it shall have become a law and shall expire and be
19 deemed repealed December 31, 2012.