

547

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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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 REVOC-  
24 ATION 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.