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

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:

Section 1. The executive law is amended by adding a new section 231 to read as follows:

S 231. 24/7 SOBRIETY PILOT PROGRAM. 1. THERE IS HEREBY ESTABLISHED A "24/7 SOBRIETY" PILOT PROGRAM TO BE ADMINISTERED IN TEN COUNTIES IN THIS STATE AS DETERMINED BY THE SUPERINTENDENT. THIS PROGRAM SHALL PROVIDE FOR EITHER TWICE-DAILY CHEMICAL TESTING OF PARTICIPANTS OR A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM FOR THOSE WHO HAVE BEEN CONVICTED OF CERTAIN OFFENSES THAT INVOLVE DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE OF CONTROLLED SUBSTANCES.

2. THE SUPERINTENDENT SHALL DEVELOP AN APPLICATION PROCESS FOR PARTICIPATION BY UP TO TEN COUNTIES IN THIS STATE. A COUNTY MAY APPLY FOR PARTICIPATION THROUGH ITS COUNTY SHERIFF'S OFFICE. A COUNTY SHERIFF MAY DESIGNATE AN ALTERNATE ENTITY TO PROVIDE THE SERVICES REQUIRED BY THE PROGRAM. THE SUPERINTENDENT SHALL MAKE GRANTS FROM AMOUNTS APPROPRIATED THEREFOR TO A PARTICIPATING COUNTY TO OFFSET COSTS ASSOCIATED WITH PARTICIPATION INCLUDING EQUIPMENT, STAFFING AND ADMINISTRATION.

3. A COURT WITH JURISDICTION IN A PARTICIPATING COUNTY MAY REQUIRE THAT ANY PERSON WHO HAS BEEN CONVICTED OF A SECOND VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW, OR ANY CRIME DEFINED BY SUCH CHAPTER OR THE PENAL LAW OF WHICH AN ALCOHOL-RELATED VIOLATION OF ANY PROVISION OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW IS AN 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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TO A PERIOD OF PROBATION, AS A CONDITION OF SUCH PROBATION, TO SUBMIT TO TWICE DAILY CHEMICAL TESTING OR BE FITTED WITH A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM FOR THE DETECTION OF ALCOHOL OR CONTROLLED SUBSTANCES, IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION; PROVIDED, 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. IF TWICE A DAY TESTING IS ORDERED, THE SHERIFF, OR DESIGNATED ENTITY, SHALL ESTABLISH THE TESTING LOCATIONS AND TIMES FOR EACH COUNTY BUT SHALL HAVE AT LEAST TWO LOCATIONS WITH TWO DAILY TESTING TIMES APPROXIMATELY TWELVE HOURS APART. IF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR (SCRAM) SYSTEM IS UTILIZED, THE SHERIFF, OR DESIGNATED ENTITY, SHALL ENSURE THE USERS COMPLIANCE BY RANDOM, UNSCHEDULED HOME VISITS.

4. THE COURT MAY CONDITION ANY BOND OR PRE-TRIAL RELEASE UPON PARTICIPATION IN THE 24/7 SOBRIETY PILOT PROGRAM AND PAYMENT OF ASSOCIATED COSTS AND EXPENSES. THE COURT MAY CONDITION THE GRANTING OF A SUSPENDED IMPOSITION OF SENTENCE, SUSPENDED EXECUTION OF SENTENCE, OR PROBATION UPON PARTICIPATION IN THE 24/7 SOBRIETY PILOT PROGRAM AND PAYMENT OF ASSOCIATED COSTS AND EXPENSES. THE COURT MAY WAIVE BOND OR FINE IN LIEU OF PARTICIPATION IN THE 24/7 SOBRIETY PILOT PROGRAM. THE COURT MAY ALSO WAIVE THE EXPENSE OF THIS PROGRAM IN CASES WHERE A DEFENDANT OR PROBATIONER MEETS THE REQUIREMENTS FOR A PUBLIC DEFENDER. THE FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS PROGRAM MAY RESULT IN THE REVOCATION ORDER ISSUED BY THE COURT. 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 SENTENCED TO A PERIOD OF PROBATION.

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

(A) REGULATE THE NATURE AND MANNER OF TESTING;

(B) PROVIDE FOR PROCEDURES AND APPARATUS FOR TESTING INCLUDING ELECTRONIC MONITORING DEVICES;

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

(D) REQUIRE THE SUBMISSION OF REPORTS AND INFORMATION BY LAW ENFORCEMENT AGENCIES WITHIN THIS STATE.

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

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

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

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

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

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