

3058

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. PRETLOW, WRIGHT, AUBRY, BARRON, BOYLAND, CAMARA, DenDEKKER, GALEF, MAISEL, PAULIN, MAYERSOHN, LANCMAN, ROSENTHAL -- Multi-Sponsored by -- M. of A. CALHOUN, COOK, CRESPO, DESTITO, HEASTIE, KAVANAGH, O'DONNELL, ORTIZ, THIELE -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing a statewide toll-free office of court administration hotline for use by police officers seeking court orders to compel persons to submit to a blood test

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

1 Section 1. Short title. This act shall be known and may be cited as
2 "Vionique Valnord's law".
3 S 2. Paragraph (d) of subdivision 3 of section 1194 of the vehicle and
4 traffic law, as added by chapter 47 of the laws of 1988, is amended to
5 read as follows:
6 (d) Court order; procedure. (1) An application for a court order to
7 compel submission to a chemical test or any portion thereof, may be made
8 to any supreme court justice, county court judge or district court judge
9 in the judicial district in which the incident occurred, or if the inci-
10 dent occurred in the city of New York before any supreme court justice
11 or judge of the criminal court of the city of New York. Such application
12 may be communicated by telephone, radio or other means of electronic
13 communication, or in person.
14 (2) The applicant must provide identification by name and title and
15 must state the purpose of the communication. Upon being advised that an
16 application for a court order to compel submission to a chemical test is
17 being made, the court shall place under oath the applicant and any other
18 person providing information in support of the application as provided
19 in subparagraph three of this paragraph. After being sworn the applicant
20 must state that the person from whom the chemical test was requested was

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

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1 the operator of a motor vehicle and in the course of such operation a
2 person, other than the operator, has been killed or seriously injured
3 and, based upon the totality of circumstances, there is reasonable cause
4 to believe that such person was operating a motor vehicle in violation
5 of any subdivision of section eleven hundred ninety-two of this article
6 and, after being placed under lawful arrest such person refused to
7 submit to a chemical test or any portion thereof, in accordance with the
8 provisions of this section or is unable to give consent to such a test
9 or any portion thereof. The applicant must make specific allegations of
10 fact to support such statement. Any other person properly identified,
11 may present sworn allegations of fact in support of the applicant's
12 statement.

13 (3) Upon being advised that an oral application for a court order to
14 compel a person to submit to a chemical test OF ONE OR MORE OF THE
15 FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, is being made, a judge or
16 justice shall place under oath the applicant and any other person
17 providing information in support of the application. Such oath or oaths
18 and all of the remaining communication must be recorded, either by means
19 of a voice recording device or verbatim stenographic or verbatim long-
20 hand notes. If a voice recording device is used or a stenographic record
21 made, the judge must have the record transcribed, certify to the accura-
22 cy of the transcription and file the original record and transcription
23 with the court within seventy-two hours of the issuance of the court
24 order. If the longhand notes are taken, the judge shall subscribe a copy
25 and file it with the court within twenty-four hours of the issuance of
26 the order.

27 (4) If the court is satisfied that the requirements for the issuance
28 of a court order pursuant to the provisions of paragraph (b) of this
29 subdivision have been met, it may grant the application and issue an
30 order requiring the accused to submit to a chemical test OF ONE OR MORE
31 OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, to determine the alco-
32 holic and/or drug content of his blood and ordering the withdrawal of a
33 blood sample in accordance with the provisions of paragraph (a) of
34 subdivision four of this section. When a judge or justice determines to
35 issue an order to compel submission to a chemical test based on an oral
36 application, the applicant therefor shall prepare the order in accord-
37 ance with the instructions of the judge or justice. In all cases the
38 order shall include the name of the issuing judge or justice, the name
39 of the applicant, and the date and time it was issued. It must be
40 signed by the judge or justice if issued in person, or by the applicant
41 if issued orally.

42 (5) UPON REFUSAL BY A PERSON, WHO A POLICE OFFICER HAS REASONABLE
43 CAUSE TO BELIEVE IS IN VIOLATION OF ANY SUBDIVISION OF SECTION ELEVEN
44 HUNDRED NINETY-TWO OF THIS ARTICLE, TO SUBMIT TO A CHEMICAL TEST OF ONE
45 OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, REQUESTED BY
46 SUCH POLICE OFFICER AT THE TIME OF SUCH TRAFFIC STOP, SUCH POLICE OFFI-
47 CER, IF A SIGNED COURT ORDER TO COMPEL SUCH PERSON TO SUBMIT TO SUCH
48 TEST CANNOT BE PRODUCED, SHALL CALL THE STATEWIDE TOLL-FREE OFFICE OF
49 COURT ADMINISTRATION HOTLINE WITHIN FIFTEEN MINUTES OF SUCH REFUSAL, AS
50 DESCRIBED IN SECTION ELEVEN HUNDRED NINETY-FOUR-B OF THIS ARTICLE, TO
51 REQUEST OR OBTAIN, BY ORAL APPLICATION AS DESCRIBED IN SUBPARAGRAPHS
52 THREE AND FOUR OF THIS PARAGRAPH, A COURT ORDER TO COMPEL SUCH PERSON TO
53 SUBMIT TO A CHEMICAL TEST OF ONE OR MORE OF THE FOLLOWING: BREATH,
54 BLOOD, URINE OR SALIVA.

55 (6) Any false statement by an applicant or any other person in support
56 of an application for a court order shall subject such person to the

1 offenses for perjury set forth in article two hundred ten of the penal
2 law.

3 [(6)] (7) The chief administrator of the courts shall establish a
4 schedule to provide that a sufficient number of judges or justices will
5 be available in each judicial district to hear oral applications for
6 court orders as permitted by this section.

7 S 3. The vehicle and traffic law is amended by adding a new section
8 1194-b to read as follows:

9 S 1194-B. STATEWIDE TOLL-FREE OFFICE OF COURT ADMINISTRATION HOTLINE;
10 COURT ORDER TO COMPEL CHEMICAL TEST. 1. THE DEPARTMENT, IN CONJUNCTION
11 WITH THE OFFICE OF COURT ADMINISTRATION AND THE DIVISION OF STATE
12 POLICE, SHALL ESTABLISH, MAINTAIN AND OPERATE A STATEWIDE TOLL-FREE
13 OFFICE OF COURT ADMINISTRATION HOTLINE FOR THE USE OF POLICE OFFICERS
14 SEEKING COURT ORDERS TO COMPEL PERSONS TO SUBMIT TO A CHEMICAL TEST OF
15 ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA, AS
16 DESCRIBED IN PARAGRAPH (D) OF SUBDIVISION THREE OF SECTION ELEVEN
17 HUNDRED NINETY-FOUR OF THIS ARTICLE.

18 2. UPON REFUSAL BY A PERSON, WHO A LAW ENFORCEMENT OFFICER HAS REASON-
19 ABLE CAUSE TO BELIEVE IS IN VIOLATION OF ANY SUBDIVISION OF SECTION
20 ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, TO SUBMIT TO A CHEMICAL TEST
21 OF ONE OR MORE OF THE FOLLOWING: BREATH, BLOOD, URINE OR SALIVA,
22 REQUESTED BY SUCH POLICE OFFICER AT THE TIME OF THE TRAFFIC STOP, SUCH
23 POLICE OFFICER, IF A SIGNED COURT ORDER TO COMPEL SUCH PERSON TO SUBMIT
24 TO A CHEMICAL TEST CANNOT BE PRODUCED, SHALL CALL THE STATEWIDE
25 TOLL-FREE OFFICE OF COURT ADMINISTRATION HOTLINE WITHIN FIFTEEN MINUTES
26 OF SUCH REFUSAL, TO REQUEST OR OBTAIN, BY ORAL APPLICATION AS DESCRIBED
27 IN SUBPARAGRAPHS THREE AND FOUR OF PARAGRAPH (D) OF SUBDIVISION THREE OF
28 SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE, A COURT ORDER TO
29 COMPEL SUCH PERSON TO SUBMIT TO SUCH TEST.

30 3. TELEPHONE CALLS MADE TO SUCH HOTLINE SHALL BE IMMEDIATELY ROUTED TO
31 A SUPREME COURT JUSTICE, COUNTY COURT JUDGE OR DISTRICT COURT JUDGE IN
32 THE JUDICIAL DISTRICT IN WHICH THE INCIDENT OCCURRED, OR IF THE INCIDENT
33 OCCURRED IN THE CITY OF NEW YORK, TO ANY SUPREME COURT JUSTICE OR JUDGE
34 OF THE CRIMINAL COURT OF THE CITY OF NEW YORK.

35 4. IF THE JUDGE OR JUSTICE IS SATISFIED THAT THE REQUIREMENTS FOR THE
36 ISSUANCE OF A COURT ORDER PURSUANT TO THE PROVISIONS OF PARAGRAPH (B) OF
37 SUBDIVISION THREE OF SECTION ELEVEN HUNDRED NINETY-FOUR OF THIS ARTICLE
38 HAVE BEEN MET, HE OR SHE SHALL GRANT THE APPLICATION AND SHALL ISSUE AN
39 ORDER REQUIRING THE ACCUSED TO SUBMIT TO A CHEMICAL TEST IMMEDIATELY,
40 PURSUANT TO SUBDIVISION THREE OF SECTION ELEVEN HUNDRED NINETY-FOUR OF
41 THIS ARTICLE.

42 5. A DETERMINATION GRANTING OR DENYING SUCH APPLICATION SHALL BE
43 ISSUED WITHIN ONE HOUR OF SUCH PHONE CALL.

44 6. A POLICE OFFICER SHALL BE GUILTY OF A CLASS E FELONY IF HE OR SHE
45 FAILS TO COMPLY WITH THE PROVISIONS SET FORTH IN SUBDIVISION TWO OF THIS
46 SECTION.

47 S 4. This act shall take effect on the one hundred twentieth day after
48 it shall have become a law, except that any rules and regulations neces-
49 sary for the timely implementation of this act on its effective date
50 shall be promulgated on or before such date.