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

3997

2011-2012 Regular Sessions

I N A S S E M B L Y

February 1, 2011

Introduced by M. of A. GABRYSZAK -- 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:

Section 1. Section 1193 of the vehicle and traffic law is amended by adding a new subdivision 1-b to read as follows:

1-B. ALCOHOL AND CONTROLLED SUBSTANCE MONITORING. (A) IN ADDITION TO ANY OTHER SANCTIONS PROVIDED BY THIS SECTION, THE COURT SHALL UPON CONVICTION OF A PERSON OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR VEHICULAR ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.03 OF THE PENAL LAW, OR VEHICULAR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION 120.04 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF THE PENAL LAW, WHEN SUCH COURT SENTENCES SUCH PERSON TO A PERIOD OF PROBATION, MAKE A CONDITION OF SUCH PROBATION THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR FOR THE DETECTION OF THE USE OF ALCOHOL OR A CONTROLLED SUBSTANCE BY THE SENTENCED PERSON; PROVIDED, HOWEVER, SUCH COURT SHALL NOT AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY ANY SUCH PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE HAS BEEN SUSPENDED OR REVOKED.

(B) A COURT SHALL CONDITION ANY BOND OR PRE-TRIAL RELEASE FOR A CHARGE OF ANY OF THE OFFENSES LISTED IN PARAGRAPH (A) OF THIS SUBDIVISION UPON THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR, AND THE PAYMENT OF THE ASSOCIATED COSTS AND EXPENSES. FURTHERMORE, THE COURT

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

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SHALL CONDITION THE SUSPENDED IMPOSITION OF SENTENCE OR SUSPENDED EXECUTION OF SENTENCE UPON SUCH WEARING, AND THE PAYMENT OF THE ASSOCIATED COSTS AND EXPENSES. A COURT MAY WAIVE A FINE OR BOND IN LIEU OF PARTICIPATION IN THE ALCOHOL AND CONTROLLED SUBSTANCE MONITORING ESTABLISHED PURSUANT TO THIS SUBDIVISION. IN ADDITION, A COURT MAY WAIVE THE PAYMENT OF THE ASSOCIATED COST AND EXPENSE OF SUCH PROGRAM WHERE THE PROBATIONER OR DEFENDANT MEETS THE ELIGIBILITY REQUIREMENTS FOR A PUBLIC DEFENDER.

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

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

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

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

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

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

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

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

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