

5349

2011-2012 Regular Sessions

I N A S S E M B L Y

February 16, 2011

Introduced by M. of A. WEISENBERG -- read once and referred to the  
Committee on Codes

AN ACT to amend the vehicle and traffic law and the penal law, in  
relation to driving while intoxicated

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

1 Section 1. Paragraph (c) of subdivision 1 of section 1193 of the vehi-  
2 cle and traffic law is amended by adding a new subparagraph (iv) to read  
3 as follows:

4 (IV) IN CALCULATING THE TEN YEAR PERIOD UNDER ITEM (I) OF CLAUSE B OF  
5 SUBPARAGRAPH THREE OF PARAGRAPH (E) OF SUBDIVISION TWO OF THIS SECTION,  
6 ANY PERIOD OF TIME DURING WHICH THE PERSON WAS INCARCERATED FOR ANY  
7 REASON BETWEEN THE TIME OF COMMISSION OF THE PREVIOUS VIOLATION OF  
8 SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A OF SECTION ELEVEN HUNDRED  
9 NINETY-TWO OF THIS ARTICLE OR OF VEHICULAR ASSAULT IN THE SECOND OR  
10 FIRST DEGREE, AS DEFINED, RESPECTIVELY, IN SECTIONS 120.03 AND 120.04  
11 AND AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN SECTION 120.04-A OF THE  
12 PENAL LAW OR OF VEHICULAR MANSLAUGHTER IN THE SECOND OR FIRST DEGREE, AS  
13 DEFINED, RESPECTIVELY, IN SECTIONS 125.12 AND 125.13 AND AGGRAVATED  
14 VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14 OF SUCH LAW, AND THE  
15 TIME OF COMMISSION OF THE PRESENT OFFENSE SHALL BE EXCLUDED AND SUCH TEN  
16 YEAR PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME  
17 SERVED UNDER SUCH INCARCERATION.

18 S 2. Subdivision 1-a of section 1193 of the vehicle and traffic law,  
19 as added by chapter 691 of the laws of 2002, paragraph (c) as amended by  
20 chapter 669 of the laws of 2007, paragraph (d) as added by chapter 732  
21 of the laws of 2006, is amended to read as follows:

22 1-a. Additional penalties. (a) Except as provided for in [paragraph]  
23 PARAGRAPHS (A-1), (b) AND (B-1) of this subdivision, a person who oper-  
24 ates a vehicle in violation of subdivision two [or], TWO-A, three, FOUR  
25 OR FOUR-A of section eleven hundred ninety-two of this article after

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

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1 having been convicted of a violation of subdivision two [or], TWO-A,  
2 three, FOUR OR FOUR-A of such section within the preceding [five] TEN  
3 years shall, in addition to any other penalties which may be imposed  
4 pursuant to subdivision one of this section, be sentenced to a term of  
5 imprisonment of [five] NOT LESS THAN THIRTY days [or, as an alternative  
6 to such imprisonment, be required to perform thirty days of service for  
7 a public or not-for-profit corporation, association, institution or  
8 agency as set forth in paragraph (h) of subdivision two of section 65.10  
9 of the penal law as a condition of sentencing for such violation].  
10 Notwithstanding the provisions of this paragraph, a sentence of a term  
11 of imprisonment of [five] THIRTY days or more pursuant to the provisions  
12 of subdivision one of this section shall be deemed to be in compliance  
13 with this subdivision. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE  
14 CONSTRUED TO LIMIT OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDI-  
15 TIONAL PENALTY, CONDITION, LICENSE SUSPENSION OR REVOCATION OR SCREENING  
16 OR ASSESSMENT OF SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

17 (A-1) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION  
18 TWO-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AFTER HAVING  
19 BEEN CONVICTED OF A VIOLATION OF SUCH SUBDIVISION WITHIN THE PRECEDING  
20 TEN YEARS SHALL, IN ADDITION TO ANY PENALTIES WHICH MAY BE IMPOSED  
21 PURSUANT TO SUBDIVISION ONE OF THIS SECTION, BE SENTENCED TO A TERM OF  
22 IMPRISONMENT OF NOT LESS THAN ONE HUNDRED EIGHTY DAYS. NOTHING  
23 CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT OR PROHIBIT A  
24 COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDITION, LICENSE  
25 SUSPENSION OR REVOCATION OR SCREENING OR ASSESSMENT OF SANCTION OF ANY  
26 KIND REQUIRED OR PERMITTED BY LAW.

27 (b) [A] EXCEPT AS PROVIDED IN PARAGRAPH (B-1) OF THIS SUBDIVISION, A  
28 person who operates a vehicle in violation of subdivision two [or],  
29 TWO-A, three, FOUR OR FOUR-A of section eleven hundred ninety-two of  
30 this article after having been convicted on two or more occasions of a  
31 violation of [any of such subdivisions] SUBDIVISION TWO, TWO-A, THREE,  
32 FOUR OR FOUR-A OF SUCH SECTION within the preceding [five] TEN years  
33 shall, in addition to any other penalties which may be imposed pursuant  
34 to subdivision one of this section, be sentenced to a term of imprison-  
35 ment of [ten] NOT LESS THAN NINETY days [or, as an alternative to such  
36 imprisonment, be required to perform sixty days of service for a public  
37 or not-for-profit corporation, association, institution or agency as set  
38 forth in paragraph (h) of subdivision two of section 65.10 of the penal  
39 law as a condition of sentencing for such violation]. Notwithstanding  
40 the provisions of this paragraph, a sentence of a term of imprisonment  
41 of [ten] NINETY days or more pursuant to the provisions of subdivision  
42 one of this section shall be deemed to be in compliance with this subdi-  
43 vision. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT  
44 OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDI-  
45 TION, LICENSE SUSPENSION OR REVOCATION OR SCREENING OR ASSESSMENT OF  
46 SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

47 (B-1) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION  
48 TWO-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AFTER HAVING  
49 BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SUCH SUBDIVISION WITHIN THE  
50 PRECEDING TEN YEARS SHALL, IN ADDITION TO ANY PENALTIES WHICH MAY BE  
51 IMPOSED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, BE SENTENCED TO A  
52 TERM OF IMPRISONMENT OF NOT LESS THAN ONE YEAR. NOTHING CONTAINED IN  
53 THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT OR PROHIBIT A COURT FROM  
54 IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDITION, LICENSE SUSPENSION OR  
55 REVOCATION OR SCREENING OR ASSESSMENT OF SANCTION OF ANY KIND REQUIRED  
56 OR PERMITTED BY LAW.

1 (c) A court sentencing a person WHO HAS BEEN CONVICTED OF OPERATING A  
2 VEHICLE IN VIOLATION OF SUBDIVISION TWO, TWO-A, THREE OR AN ALCOHOL-RE-  
3 LATED VIOLATION OF SUBDIVISION FOUR-A OF SECTION ELEVEN HUNDRED NINETY-  
4 TWO OF THIS ARTICLE pursuant to paragraph (a) [or], (A-1), (b) OR (B-1)  
5 of this subdivision shall: (i) order the installation of an ignition  
6 interlock device approved pursuant to section eleven hundred ninety-  
7 eight of this article in any motor vehicle owned or operated by the  
8 person so sentenced. Such devices shall remain installed during any  
9 period of license revocation required to be imposed pursuant to para-  
10 graph (b) of subdivision two of this section, and, upon the termination  
11 of such revocation period, for an additional period as determined by the  
12 court; and (ii) order that such person receive an assessment of the  
13 degree of their alcohol or substance abuse and dependency pursuant to  
14 the provisions of section eleven hundred ninety-eight-a of this article.  
15 Where such assessment indicates the need for treatment, such court is  
16 authorized to impose treatment as a condition of such sentence except  
17 that such court shall impose treatment as a condition of a sentence of  
18 probation or conditional discharge pursuant to the provisions of subdi-  
19 vision three of section eleven hundred ninety-eight-a of this article.  
20 Any person ordered to install an ignition interlock device pursuant to  
21 this paragraph shall be subject to the provisions of subdivisions four,  
22 five, seven, eight and nine of section eleven hundred ninety-eight of  
23 this article. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO  
24 LIMIT OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY,  
25 CONDITION, LICENSE SUSPENSION OR REVOCATION OR SCREENING OR ASSESSMENT  
26 OF SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

27 (d) Confidentiality of records. The provisions of subdivision six of  
28 section eleven hundred ninety-eight-a of this article shall apply to the  
29 records and content of all assessments and treatment conducted pursuant  
30 to this subdivision.

31 (E) IN CALCULATING THE TEN YEAR PERIOD UNDER PARAGRAPHS (A), (A-1),  
32 (B) AND (B-1) OF THIS SUBDIVISION, ANY PERIOD OF TIME DURING WHICH THE  
33 PERSON WAS INCARCERATED FOR ANY REASON BETWEEN THE TIME OF COMMISSION OF  
34 THE PREVIOUS VIOLATION OF SUBDIVISION TWO, TWO-A, THREE, FOUR OR FOUR-A  
35 OF SECTION ELEVEN HUNDRED AND NINETY-TWO OF THIS ARTICLE AND THE TIME OF  
36 COMMISSION OF THE PRESENT OFFENSE SHALL BE EXCLUDED AND SUCH TEN YEAR  
37 PERIOD SHALL BE EXTENDED BY A PERIOD OR PERIODS EQUAL TO THE TIME SERVED  
38 UNDER SUCH INCARCERATION.

39 S 3. Paragraph (a) of subdivision 1 of section 70.06 of the penal law,  
40 as amended by chapter 410 of the laws of 1979, is amended to read as  
41 follows:

42 (a) A second felony offender is a person, other than a second violent  
43 felony offender as defined in section 70.04, who stands convicted of a  
44 felony [defined in this chapter], other than a class A-I felony, after  
45 having previously been subjected to one or more predicate felony  
46 convictions as defined in paragraph (b) of this subdivision.

47 S 4. This act shall take effect on the first of November next succeed-  
48 ing the date on which it shall have become a law.