

2516

2011-2012 Regular Sessions

I N   S E N A T E

January 24, 2011

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Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed 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:

1     Section 1. Section 1193 of the vehicle and traffic law is amended by  
2     adding a new subdivision 1-b to read as follows:  
3     1-B. ALCOHOL AND CONTROLLED SUBSTANCE MONITORING. (A) IN ADDITION TO  
4     ANY OTHER SANCTIONS PROVIDED BY THIS SECTION, THE COURT SHALL UPON  
5     CONVICTION OF A PERSON OF A VIOLATION OF SUBDIVISION TWO, TWO-A OR THREE  
6     OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE, OR VEHICULAR  
7     ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.03 OF THE PENAL  
8     LAW, OR VEHICULAR ASSAULT IN THE FIRST DEGREE AS DEFINED IN SECTION  
9     120.04 OF THE PENAL LAW, OR AGGRAVATED VEHICULAR ASSAULT AS DEFINED IN  
10    SECTION 120.04-A OF THE PENAL LAW, OR VEHICULAR MANSLAUGHTER IN THE  
11    SECOND DEGREE AS DEFINED IN SECTION 125.12 OF THE PENAL LAW, OR VEHICU-  
12    LAR MANSLAUGHTER IN THE FIRST DEGREE AS DEFINED IN SECTION 125.13 OF THE  
13    PENAL LAW, OR AGGRAVATED VEHICULAR HOMICIDE AS DEFINED IN SECTION 125.14  
14    OF THE PENAL LAW, WHEN SUCH COURT SENTENCES SUCH PERSON TO A PERIOD OF  
15    PROBATION, MAKE A CONDITION OF SUCH PROBATION THE WEARING OF A SECURE  
16    CONTINUOUS REMOTE ALCOHOL MONITOR FOR THE DETECTION OF THE USE OF ALCO-  
17    HOL OR A CONTROLLED SUBSTANCE BY THE SENTENCED PERSON; PROVIDED, HOWEV-  
18    ER, SUCH COURT SHALL NOT AUTHORIZE THE OPERATION OF A MOTOR VEHICLE BY  
19    ANY SUCH PERSON WHOSE LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE  
20    HAS BEEN SUSPENDED OR REVOKED.  
21    (B) A COURT SHALL CONDITION ANY BOND OR PRE-TRIAL RELEASE FOR A CHARGE  
22    OF ANY OF THE OFFENSES LISTED IN PARAGRAPH (A) OF THIS SUBDIVISION UPON  
23    THE WEARING OF A SECURE CONTINUOUS REMOTE ALCOHOL MONITOR, AND THE  
24    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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1 SHALL CONDITION THE SUSPENDED IMPOSITION OF SENTENCE OR SUSPENDED  
2 EXECUTION OF SENTENCE UPON SUCH WEARING, AND THE PAYMENT OF THE ASSOCI-  
3 ATED COSTS AND EXPENSES. A COURT MAY WAIVE A FINE OR BOND IN LIEU OF  
4 PARTICIPATION IN THE ALCOHOL AND CONTROLLED SUBSTANCE MONITORING ESTAB-  
5 LISHED PURSUANT TO THIS SUBDIVISION. IN ADDITION, A COURT MAY WAIVE THE  
6 PAYMENT OF THE ASSOCIATED COST AND EXPENSE OF SUCH PROGRAM WHERE THE  
7 PROBATIONER OR DEFENDANT MEETS THE ELIGIBILITY REQUIREMENTS FOR A PUBLIC  
8 DEFENDER.

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

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

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

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

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

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

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

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

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