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

2597

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

Introduced by Sens. FUSCHILLO, BONACIC, DILAN, HUNTLEY, JOHNSON, KLEIN, LARKIN, NOZZOLIO, SALAND, STAVISKY -- 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 penal law, in relation to driving while intoxicated

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

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

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

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

1-a. Additional penalties. (a) Except as provided for in [paragraph] PARAGRAPHS (A-1), (b) AND (B-1) of this subdivision, a person who operates a vehicle in violation of subdivision two [or], TWO-A, three, FOUR

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

LBD04584-03-1

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

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

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

(B-1) A PERSON WHO OPERATES A VEHICLE IN VIOLATION OF SUBDIVISION TWO-A OF SECTION ELEVEN HUNDRED NINETY-TWO OF THIS ARTICLE AFTER HAVING BEEN CONVICTED OF TWO OR MORE VIOLATIONS OF SUCH SUBDIVISION WITHIN THE PRECEDING TEN YEARS SHALL, IN ADDITION TO ANY PENALTIES WHICH MAY BE IMPOSED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, BE SENTENCED TO A TERM OF IMPRISONMENT OF NOT LESS THAN ONE YEAR. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO LIMIT OR PROHIBIT A COURT FROM IMPOSING ANY OTHER ADDITIONAL PENALTY, CONDITION, LICENSE SUSPENSION OR

REVOCATION OR SCREENING OR ASSESSMENT OF SANCTION OF ANY KIND REQUIRED OR PERMITTED BY LAW.

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

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

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

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

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

S 4. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.