

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1167

Introduced by Pedersen, 39; Ashford, 20.

Read first time January 23, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Office of Probation Administration; to
2 amend section 60-6,197.03, Revised Statutes Supplement,
3 2007; to create and provide for participation in the
4 statewide 24/7 sobriety program; to create a fund; to
5 provide duties for the office; to provide for rules and
6 regulations; to change provisions relating to sentencing
7 as prescribed; to harmonize provisions; and to repeal the
8 original section.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. The statewide 24/7 sobriety program is
2 established. The program shall be administered by the Office
3 of Probation Administration. Participants in the program shall
4 be required to abstain from consuming or otherwise using any
5 substances containing alcohol or illegal drugs. Abstinence from
6 alcohol shall be verified by a minimum of twice-daily breath
7 testing or continuous alcohol monitoring. Abstinence from illegal
8 drugs shall be verified by twice-weekly urine or blood testing.
9 Participants also shall be prohibited from tampering or attempting
10 to tamper with or obstruct the testing process.

11 Sec. 2. The 24/7 Sobriety Fund is established. The fund
12 shall be maintained and administered by the Office of Probation
13 Administration to defray costs of operating the statewide 24/7
14 sobriety program, including, but not limited to, purchasing,
15 leasing, and maintaining equipment, funding support services, and
16 paying the costs of testing participants determined to be indigent
17 by the office. The fund shall include donations, gifts, grants,
18 and money collected as user fees or payments. Money in the fund
19 available for investment shall be invested by the state investment
20 officer pursuant to the Nebraska Capital Expansion Act and the
21 Nebraska State Funds Investment Act.

22 Sec. 3. The Office of Probation Administration may
23 conduct the statewide 24/7 sobriety program through its district
24 probation offices or may contract with an entity willing to conduct
25 the program at the county or probation-district level. The district

1 probation office or contracting entity shall establish the testing
2 locations and times for each probation district or county but shall
3 provide at least one location in each probation district or county.
4 Participants shall be required to submit to drug testing at least
5 two times each week.

6 Sec. 4. A court may condition the granting of a suspended
7 sentence, suspended execution of sentence, or probation upon
8 participation in the statewide 24/7 sobriety program and payment
9 of associated costs and expenses, except that participation shall
10 be required as a condition of any suspended sentence or probation
11 for (1) any person convicted of a second or subsequent violation
12 of section 60-6,196 or 60-6,197 or a substantially similar city
13 or village ordinance and (2) for any person convicted of a
14 first or subsequent violation of section 60-6,196 or 60-6,197
15 or a substantially similar city or village ordinance with a
16 concentration of alcohol in his or her blood or breath as described
17 in subsection (2) of section 60-6,197.03.

18 Sec. 5. Any person convicted of a second or subsequent
19 violation of section 60-6,196 or 60-6,197 or a substantially
20 similar city or village ordinance or any person convicted of a
21 first or subsequent violation of section 60-6,196 or 60-6,197
22 or a substantially similar city or village ordinance with a
23 concentration of alcohol in his or her blood or breath as described
24 in subsection (2) of section 60-6,197.03 shall participate in the
25 statewide 24/7 sobriety program upon release from any period of

1 incarceration.

2 Sec. 6. The Board of Parole may condition parole upon
3 participation by the parolee in the statewide 24/7 sobriety program
4 and payment of the associated cost and expenses, except that
5 participation shall be required as a condition of parole for (1)
6 any person convicted of a second or subsequent violation of section
7 60-6,196 or 60-6,197 and (2) for any person convicted of a first
8 or subsequent violation of section 60-6,196 or 60-6,197 with a
9 concentration of alcohol in his or her blood or breath as described
10 in subsection (2) of section 60-6,197.03.

11 Sec. 7. Inability to pay any fees established by
12 the Office of Probation Administration pursuant to rules and
13 regulations as provided in section 8 of this act shall not preclude
14 a person from participation in the statewide 24/7 sobriety program.

15 Sec. 8. The Office of Probation Administration may adopt
16 and promulgate rules to carry out sections 1 to 9 of this act. Such
17 rules and regulations shall include, but need not be limited to:

18 (1) The nature and manner of testing;

19 (2) Provisions for procedures and apparatus for testing,
20 including electronic monitoring devices; and

21 (3) Participation and user fees.

22 The office shall submit an annual report to the Judiciary
23 Committee of the Legislature and the Clerk of the Legislature,
24 detailing the number of days of incarceration avoided, if any, and
25 the annual cost of implementing and sustaining the statewide 24/7

1 sobriety program.

2 Sec. 9. All fees collected under sections 1 to 8 of this
3 act shall be remitted to the State Treasurer for credit to the 24/7
4 Sobriety Fund.

5
6 Sec. 10. Section 60-6,197.03, Revised Statutes
7 Supplement, 2007, is amended to read:

8 60-6,197.03 Any person convicted of a violation of
9 section 60-6,196 or 60-6,197 shall be punished as follows:

10 (1) Except as provided in subdivision (2) of this
11 section, if such person has not had a prior conviction, such
12 person shall be guilty of a Class W misdemeanor, and the court
13 shall, as part of the judgment of conviction, order that the
14 operator's license of such person be revoked or impounded for a
15 period of six months from the date ordered by the court. Such
16 revocation or impoundment shall be administered upon sentencing,
17 upon final judgment of any appeal or review, or upon the date that
18 any probation is revoked.

19 If the court places such person on probation or suspends
20 the sentence for any reason, the court shall, as one of the
21 conditions of probation or sentence suspension, order that the
22 operator's license of such person be revoked or impounded for
23 a period of sixty days from the date ordered by the court
24 unless otherwise authorized by an order issued pursuant to section
25 60-6,211.05, and such order of probation or sentence suspension

1 shall also include, as one of its conditions, the payment of a
2 four-hundred-dollar fine;

3 (2) If such person has not had a prior conviction
4 and, as part of the current violation, had a concentration of
5 fifteen-hundredths of one gram or more by weight of alcohol per
6 one hundred milliliters of his or her blood or fifteen-hundredths
7 of one gram or more by weight of alcohol per two hundred ten
8 liters of his or her breath, such person shall be guilty of
9 a Class W misdemeanor, and the court shall, as part of the
10 judgment of conviction, revoke the operator's license of such
11 person for a period of one year from the date ordered by the
12 court. Such revocation shall be administered upon sentencing, upon
13 final judgment of any appeal or review, or upon the date that any
14 probation is revoked. The court shall also order that such person
15 participate in the statewide 24/7 sobriety program established
16 under sections 1 to 9 of this act upon release from any period of
17 incarceration.

18 If the court places such person on probation or suspends
19 the sentence for any reason, the court shall, as one of the
20 conditions of probation or sentence suspension, order (a) that
21 the operator's license of such person be revoked or impounded
22 for a period of one year from the date ordered by the court
23 unless otherwise authorized by an order issued pursuant to
24 section 60-6,211.05, and ~~such order of probation or sentence~~
25 ~~suspension shall also include, as conditions,~~ (b) the payment of

1 a five-hundred-dollar fine and either confinement in the city or
2 county jail for two days or the imposition of not less than one
3 hundred twenty hours of community service, and (c) that the person
4 participate in the statewide 24/7 sobriety program established
5 under sections 1 to 9 of this act;

6 (3) Except as provided in subdivision (5) of this
7 section, if such person has had one prior conviction, such person
8 shall be guilty of a Class W misdemeanor, and the court shall,
9 as part of the judgment of conviction, order that the operator's
10 license of such person be revoked for a period of one year from
11 the date ordered by the court and shall issue an order pursuant
12 to section 60-6,197.01. Such orders shall be administered upon
13 sentencing, upon final judgment of any appeal or review, or upon
14 the date that any probation is revoked. The court shall also order
15 that such person participate in the statewide 24/7 sobriety program
16 established under sections 1 to 9 of this act upon release from any
17 period of incarceration.

18 If the court places such person on probation or
19 suspends the sentence for any reason, the court shall, as ~~one~~
20 ~~of the~~ conditions of probation or sentence suspension, order
21 (a) that the operator's license of such person be revoked or
22 impounded for a period of one year from the date ordered by the
23 court unless otherwise authorized by an order issued pursuant
24 to section 60-6,211.05 and shall issue an order pursuant to
25 section 60-6,197.01, ~~and such order of probation or sentence~~

1 ~~suspension shall also include, as conditions,~~ (b) the payment of
2 a five-hundred-dollar fine and either confinement in the city or
3 county jail for ten days or the imposition of not less than two
4 hundred forty hours of community service, and (c) that the person
5 participate in the statewide 24/7 sobriety program established
6 under sections 1 to 9 of this act;

7 (4) Except as provided in subdivision (6) of this
8 section, if such person has had two prior convictions, such person
9 shall be guilty of a Class W misdemeanor, and the court shall,
10 as part of the judgment of conviction, order that the operator's
11 license of such person be revoked for a period of fifteen years
12 from the date ordered by the court and shall issue an order
13 pursuant to section 60-6,197.01. Such orders shall be administered
14 upon sentencing, upon final judgment of any appeal or review, or
15 upon the date that any probation is revoked. The court shall also
16 order that such person participate in the statewide 24/7 sobriety
17 program established under sections 1 to 9 of this act upon release
18 from any period of incarceration.

19 If the court places such person on probation or suspends
20 the sentence for any reason, the court shall, as ~~one of the~~
21 conditions of probation or sentence suspension, order (a) that the
22 operator's license of such person be revoked for a period of at
23 least two years but not more than fifteen years from the date
24 ordered by the court unless otherwise authorized by an order issued
25 pursuant to section 60-6,211.05 and shall issue an order pursuant

1 to section 60-6,197.01, and such order of probation or sentence
2 ~~suspension shall also include, as conditions,~~ (b) the payment of
3 a six-hundred-dollar fine and confinement in the city or county
4 jail for thirty days, and (c) that the person participate in the
5 statewide 24/7 sobriety program established under sections 1 to 9
6 of this act;

7 (5) If such person has had one prior conviction
8 and, as part of the current violation, had a concentration of
9 fifteen-hundredths of one gram or more by weight of alcohol per
10 one hundred milliliters of his or her blood or fifteen-hundredths
11 of one gram or more by weight of alcohol per two hundred ten
12 liters of his or her breath or refused to submit to a test as
13 required under section 60-6,197, such person shall be guilty of a
14 Class I misdemeanor, and the court shall, as part of the judgment
15 of conviction, revoke the operator's license of such person for
16 a period of at least one year but not more than fifteen years
17 from the date ordered by the court and shall issue an order
18 pursuant to section 60-6,197.01. Such revocation and order shall be
19 administered upon sentencing, upon final judgment of any appeal or
20 review, or upon the date that any probation is revoked. The court
21 shall also sentence such person to serve at least ninety days'
22 imprisonment in the city or county jail or an adult correctional
23 facility. The court shall also order that such person participate
24 in the statewide 24/7 sobriety program established under sections 1
25 to 9 of this act upon release from any period of incarceration.

1 If the court places such person on probation or suspends
2 the sentence for any reason, the court shall, as ~~one of the~~
3 conditions of probation or sentence suspension, order (a) that the
4 operator's license of such person be revoked or impounded for a
5 period of at least one year but not more than fifteen years from
6 the date ordered by the court unless otherwise authorized by an
7 order issued pursuant to section 60-6,211.05 and shall issue an
8 order pursuant to section 60-6,197.01, ~~and such order of probation~~
9 ~~or sentence suspension shall also include,~~ as conditions, (b) the
10 payment of a one-thousand-dollar fine and confinement in the city
11 or county jail for thirty days, and (c) that the person participate
12 in the statewide 24/7 sobriety program established under sections 1
13 to 9 of this act;

14 (6) If such person has had two prior convictions
15 and, as part of the current violation, had a concentration of
16 fifteen-hundredths of one gram or more by weight of alcohol per
17 one hundred milliliters of his or her blood or fifteen-hundredths
18 of one gram or more by weight of alcohol per two hundred ten
19 liters of his or her breath or refused to submit to a test as
20 required under section 60-6,197, such person shall be guilty of a
21 Class IIIA felony, and the court shall, as part of the judgment
22 of conviction, revoke the operator's license of such person for
23 a period of fifteen years from the date ordered by the court
24 and shall issue an order pursuant to section 60-6,197.01. Such
25 revocation and order shall be administered upon sentencing, upon

1 final judgment of any appeal or review, or upon the date that any
2 probation is revoked. The court shall also sentence such person to
3 serve at least one hundred eighty days' imprisonment in the city or
4 county jail or an adult correctional facility. The court shall also
5 order that such person participate in the statewide 24/7 sobriety
6 program established under sections 1 to 9 of this act upon release
7 from any period of incarceration.

8 If the court places such person on probation or suspends
9 the sentence for any reason, the court shall, as ~~one of the~~
10 conditions of probation or sentence suspension, order (a) that the
11 operator's license of such person be revoked for a period of at
12 least five years but not more than fifteen years from the date
13 ordered by the court unless otherwise authorized by an order issued
14 pursuant to section 60-6,211.05 and shall issue an order pursuant
15 to section 60-6,197.01, and ~~such order of probation or sentence~~
16 ~~suspension shall also include, as conditions,~~ (b) the payment of
17 a one-thousand-dollar fine and confinement in the city or county
18 jail for sixty days, and (c) that the person participate in the
19 statewide 24/7 sobriety program established under sections 1 to 9
20 of this act;

21 (7) Except as provided in subdivision (8) of this
22 section, if such person has had three prior convictions, such
23 person shall be guilty of a Class IIIA felony, and the court shall,
24 as part of the judgment of conviction, order that the operator's
25 license of such person be revoked for a period of fifteen years

1 from the date ordered by the court and shall issue an order
2 pursuant to section 60-6,197.01. Such orders shall be administered
3 upon sentencing, upon final judgment of any appeal or review, or
4 upon the date that any probation is revoked. The court shall also
5 sentence such person to serve at least one hundred eighty days'
6 imprisonment in the city or county jail or an adult correctional
7 facility. The court shall also order that such person participate
8 in the statewide 24/7 sobriety program established under sections 1
9 to 9 of this act upon release from any period of incarceration.

10 If the court places such person on probation or suspends
11 the sentence for any reason, the court shall, as one of the
12 conditions of probation or sentence suspension, order (a) that
13 the operator's license of such person be revoked for a period of
14 fifteen years from the date ordered by the court unless otherwise
15 authorized by an order issued pursuant to section 60-6,211.05 and
16 shall issue an order pursuant to section 60-6,197.01, and such
17 order of probation or sentence suspension shall also include,
18 as conditions, (b) the payment of a one-thousand-dollar fine and
19 confinement in the city or county jail for ninety days, and (c)
20 that the person participate in the statewide 24/7 sobriety program
21 established under sections 1 to 9 of this act;

22 (8) If such person has had three prior convictions
23 and, as part of the current violation, had a concentration of
24 fifteen-hundredths of one gram or more by weight of alcohol per one
25 hundred milliliters of his or her blood or fifteen-hundredths of

1 one gram or more by weight of alcohol per two hundred ten liters
2 of his or her breath or refused to submit to a test as required
3 under section 60-6,197, such person shall be guilty of a Class III
4 felony, and the court shall, as part of the judgment of conviction,
5 revoke the operator's license of such person for a period of
6 fifteen years from the date ordered by the court and shall issue
7 an order pursuant to section 60-6,197.01. Such revocation and order
8 shall be administered upon sentencing, upon final judgment of any
9 appeal or review, or upon the date that any probation is revoked.
10 The court shall also order that such person participate in the
11 statewide 24/7 sobriety program established under sections 1 to 9
12 of this act upon release from any period of incarceration.

13 If the court places such person on probation or suspends
14 the sentence for any reason, the court shall, as one of the
15 conditions of probation or sentence suspension, order (a) that
16 the operator's license of such person be revoked for a period of
17 fifteen years from the date ordered by the court unless otherwise
18 authorized by an order issued pursuant to section 60-6,211.05 and
19 shall issue an order pursuant to section 60-6,197.01, and such
20 ~~order of probation or sentence suspension shall also include,~~
21 ~~as conditions,~~ (b) the payment of a one-thousand-dollar fine and
22 confinement in the city or county jail for one hundred twenty days,
23 and (c) that the person participate in the statewide 24/7 sobriety
24 program established under sections 1 to 9 of this act;

25 (9) Except as provided in subdivision (10) of this

1 section, if such person has had four or more prior convictions,
2 such person shall be guilty of a Class III felony, and the court
3 shall, as part of the judgment of conviction, order that the
4 operator's license of such person be revoked for a period of
5 fifteen years from the date ordered by the court and shall issue
6 an order pursuant to section 60-6,197.01. Such orders shall be
7 administered upon sentencing, upon final judgment of any appeal or
8 review, or upon the date that any probation is revoked. The court
9 shall also order that such person participate in the statewide 24/7
10 sobriety program established under sections 1 to 9 of this act upon
11 release from any period of incarceration.

12 If the court places such person on probation or suspends
13 the sentence for any reason, the court shall, as ~~one of the~~
14 conditions of probation or sentence suspension, order (a) that
15 the operator's license of such person be revoked for a period of
16 fifteen years from the date ordered by the court unless otherwise
17 authorized by an order issued pursuant to section 60-6,211.05 and
18 shall issue an order pursuant to section 60-6,197.01, ~~and such~~
19 ~~order of probation or sentence suspension shall also include,~~
20 ~~as conditions,~~ (b) the payment of a one-thousand-dollar fine and
21 confinement in the city or county jail for one hundred eighty days,
22 and (c) that the person participate in the statewide 24/7 sobriety
23 program established under sections 1 to 9 of this act; and

24 (10) If such person has had four or more prior
25 convictions and, as part of the current violation, had a

1 concentration of fifteen-hundredths of one gram or more by weight
2 of alcohol per one hundred milliliters of his or her blood or
3 fifteen-hundredths of one gram or more by weight of alcohol per
4 two hundred ten liters of his or her breath or refused to submit
5 to a test as required under section 60-6,197, such person shall
6 be guilty of a Class II felony and the court shall, as part of
7 the judgment of conviction, revoke the operator's license of such
8 person for a period of fifteen years from the date ordered by the
9 court and shall issue an order pursuant to section 60-6,197.01.
10 Such revocation and order shall be administered upon sentencing,
11 upon final judgment of any appeal or review, or upon the date
12 that any probation is revoked. The court shall also order that
13 such person participate in the statewide 24/7 sobriety program
14 established under sections 1 to 9 of this act upon release from
15 any period of incarceration.

16 If the court places such person on probation or suspends
17 the sentence for any reason, the court shall, as one of the
18 conditions of probation or sentence suspension, order (a) that
19 the operator's license of such person be revoked for a period of
20 fifteen years from the date ordered by the court unless otherwise
21 authorized by an order issued pursuant to section 60-6,211.05 and
22 shall issue an order pursuant to section 60-6,197.01, and such
23 order of probation or sentence suspension shall also include,
24 as conditions, (b) the payment of a one-thousand-dollar fine and
25 confinement in the city or county jail for one hundred eighty days,

1 and (c) that the person participate in the statewide 24/7 sobriety
2 program established under sections 1 to 9 of this act.

3 Sec. 11. Original section 60-6,197.03, Revised Statutes
4 Supplement, 2007, is repealed.