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

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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the executive law, in relation to correctional alternative programs and alternatives to incarceration service plans

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

Section 1. Subdivision 2 of section 243 of the executive law, as amended by chapter 574 of the laws of 1985, is amended to read as follows:

2. The director shall exercise general supervision over the utilization of correctional alternative programs throughout the state. [He] THE DIRECTOR shall collect statistical and other information and make recommendations regarding the availability, identification, coordination and utilization of such programs. The director shall endeavor to facilitate communication and coordination among and between correctional alternative programs and probation services in order to assist in making effective use of such programs. A correctional alternative program shall be deemed to refer to those programs, including eligible programs as defined in paragraph b of subdivision one of section two hundred sixty-one of this chapter, which by themselves, or when used in conjunction with one or more programs or with probation services, may serve as an alternative to a sentence or disposition of incarceration or a portion thereof, and which shall serve the interests of justice. The director shall further exercise general supervision over the administration and implementation of alternatives to incarceration service plans under the provisions of article thirteen-A of this chapter. [He] THE DIRECTOR shall adopt general rules and regulations which shall regulate methods and procedures in the administration and funding of alternative to incarceration service plans, and any other correctional alternative program funded by the state through the division[, including but not

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

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limited to issuance of quarterly reports as specified by section two hundred sixty-three of this chapter]. Such rules and regulations shall be binding upon all counties and eligible programs that may be funded in such plans, AND ANY OTHER CORRECTIONAL ALTERNATIVE PROGRAM FUNDED BY THE STATE THROUGH THE DIVISION, and when duly adopted shall have the force and effect of law. [He] THE DIRECTOR shall keep [himself] informed as to the development, implementation and utilization of plans and funded [eligible] programs [therein] OF THE DIVISION and shall from time to time inquire into and report upon their work and efficiency. [He] THE DIRECTOR shall investigate the work of any [funded] plan or [eligible] FUNDED program OF THE DIVISION and shall have access to their records and offices for such purpose.

S 2. Subdivision 4 of section 262 of the executive law, as added by chapter 907 of the laws of 1984 and paragraph a as amended by chapter 421 of the laws of 1988, is amended to read as follows:

4. a. Each such plan shall be submitted to the division [no later than one hundred eighty days after the effective date of the chapter of the laws of nineteen hundred eighty-eight which amended this paragraph and added these words or] by the first day of April of [each subsequent] THE year [and shall provide that upon] FOR WHICH APPROVAL IS SOUGHT UNLESS PRIOR PERMISSION OTHERWISE HAS BEEN GRANTED BY THE DIVISION. UPON approval BY THE DIVISION it shall become effective. Annual renewals of service plans [are required and] shall be submitted to the division [no later than the first day of April of each year following submission of the original plan] AS REQUIRED. A plan may be amended from time to time by the advisory board, subject to the approval of the local legislative body and the division. The division may recommend amendments to a plan, subject to the approval of the advisory board and the local legislative body. Reasons for such amendments may include but shall not be limited to the addition or deletion of eligible programs with due consideration to their utilization by the court, their effect on diverting the jail bound population, reducing the overcrowding problem and their cost-effectiveness.

b. The division shall either approve or deny the plan [no later than sixty days following its submission]. If the plan is denied, the division shall notify the county executive in writing of such denial and the reasons therefor and shall specify any measures which should be undertaken to secure the approval of the division. Nothing herein shall prohibit the amendment of a plan BY THE COUNTY EXECUTIVE OR HIS OR HER DESIGNEE to overcome the division's stated reasons for denial or the resubmission of such proposed plan for approval.

S 3. Section 263 of the executive law, as added by chapter 907 of the laws of 1984, is amended to read as follows:

S 263. Reports. The advisory board, through its chairperson, shall submit to the division [a quarterly report] REPORTS relative to the status of compliance with the plan, pursuant to [rules and regulations promulgated] REPORTING REQUIREMENTS ESTABLISHED by the division. The report shall include, but not be limited to: compliance with specific goals and objectives as reflected in the plan; ability of programs to meet performance criteria; compliance with timetables; utilization by the court of the programs included in the plan; effect of such programs on diverting the jail bound population and reducing the [over crowding] OVERCROWDING problem; and any other information requested by the division and available to the advisory board with respect to this article.

S 4. Subdivision 1 of section 264 of the executive law, as added by chapter 907 of the laws of 1984 and the opening paragraph as amended by chapter 908 of the laws of 1984, is amended to read as follows:

1. If at any time the division determines that a county plan is not being complied with, it shall notify the advisory board through the chairperson and the state commission of correction in writing of such fact, and it shall withhold any portion of state funds not theretofore [allocated] DISBURSED OR EXPENDED TO SUCH COUNTY. Such notice shall state the particular reasons for the determination and demand compliance with the plan within sixty days of the notice, setting forth the specific actions deemed necessary to secure compliance. If compliance is forthcoming the board and the state commission of correction shall be notified of such fact in writing and any state funds heretofore withheld shall be released. If compliance with the plan is not fulfilled within such time or within a thirty day extension period as authorized herein, the division shall notify the advisory board through the chairperson and the state commission of correction. Upon such notification, the county shall be deemed in noncompliance with the approved plan and the provisions of subdivision eight of section five hundred-b of the correction law shall be applied.

An extension may be granted by the division for a thirty day period upon a request by the board through the chairperson, where the division determines it to be appropriate, setting forth specific reasons for a need for an extension and the steps which shall be undertaken to be in compliance at the end of such period.

Any notification by the division of non-compliance pursuant to this section shall be deemed a final determination for purposes of judicial review.

S 5. Paragraph b of subdivision 2 and subdivision 3 of section 265 of the executive law, paragraph b of subdivision 2 and the opening paragraph of subdivision 3 as amended by chapter 338 of the laws of 1989, subdivision 3 as added by chapter 907 of the laws of 1984 and paragraph b of subdivision 3 as amended by chapter 320 of the laws of 1989, are amended to read as follows:

b. [Except as provided in section two hundred sixty-six of this article, applications for such assistance must be made and submitted no later than one hundred eighty days after the effective date of the chapter of the laws of nineteen hundred eighty-eight which amended this paragraph and added these words or by the first day of April of each subsequent year and shall be either approved or denied by the division no later than sixty days following such submission.] Any part of the moneys so made available and not apportioned pursuant to a plan approved [and contract entered into with] BY the division within the time limits required shall be apportioned by the division in its discretion to such a city or counties on a need basis, taking into consideration inmate population or prior commitment by a county in the development of alternatives to detention or incarceration programs.

3. [The division may receive applications from and may enter into contracts with municipalities to undertake implementation of the service plan and any such municipality may enter into a contract with the division and with such private organization or organizations for such purpose. Except as provided in section two hundred sixty-six of this article, any such contract may include such provisions as may be agreed upon by the parties thereto, but shall include in substance at least the following:

a. An estimate of the reasonable cost and need of the programs as approved by the division;] UPON RECEIVING A SERVICE PLAN, THE DIVISION MAY AGREE TO REIMBURSE A MUNICIPALITY FOR COSTS INCURRED IN THE IMPLEMENTATION OF THE PLAN AS APPROVED BY THE DIVISION.

[b.] In [the first] ANY year of the approved service plan [an agreement by] the division SHALL AGREE to reimburse to the municipality up to fifty percent of [the state's share of the] DIVISION APPROVED MUNICIPALITY'S costs at the initial approval OR RENEWAL of the plan[; one-half of the remaining fifty percent of the state's share shall be allocated to municipalities during the implementation of the plan, provided there is substantial compliance with timetables and any other provisions of the plan deemed necessary by the division. The balance of the state's share of the costs shall be allocated to the municipality in a manner determined by the division. In any subsequent year, the division shall reimburse to the municipality the state's share of actual costs incurred under the plan]. In no event shall the state's [share exceed fifty percent of the total cost of the plan, nor shall it] REIMBURSEMENT be used to replace current expenditures by the municipality for such alternatives programs. However, in determining the amount of the municipal [share of the] cost of a program, the division shall [reduce the amount of the municipal share] CREDIT THE MUNICIPALITY by an amount equal to the costs incurred by such municipality on implementation of any of the plan's provisions during the year immediately preceding approval of the plan by the division. [Any such amount resulting in a reduction of the municipal share shall not be considered in calculating the municipal share of any future program;] IN SUCH INSTANCES, THE DIVISION MAY REIMBURSE UP TO ONE HUNDRED PERCENT OF THE MUNICIPALITY'S COST OF THE PROGRAM.

[c. An agreement by the municipality to provide for the payment of the municipality's share of the cost of the program or programs and to proceed expeditiously with, and complete, the program or programs, as approved by the commission;

d.] Any costs in excess of the [amount] MAXIMUM DIVISION REIMBURSEMENT provided for in this subdivision will be the responsibility of the municipality [except as otherwise provided in this article;].

[e. An agreement that, in] IN the event federal assistance[, which was not included in the calculation of the state or municipal payment,] becomes available to the municipality[, the amount of the state payment shall be recalculated with the inclusion of one-half of such federal assistance and the amount of the municipality's payment shall be recalculated with the inclusion of one-half of such federal assistance; and] FOR THE OPERATION OF ANY PROGRAM, THE DIVISION SHALL NOT REIMBURSE THE MUNICIPALITY IN THE AMOUNT OF SUCH FEDERAL ASSISTANCE.

[f. An agreement that in] IN the event [of] private [financial assistance, which was not included in the calculation of the municipal payment and which] FUNDING becomes available to the municipality[, such financial assistance shall result in a reduction of the municipal share by said amount] FOR THE OPERATION OF ANY PROGRAM, THE DIVISION SHALL REIMBURSE UP TO FIFTY PERCENT OF THE PRIVATE FUNDS EXPENDED BY THE MUNICIPALITY.

S 6. Subdivision 4 of section 266 of the executive law, as added by chapter 338 of the laws of 1989, is amended to read as follows:

4. [The division may receive approved amendments and may amend approved plans in accordance with such approved amendments at any time. The division may enter into contracts to undertake the implementation of the approved amendments and any such municipality may enter into

contracts with the division and with private organizations for such implementation. Any such contracts may include such provisions as may be agreed upon by the parties thereto, but shall include at least the following:

a. An estimate of the reasonable costs and need for the eligible alcohol and substance abuse programs;

b. An agreement by the division to reimburse the municipality in accordance with the following:] UPON RECEIVING AN AMENDMENT, THE DIVISION MAY AGREE TO REIMBURSE A MUNICIPALITY FOR COSTS INCURRED IN THE IMPLEMENTATION OF ANY ELIGIBLE ALCOHOL AND SUBSTANCE ABUSE PROGRAM AS APPROVED BY THE DIVISION.

[(i)] A. In the first year of implementation and operation of the eligible alcohol and substance abuse program, the division shall reimburse to the municipality one hundred percent of [the] DIVISION APPROVED MUNICIPALITY'S costs incurred[, provided that, upon approval of the contract and consistent with implementation plans approved by the division, up to one-half of the state's share of the cost of] FOR such program [may be immediately allocated to the municipality for purposes of implementation of the program. The balance of the state's share of the costs shall be allocated to the municipality in a manner determined by the division].

[(ii)] B. In the second year of operation of such eligible alcohol and substance abuse program, such program shall be included in the approved service plan submitted by the municipality and the division shall reimburse to the municipality UP TO seventy-five percent of the costs of approved expenditures. [Municipalities shall provide at least twenty-five percent of costs of approved expenditures of the contract.

(iii)] C. In the third and any subsequent year of operation of such alcohol and substance abuse program, such program shall be included in the approved service plan submitted by the municipality and the division shall reimburse to the municipality UP TO fifty percent of the costs of approved expenditures. [Municipalities shall provide at least fifty percent of costs of approved expenditures of the contract.]

In no event shall the state's [share] REIMBURSEMENT be used to replace expenditures previously incurred by the municipality for such alcohol and substance abuse programs[;

c. An agreement by the municipality to provide for the payment of the municipality's share of the costs of the alcohol and substance abuse program or programs, and to proceed expeditiously with, and implement, such program or programs, as approved by the division; and

d]. Any costs in excess of the [amount] MAXIMUM DIVISION REIMBURSEMENT provided for in this subdivision shall be the responsibility of the municipality[, except as otherwise provided in this article].

S 7. Section 267 of the executive law, as amended by chapter 338 of the laws of 1989, is amended to read as follows:

S 267. Division reports. The division shall ANNUALLY submit to the governor, the temporary president of the senate, the speaker of the assembly, the [chairman] RESPECTIVE CHAIRPERSONS of the senate crime VICTIMS, CRIME and correction committee and the [chairman of the] assembly committee on codes [by October first of each year] its evaluation and assessment of this alternatives planning and programming effort by the counties. Such report shall include, but not be limited to, the status of the development of such plans, the approval and implementation of such plans, the success of the programs, in terms of their utilization, effect on jail population, results of the analyses provided counties and the city of New York on the relationship between alcohol, drugs

and crime and the success of the eligible alcohol and substance abuse programs and sentencing decisions together with any recommendations with respect to the proper operation or improvement of planning and implementation of effective alternatives to detention and alternatives to incarceration programs in counties.

S 8. This act shall take effect immediately; provided, however, that the amendments to sections 262, 263, 264, 265, 266 and 267 of the executive law made by sections two, three, four, five, six and seven, respectively, of this act shall not affect the repeal of such sections and shall be deemed repealed on the same date as provided for in section 12 of chapter 907 of the laws of 1984, as amended.