

6085

2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

Introduced by M. of A. AUBRY, SILVER, LENTOL, WEINSTEIN, FARRELL, WRIGHT, P. RIVERA, ESPAILLAT, O'DONNELL, GOTTFRIED, McENENY, WEISENBERG, COOK, CLARK, ROSENTHAL, KAVANAGH, SCARBOROUGH, PRETLOW, PEOPLES-STOKES, BENJAMIN, PERRY -- Multi-Sponsored by -- M. of A. BARRON, BING, BRENNAN, BRODSKY, CAHILL, CHRISTENSEN, CYMBROWITZ, DenDEKKER, DINOWITZ, GLICK, HEASTIE, HOOPER, HOYT, JACOBS, JAFFEE, JEFFRIES, JOHN, LAVINE, LIFTON, V. LOPEZ, LUPARDO, MAISEL, MILLMAN, ORTIZ, PAULIN, PERALTA, N. RIVERA, ROBINSON, RUSSELL, SCHIMEL, SKARTADOS, STIRPE, SWEENEY, TITONE, TITUS, TOWNS, ZEBROWSKI -- read once and referred to the Committee on Codes

AN ACT to amend the correction law, in relation to drug abuse treatment in state prisons; to amend the criminal procedure law, in relation to sentencing proceedings; to amend the executive law, in relation to sentences of parole supervision and a combined law enforcement and community strategy to eliminate street-level drug crime; to amend the judiciary law, the penal law, the civil practice law and rules and the state finance law, in relation to determinate sentences for certain drug offenses and the creation of new offenses for criminal sale of a controlled substance to a child, trafficking through a controlled substance organization, and criminal possession of a weapon while selling or attempting to sell a controlled substance; to amend the state finance law, in relation to establishing the crime reduction fund and the school drug abuse prevention fund; and to repeal certain provisions of the criminal procedure law relating thereto

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

1 Section 1. Subdivision 17 of section 2 of the correction law, as added
2 by chapter 338 of the laws of 1989, is amended to read as follows:
3 17. (A) "Alcohol and substance abuse treatment [facility] SERVICES." A
4 correctional [facility] PROGRAM designed [to house medium security
5 inmates as defined by department rules and regulations and operated] for

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

A

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1 the purpose of providing intensive alcohol and substance abuse treatment
2 services TO INMATES OF THE DEPARTMENT. Such services shall ensure
3 comprehensive treatment for alcoholism and substance abuse, PURSUANT TO
4 PARAGRAPH (B) OF THIS SUBDIVISION, to ALL inmates UNDER CUSTODY OF THE
5 DEPARTMENT who have been identified by the commissioner or his or her
6 designee, OR BY THE SENTENCING COURT, as having had or presently having
7 a history of alcoholism or substance abuse. Such services shall be
8 provided [in the facility] WITHIN THE DEPARTMENT FOR A MINIMUM OF TWELVE
9 MONTHS (PROVIDED, HOWEVER, THAT INMATES WHO SUCCESSFULLY COMPLETE SIX
10 MONTHS OF SUCH ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM, AND ARE
11 OTHERWISE ELIGIBLE FOR DRUG ABUSE TREATMENT PURSUANT TO SUBDIVISION
12 EIGHTEEN OF THIS SECTION, MAY PARTICIPATE IN SUCH TREATMENT AT A CORREC-
13 TIONAL ANNEX PURSUANT TO SUBDIVISION EIGHTEEN OF THIS SECTION), OR UNTIL
14 RELEASE FROM THE DEPARTMENT, WHICHEVER OCCURS FIRST, TO ALL INMATES WHO
15 WERE ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE
16 DEPENDENCY BY THE DEPARTMENT OR BY THE SENTENCING COURT. SUCH PROGRAM
17 SHALL BE PROVIDED in accordance with minimum standards promulgated by
18 [the department after consultation with the division of alcoholism and
19 alcohol abuse and the division of substance abuse services] THE OFFICE
20 OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, AFTER CONSULTATION WITH THE
21 DEPARTMENT. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS.

22 (B) THE DEPARTMENT SHALL ENSURE COMPLIANCE WITH THE REGULATIONS OF THE
23 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AND SHALL REQUIRE,
24 EITHER DIRECTLY OR THROUGH FORMAL AGREEMENT WITH COMMUNITY-BASED
25 NOT-FOR-PROFIT SUBSTANCE ABUSE TREATMENT PROVIDERS LICENSED BY THE
26 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, THAT INMATES WHO ARE
27 RELEASED ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION AND
28 WHO ARE, AS A CONDITION OF SUCH RELEASE, REQUIRED TO PARTICIPATE IN
29 TREATMENT AND INMATES WHO ARE TRANSFERRED TO A COMMUNITY-BASED TREATMENT
30 PROGRAM IN ACCORDANCE WITH THE COMMUNITY REINTEGRATION PHASE OF THE
31 COMPREHENSIVE ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM, SHALL BE
32 PROVIDED WITH A SUBSTANCE ABUSE TREATMENT ASSESSMENT AND COMMUNITY-BASED
33 ALCOHOL AND SUBSTANCE ABUSE TREATMENT SERVICES PROVIDING AN APPROPRIATE
34 CONTINUUM OF TREATMENT AND DESIGNED TO REDUCE OFFENDER RECIDIVISM AND
35 CRIME. THE DIVISION OF PAROLE SHALL ASSIST THE DEPARTMENT IN ANY MANNER
36 NECESSARY TO ASSURE THAT THE PURPOSES AND OBJECTIVES OF THIS PARAGRAPH
37 ARE EFFECTIVELY ACCOMPLISHED.

38 S 2. Subdivision 18 of section 2 of the correction law, as amended by
39 section 1 of chapter 738 of the laws of 2004, is amended to read as
40 follows:

41 18. "Alcohol and substance abuse treatment correctional annex." A
42 medium security correctional facility consisting of one or more residen-
43 tial dormitories which provide intensive alcohol and substance abuse
44 treatment services to inmates who: (i) are otherwise eligible for tempo-
45 rary release, or (ii) stand convicted of a felony defined in article two
46 hundred twenty or two hundred twenty-one of the penal law, and are with-
47 in [six] EIGHTEEN months of being an eligible inmate as that term is
48 defined in subdivision two of section eight hundred fifty-one of this
49 chapter including such inmates who are participating in such program
50 pursuant to subdivision six of section 60.04 of the penal law. Notwith-
51 standing the foregoing provisions of this subdivision, any inmate to be
52 enrolled in this program pursuant to subdivision six of section 60.04 of
53 the penal law shall be governed by the same rules and regulations
54 promulgated by the department, including without limitation those rules
55 and regulations establishing requirements for completion and those rules
56 and regulations governing discipline and removal from the program. No

1 such period of court ordered corrections based drug abuse treatment
2 pursuant to this subdivision shall be required to extend beyond the
3 defendant's conditional release date. Such treatment services may be
4 provided by one or more outside service providers pursuant to contractu-
5 al agreements with both the department and the division of parole,
6 provided, however, that any such provider shall be required to continue
7 to provide, either directly or through formal or informal agreement with
8 other providers, alcohol and substance abuse treatment services to
9 inmates who have successfully participated in such provider's carcera-
10 tive treatment services and who have been paroled or conditionally
11 released under the supervision of the division of parole and who are, as
12 a condition of their parole or conditional release, required to partic-
13 ipate in alcohol or substance abuse treatment. Such incarcerative
14 services shall be provided in the facility in accordance with minimum
15 standards promulgated by the department after consultation with the
16 office of alcoholism and substance abuse services. Such services to
17 parolees shall be provided in accordance with standards promulgated by
18 the division of parole after consultation with the office of alcoholism
19 and substance abuse services. Notwithstanding any other provision of
20 law, any person who has successfully completed no less than six months
21 of intensive alcohol and substance abuse treatment services in one of
22 the department's eight designated alcohol and substance abuse treatment
23 correctional annexes having a combined total capacity of two thousand
24 five hundred fifty beds may be transferred to a program operated by or
25 at a residential treatment facility[, provided however, that a person
26 under a determinate sentence as a second felony drug offender for a
27 class B felony offense defined in article two hundred twenty of the
28 penal law, who was sentenced pursuant to section 70.70 of such law,
29 shall not be eligible to be transferred to a program operated at a resi-
30 dential treatment facility until the time served under imprisonment for
31 his or her determinate sentence, including any jail time credited pursu-
32 ant to the provisions of article seventy of the penal law, shall be at
33 least eighteen months]. The commissioner shall report annually to the
34 temporary president of the senate and the speaker of the assembly
35 commencing January first, nineteen hundred ninety-two as to the efficacy
36 of such programs including but not limited to a comparative analysis of
37 state-operated and private sector provision of treatment services and
38 recidivism. Such report shall also include the number of inmates
39 received by the department during the reporting period who are subject
40 to a sentence which includes enrollment in substance abuse treatment in
41 accordance with subdivision six of section 60.04 of the penal law, the
42 number of such inmates who are not placed in such treatment program and
43 the reasons for such occurrences.

44 S 3. Subdivision 18 of section 2 of the correction law, as amended by
45 section 2 of chapter 738 of the laws of 2004, is amended to read as
46 follows:

47 18. "Alcohol and substance abuse treatment correctional annex." A
48 medium security correctional facility consisting of one or more residen-
49 tial dormitories which provide intensive alcohol and substance abuse
50 treatment services to inmates who: (i) are otherwise eligible for tempo-
51 rary release, or (ii) stand convicted of a felony defined in article two
52 hundred twenty or two hundred twenty-one of the penal law, and are with-
53 in [six] EIGHTEEN months of being an eligible inmate as that term is
54 defined in subdivision two of section eight hundred fifty-one of this
55 chapter including such inmates who are participating in such program
56 pursuant to subdivision six of section 60.04 of the penal law. Notwith-

1 standing the foregoing provisions of this subdivision, any inmate to be
2 enrolled in this program pursuant to subdivision six of section 60.04 of
3 the penal law shall be governed by the same rules and regulations
4 promulgated by the department, including without limitation those rules
5 and regulations establishing requirements for completion and those rules
6 and regulations governing discipline and removal from the program. No
7 such period of court ordered corrections based drug abuse treatment
8 pursuant to this subdivision shall be required to extend beyond the
9 defendant's conditional release date. Such treatment services may be
10 provided by one or more outside service providers pursuant to contractu-
11 al agreements with both the department and the division of parole,
12 provided, however, that any such provider shall be required to continue
13 to provide, either directly or through formal or informal agreement with
14 other providers, alcohol and substance abuse treatment services to
15 inmates who have successfully participated in such provider's carcera-
16 tive treatment services and who have been paroled or conditionally
17 released under the supervision of the division of parole and who are, as
18 a condition of their parole or conditional release, required to partic-
19 ipate in alcohol or substance abuse treatment. Such incarcerative
20 services shall be provided in the facility in accordance with minimum
21 standards promulgated by the department after consultation with the
22 office of alcoholism and substance abuse services. Such services to
23 parolees shall be provided in accordance with standards promulgated by
24 the division of parole after consultation with the office of alcoholism
25 and substance abuse services. The commissioner shall report annually to
26 the majority leader of the senate and the speaker of the assembly
27 commencing January first, nineteen hundred ninety-two as to the efficacy
28 of such programs including but not limited to a comparative analysis of
29 state-operated and private sector provision of treatment services and
30 recidivism. Such report shall also include the number of inmates
31 received by the department during the reporting period who are subject
32 to a sentence which includes enrollment in substance abuse treatment in
33 accordance with subdivision six of section 60.04 of the penal law, the
34 number of such inmates who are not placed in such treatment program and
35 the reasons for such occurrences.

36 S 4. Section 71 of the correction law is amended by adding a new
37 subdivision 2-a to read as follows:

38 2-A. PERSONS WHO ARE COMMITTED, TRANSFERRED, CERTIFIED TO OR CONFINED
39 BY THE DEPARTMENT AND HAVE A HISTORY OF ALCOHOL OR SUBSTANCE ABUSE SHALL
40 BE DELIVERED TO THE GREATEST EXTENT PRACTICABLE TO A CORRECTIONAL FACIL-
41 ITY THAT OFFERS ALCOHOL OR SUBSTANCE ABUSE SERVICES, AS APPLICABLE, AS
42 DEFINED IN SUBDIVISION SEVENTEEN OF SECTION TWO OF THIS CHAPTER.

43 S 5. The correction law is amended by adding a new section 149-a to
44 read as follows:

45 S 149-A. RELEASED INMATES; TRANSITIONAL SERVICES PROGRAM. 1. AS USED
46 IN THIS SECTION, "TRANSITIONAL SERVICES PROGRAM" SHALL MEAN A COMPREHEN-
47 SIVE SKILLS-BASED TRAINING PROGRAM OF THE DEPARTMENT DESIGNED TO PREPARE
48 INMATES FOR REINTEGRATION INTO THE COMMUNITY. EACH TRANSITIONAL
49 SERVICES PROGRAM SHALL BE DESIGNED TO REDUCE OFFENDER RECIDIVISM AND
50 CRIME. SUCH PREPARATION FOR REINTEGRATION SHALL INCLUDE REFERRALS TO
51 APPROPRIATE MEDICAL SERVICES, EDUCATIONAL AND VOCATIONAL SERVICES,
52 MENTAL HEALTH SERVICES AND HOUSING SERVICES AND SHALL BE CONSISTENT WITH
53 THE REQUIREMENT THAT ALL OFFENDERS RELEASED FROM PRISON WITH A SUBSTANCE
54 ABUSE DEPENDENCY BE REQUIRED TO UNDERGO A MANDATORY ALCOHOL OR SUBSTANCE
55 ABUSE TREATMENT PROGRAM. THE DEPARTMENT SHALL MAINTAIN A CURRENT LIST OF
56 REFERRAL SOURCES TO EFFECTUATE EACH TRANSITIONAL SERVICES PROGRAM WHICH

1 LIST SHALL BE UPDATED NO LESS THAN ANNUALLY. SUCH PREPARATION FOR REIN-
2 TEGRATION SHALL INCLUDE ASSISTANCE IN OBTAINING NECESSARY PERSONAL IDEN-
3 TIFICATION INFORMATION.

4 2. A. THE COMMISSIONER SHALL DESIGNATE STAFF AT EACH TRANSITIONAL
5 SERVICES PROGRAM TO PREPARE AND SUBMIT APPLICATIONS FOR MEDICAL ASSIST-
6 ANCE ESTABLISHED UNDER TITLES ELEVEN AND ELEVEN-D OF ARTICLE FIVE OF THE
7 SOCIAL SERVICES LAW, ON BEHALF OF EACH INMATE WHO WAS NOT RECEIVING SUCH
8 MEDICAL ASSISTANCE IMMEDIATELY BEFORE BEING ADMITTED TO THE CUSTODY OF
9 THE DEPARTMENT. SUCH APPLICATIONS SHALL BE SUBMITTED TO THE COMMISSIONER
10 OF HEALTH PURSUANT TO SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED SIX
11 OF THE PUBLIC HEALTH LAW AT LEAST FORTY-FIVE DAYS BEFORE THE ANTICIPATED
12 RELEASE, CONDITIONAL RELEASE OR DISCHARGE OF SUCH INMATES.

13 B. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, UPON RECEIPT OF
14 AN APPLICATION FOR MEDICAL ASSISTANCE FOR AN INMATE PURSUANT TO PARA-
15 GRAPH A OF THIS SUBDIVISION, THE COMMISSIONER OF HEALTH SHALL DETERMINE
16 THE ELIGIBILITY OF SUCH INMATE FOR ENROLLMENT IN THE MEDICAL ASSISTANCE
17 PROGRAM ESTABLISHED UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL
18 SERVICES LAW OR THE FAMILY HEALTH PLUS PROGRAM ESTABLISHED UNDER TITLE
19 ELEVEN-D OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW. SUCH DETERMINATION
20 SHALL BE BASED ON WHETHER THE INMATE, EXCEPT FOR HIS OR HER STATUS AS AN
21 INMATE, WOULD BE ELIGIBLE TO RECEIVE MEDICAL ASSISTANCE. ENROLLMENT IN
22 THE MEDICAL ASSISTANCE PROGRAM SHALL BE EFFECTIVE ON THE DATE AN ELIGI-
23 BLE INMATE IS RELEASED, CONDITIONALLY RELEASED OR DISCHARGED FROM THE
24 DEPARTMENT AND THE MEDICAL ASSISTANCE IDENTIFICATION CARD SHALL BE
25 PROVIDED TO THE INMATE UPON HIS OR HER RELEASE, CONDITIONAL RELEASE OR
26 DISCHARGE FROM THE DEPARTMENT.

27 C. THE DIVISION OF PAROLE SHALL ASSIST THE DEPARTMENT IN ANY MANNER
28 NECESSARY TO ASSURE THAT THE PURPOSES AND OBJECTIVES OF THIS SECTION ARE
29 EFFECTIVELY ACCOMPLISHED.

30 3. THE DEPARTMENT SHALL ESTABLISH TRANSITIONAL SERVICES PROGRAMS AT
31 ALL DEPARTMENT FACILITIES FROM WHICH INMATES ARE SCHEDULED TO BE
32 RELEASED FROM CONFINEMENT BY THE DEPARTMENT.

33 S 6. Subdivision 2-b of section 851 of the correction law, as added by
34 chapter 738 of the laws of 2004, is amended to read as follows:

35 2-b. When calculating in advance the date on which a person is or will
36 be eligible for release on parole or conditional release, for purposes
37 of determining eligibility for temporary release or for placement at an
38 alcohol and substance abuse treatment correctional annex, the commis-
39 sioner shall consider and include credit for all potential credits and
40 reductions including but not limited to merit time, ADDITIONAL MERIT
41 TIME and good behavior allowances. Nothing in this subdivision shall be
42 interpreted as precluding the consideration and inclusion of credit for
43 all potential credits and reductions including, but not limited to,
44 merit time, ADDITIONAL MERIT TIME and good behavior allowances when
45 calculating in advance for any other purpose the date on which a person
46 is or will be eligible for release on parole or conditional release.

47 S 7. Subdivision 1 of section 865 of the correction law, as amended by
48 chapter 738 of the laws of 2004, is amended to read as follows:

49 1. "Eligible inmate" means a person sentenced to an indeterminate term
50 of imprisonment who will become eligible for release on parole within
51 three years or sentenced to a determinate term of imprisonment who will
52 become eligible for conditional release within three years, who has not
53 reached the age of [forty] FIFTY years, who (EXCEPT WITH RESPECT TO A
54 JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE AS DEFINED IN SUBDIVI-
55 SION THREE OF THIS SECTION) has not previously been convicted of a felo-
56 ny upon which an indeterminate or determinate term of imprisonment was

1 imposed and who was between the ages of sixteen and [forty] FIFTY years
2 at the time of commission of the crime upon which his or her present
3 sentence was based [except, however, an eligible inmate shall not
4 include a person sentenced to a determinate sentence of three and one-
5 half years or more as a second felony drug offender pursuant to subdivi-
6 sion three of section 70.70 of the penal law for a conviction of a class
7 B felony offense defined in article two hundred twenty of the penal
8 law]. Notwithstanding the foregoing, no person who is convicted of any
9 of the following crimes shall be deemed eligible to participate in this
10 program: (a) a violent felony offense as defined in article seventy of
11 the penal law, (b) an A-I felony offense, (c) manslaughter in the second
12 degree, vehicular manslaughter in the second degree, vehicular
13 manslaughter in the first degree, and criminally negligent homicide as
14 defined in article one hundred twenty-five of the penal law, (d) rape in
15 the second degree, rape in the third degree, criminal sexual act in the
16 second degree, criminal sexual act in the third degree, attempted sexual
17 abuse in the first degree, attempted rape in the second degree and
18 attempted criminal sexual act in the second degree as defined in arti-
19 cles one hundred ten and one hundred thirty of the penal law and (e) any
20 escape or absconding offense as defined in article two hundred five of
21 the penal law.

22 S 8. Subdivision 2 of section 865 of the correction law, as added by
23 chapter 261 of the laws of 1987, is amended to read as follows:

24 2. "Shock incarceration program" means a program pursuant to which
25 eligible inmates are selected [directly at reception centers] BY THE
26 SENTENCING COURT, PURSUANT TO SUBDIVISION THREE OF THIS SECTION, OR BY
27 THE DEPARTMENT to participate in the program and serve a period of six
28 months in a shock incarceration facility, which shall provide rigorous
29 physical activity, intensive regimentation and discipline and rehabili-
30 tation therapy and programming. INMATES SELECTED BY THE DEPARTMENT MAY
31 BE SELECTED EITHER: (I) AT A RECEPTION CENTER; OR (II) AT A GENERAL
32 CONFINEMENT FACILITY WHEN THE OTHERWISE ELIGIBLE INMATE THEN BECOMES
33 ELIGIBLE FOR RELEASE ON PAROLE WITHIN THREE YEARS IN THE CASE OF AN
34 INDETERMINATE TERM OF IMPRISONMENT, OR THEN BECOMES ELIGIBLE FOR CONDI-
35 TIONAL RELEASE WITHIN THREE YEARS IN THE CASE OF A DETERMINATE TERM OF
36 IMPRISONMENT.

37 S 9. Section 865 of the correction law is amended by adding a new
38 subdivision 3 to read as follows:

39 3. "JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE" MEANS A PERSON,
40 OTHER THAN A PERSON WHO IS CHARGED WITH, SERVING A SENTENCE FOR, OR A
41 PERSON WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN
42 SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW,
43 CONVICTED OF A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO
44 HUNDRED TWENTY-ONE OF THE PENAL LAW WHO, ON HIS OR HER MOTION, WAS FOUND
45 BY THE SENTENCING COURT TO BE AN "ELIGIBLE INMATE" AS DEFINED IN SUBDI-
46 VISION ONE OF THIS SECTION, AND SENTENCED BY SUCH COURT TO PARTICIPATE
47 IN A SHOCK INCARCERATION PROGRAM PURSUANT TO THIS ARTICLE.

48 S 10. Section 867 of the correction law is amended by adding a new
49 subdivision 2-a to read as follows:

50 2-A. SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL NOT APPLY TO A
51 JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE. NOTWITHSTANDING SUBDI-
52 VISION FIVE OF THIS SECTION, A JUDICIALLY SENTENCED SHOCK INCARCERATION
53 INMATE SHALL PROMPTLY COMMENCE PARTICIPATION IN THE PROGRAM. EACH JUDI-
54 Cially SENTENCED SHOCK INCARCERATION INMATE DETERMINED TO BE IN NEED OF
55 SUBSTANCE ABUSE TREATMENT SHALL BE REQUIRED TO UNDERGO A SUBSTANCE ABUSE
56 TREATMENT PROGRAM WHILE PARTICIPATING IN THE SHOCK INCARCERATION

1 PROGRAM. SUCH PROGRAM SHALL COMPLY WITH THE REQUIREMENTS OF PARAGRAPH
2 (B) OF SUBDIVISION SEVENTEEN OF SECTION TWO OF THIS CHAPTER. EACH JUDI-
3 CIALY SENTENCED SHOCK INCARCERATION INMATE DETERMINED TO BE IN NEED OF
4 SUBSTANCE ABUSE TREATMENT SHALL ALSO BE REQUIRED TO UNDERGO AN ADDI-
5 TIONAL YEAR-LONG SUBSTANCE ABUSE TREATMENT PROGRAM FOLLOWING RELEASE
6 FROM SUCH SHOCK INCARCERATION PROGRAM, IN ACCORDANCE WITH THE REQUIRE-
7 MENTS OF THIS CHAPTER.

8 S 11. Section 1.20 of the criminal procedure law is amended by adding
9 a new subdivision 44 to read as follows:

10 44. "DIVERSION PROGRAM" MEANS AN ALCOHOL OR SUBSTANCE ABUSE PROGRAM
11 LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES OR AN
12 INTERVENTION PROGRAM APPROVED BY THE COURT AFTER CONSULTATION WITH THE
13 LOCAL PROBATION DEPARTMENT HAVING JURISDICTION, OR SUCH OTHER PUBLIC OR
14 PRIVATE AGENCY AS THE COURT DETERMINES TO BE APPROPRIATE.

15 S 12. Subdivision 4 of section 170.15 of the criminal procedure law,
16 as amended by chapter 67 of the laws of 2000, is amended to read as
17 follows:

18 4. Notwithstanding any provision of this section to the contrary, in
19 any county outside a city having a population of one million or more,
20 upon or after arraignment of a defendant on an information, a simplified
21 information, a prosecutor's information or a misdemeanor complaint pend-
22 ing in a local criminal court, such court may, upon motion of the
23 defendant, and with the consent of the district attorney (EXCEPT THAT
24 SUCH CONSENT SHALL NOT BE REQUIRED WHEN THE DEFENDANT IS CHARGED WITH AN
25 OFFENSE OR OFFENSES DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED
26 TWENTY-ONE OF THE PENAL LAW OTHER THAN A CLASS A FELONY, STANDS CHARGED
27 WITH NO OTHER FELONY CRIME OR CRIMES, AND IS NOT CHARGED WITH, SERVING A
28 SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN
29 OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS
30 CHAPTER), order that the action be removed from the court in which the
31 matter is pending to another local criminal court in the same county
32 which has been designated a drug court by the chief administrator of the
33 courts, and such drug court may then conduct such action to [judgement]
34 JUDGMENT or other final disposition; provided, however, that an order of
35 removal issued under this subdivision shall not take effect until five
36 days after the date the order is issued unless, prior to such effective
37 date, the drug court notifies the court that issued the order that:

38 (a) it will not accept the action, in which event the order shall not
39 take effect, or

40 (b) it will accept the action on a date prior to such effective date,
41 in which event the order shall take effect upon such prior date.

42 Upon providing notification pursuant to paragraph (a) or (b) of this
43 subdivision, the drug court shall promptly give notice to the defendant,
44 his or her counsel and the district attorney.

45 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION THAT MAY BE
46 REMOVED PURSUANT TO THIS SUBDIVISION MAY BE REMOVED TO A SUPERIOR COURT
47 JUDGE SITTING AS A LOCAL CRIMINAL COURT AND SUCH JUDGE MAY THEN CONDUCT
48 SUCH ACTION TO JUDGMENT OR OTHER FINAL DISPOSITION.

49 S 13. Section 170.40 of the criminal procedure law is amended by
50 adding a new subdivision 1-a to read as follows:

51 1-A. EXCEPT IN THE CASE OF A PERSON WHO IS CHARGED WITH, SERVING A
52 SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN
53 OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER,
54 THE SUCCESSFUL COMPLETION OF A DIVERSION PROGRAM BY A PERSON WHO STANDS
55 CHARGED IN AN ACCUSATORY INSTRUMENT OR A COUNT THEREOF WITH A VIOLATION
56 OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL

1 LAW, OR WITH A VIOLATION OF PROBATION IMPOSED AS A SENTENCE FOR SUCH
2 OFFENSE, MAY, IN AND OF ITSELF, CONSTITUTE A COMPELLING FACTOR, CONSID-
3 ERATION OR CIRCUMSTANCE DEMONSTRATING THAT CONVICTION OR PROSECUTION OF
4 THE DEFENDANT UPON SUCH CHARGE IN SUCH ACCUSATORY INSTRUMENT OR COUNT
5 WOULD CONSTITUTE OR RESULT IN INJUSTICE. IN CONSIDERING WHETHER TO GRANT
6 A MOTION TO DISMISS UNDER SUCH CIRCUMSTANCES, THE COURT SHALL ALSO, TO
7 THE EXTENT APPLICABLE, EXAMINE AND CONSIDER THE FACTORS SET FORTH IN
8 PARAGRAPHS (A) THROUGH (J) OF SUBDIVISION ONE OF THIS SECTION.

9 S 14. Subdivision 3 of section 180.20 of the criminal procedure law,
10 as amended by chapter 67 of the laws of 2000, is amended to read as
11 follows:

12 3. Notwithstanding any provision of this section to the contrary, in
13 any county outside a city having a population of one million or more,
14 upon or after arraignment of a defendant on a felony complaint pending
15 in a local criminal court having preliminary jurisdiction thereof, such
16 court may, upon motion of the defendant, and with the consent of the
17 district attorney (EXCEPT THAT SUCH CONSENT SHALL NOT BE REQUIRED WHEN
18 THE DEFENDANT IS CHARGED WITH AN OFFENSE OR OFFENSES DEFINED IN ARTICLE
19 TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW OTHER THAN
20 A CLASS A FELONY, IS CHARGED WITH NO OTHER FELONY CRIME OR CRIMES, AND
21 IS NOT CHARGED WITH, SERVING A SENTENCE FOR, OR A PERSON WITH A PREDI-
22 CATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF
23 SECTION 440.46 OF THIS CHAPTER), order that the action be removed from
24 the court in which the matter is pending to another local criminal court
25 in the same county which has been designated a drug court by the chief
26 administrator of the courts, and such drug court may then dispose of
27 such felony complaint pursuant to this article; provided, however, that
28 an order of removal issued under this subdivision shall not take effect
29 until five days after the date the order is issued unless, prior to such
30 effective date, the drug court notifies the court that issued the order
31 that:

32 (a) it will not accept the action, in which event the order shall not
33 take effect, or

34 (b) it will accept the action on a date prior to such effective date,
35 in which event the order shall take effect upon such prior date.

36 Upon providing notification pursuant to paragraph (a) or (b) of this
37 subdivision, the drug court shall promptly give notice to the defendant,
38 his or her counsel and the district attorney.

39 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION THAT MAY BE
40 REMOVED PURSUANT TO THIS SUBDIVISION MAY BE REMOVED TO A SUPERIOR COURT
41 JUDGE SITTING AS A LOCAL CRIMINAL COURT AND SUCH JUDGE MAY THEN DISPOSE
42 OF SUCH FELONY COMPLAINT PURSUANT TO THIS ARTICLE.

43 S 15. Section 210.40 of the criminal procedure law is amended by
44 adding a new subdivision 1-a to read as follows:

45 1-A. EXCEPT IN THE CASE OF A PERSON WHO IS CHARGED WITH, SERVING A
46 SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN
47 OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER,
48 THE SUCCESSFUL COMPLETION OF A DIVERSION PROGRAM BY A PERSON WHO STANDS
49 CHARGED IN AN ACCUSATORY INSTRUMENT OR A COUNT THEREOF WITH A VIOLATION
50 OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL
51 LAW, OR WITH A SPECIFIED OFFENSE OR OFFENSES, AS DEFINED IN SUBDIVISION
52 FIVE OF SECTION 410.91 OF THIS CHAPTER, OR WITH A VIOLATION OF PROBATION
53 IMPOSED AS A SENTENCE FOR SUCH OFFENSE, MAY, IN AND OF ITSELF, CONSTI-
54 TUTE A COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE DEMONSTRATING
55 THAT CONVICTION OR PROSECUTION OF THE DEFENDANT UPON SUCH CHARGE IN SUCH
56 ACCUSATORY INSTRUMENT OR COUNT WOULD CONSTITUTE OR RESULT IN INJUSTICE.

1 IN CONSIDERING WHETHER TO GRANT A MOTION TO DISMISS UNDER SUCH CIRCUM-
2 STANCES, THE COURT SHALL ALSO, TO THE EXTENT APPLICABLE, EXAMINE AND
3 CONSIDER THE FACTORS SET FORTH IN PARAGRAPHS (A) THROUGH (J) OF SUBDIVI-
4 SION ONE OF THIS SECTION.

5 S 16. Subparagraph (i) of paragraph (b) of subdivision 3 of section
6 220.30 of the criminal procedure law, as amended by chapter 410 of the
7 laws of 1979, is amended to read as follows:

8 (i) A plea of guilty, whether to the entire indictment or to part of
9 the indictment for any crime other than a class [A] B OR HIGHER felony,
10 may not be accepted on the condition that it constitutes a complete
11 disposition of one or more other indictments against the defendant wher-
12 ein is charged a class [A-I] A felony as defined in article two hundred
13 twenty of the penal law or the attempt to commit any such class [A-I] A
14 felony, except that an eligible youth, as defined in subdivision two of
15 section 720.10 OF THIS CHAPTER, may plea to a class B felony, upon
16 consent of the district attorney, for purposes of adjudication as a
17 youthful offender.

18 S 17. The criminal procedure law is amended by adding a new section
19 255.30 to read as follows:

20 S 255.30 MOTION FOR ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT.

21 AT ANY TIME AFTER ARRAIGNMENT, THE COURT, UPON APPLICATION OF A
22 DEFENDANT CHARGED WITH A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF
23 THE PENAL LAW, MAY ORDER AN ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT OF THE
24 DEFENDANT, CONDUCTED BY AN APPROPRIATE PROFESSIONAL OR COUNSELOR. AT
25 ANY TIME AFTER ARRAIGNMENT AND BEFORE ANNOUNCEMENT OF A VERDICT OR
26 ACCEPTANCE OF A GUILTY PLEA CONCERNING ALL FELONY CHARGES BEFORE THE
27 COURT, THE COURT, UPON APPLICATION OF THE PEOPLE, MAY ORDER AN ALCOHOL
28 OR SUBSTANCE ABUSE ASSESSMENT, CONDUCTED BY AN INDEPENDENT PROFESSIONAL
29 OR COUNSELOR, OF A DEFENDANT CHARGED WITH A FELONY DEFINED IN ARTICLE
30 TWO HUNDRED TWENTY OF THE PENAL LAW WHEN, FOLLOWING A HEARING OR COUN-
31 SELED WAIVER THEREOF, THE COURT DETERMINES THAT THERE EXISTS PROBABLE
32 CAUSE TO BELIEVE THE DEFENDANT HAS AN ALCOHOL OR SUBSTANCE ABUSE DEPEND-
33 ENCY. SUCH ASSESSMENT SHALL BE CONDUCTED BY A LICENSED HEALTH CARE
34 PROFESSIONAL EXPERIENCED IN THE TREATMENT OF ALCOHOL AND SUBSTANCE
35 ABUSE, OR BY AN ADDICTION AND SUBSTANCE ABUSE COUNSELOR CREDENTIALLED BY
36 THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, PURSUANT TO
37 SECTION 19.07 OF THE MENTAL HYGIENE LAW.

38 S 18. Subdivision 4 of section 410.91 of the criminal procedure law is
39 REPEALED, subdivisions 5 and 7, as added by chapter 3 of the laws of
40 1995, are amended and a new subdivision 4 is added to read as follows:

41 4. IF A DEFENDANT CONVICTED OF AN OFFENSE IN VIOLATION OF ARTICLE TWO
42 HUNDRED TWENTY OF THE PENAL LAW IS SENTENCED TO PAROLE SUPERVISION
43 PURSUANT TO THIS SECTION, THAT SENTENCE MUST INCLUDE ONE YEAR, EXCLUSIVE
44 OF THE NINETY DAYS SPENT AT A DRUG TREATMENT CAMPUS, IN A SUBSTANCE
45 ABUSE TREATMENT PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND
46 SUBSTANCE ABUSE SERVICES. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALY-
47 SIS.

48 5. For the purposes of this section, a "specified offense" is an
49 offense defined by any of the following provisions of the penal law:
50 criminal mischief in the third degree as defined in section 145.05,
51 criminal mischief in the second degree as defined in section 145.10,
52 grand larceny in the fourth degree as defined in subdivision one, two,
53 three, four, five, six, eight, nine or ten of section 155.30, grand
54 larceny in the third degree as defined in section 155.35 (except where
55 the property consists of one or more firearms, rifles or shotguns),
56 unauthorized use of a vehicle in the second degree as defined in section

1 165.06, criminal possession of stolen property in the fourth degree as
2 defined in subdivision one, two, three, five or six of section 165.45,
3 criminal possession of stolen property in the third degree as defined in
4 section 165.50 (except where the property consists of one or more
5 firearms, rifles or shotguns), forgery in the second degree as defined
6 in section 170.10, criminal possession of a forged instrument in the
7 second degree as defined in section 170.25, unlawfully using slugs in
8 the first degree as defined in section 170.60, or an attempt to commit
9 any of the aforementioned offenses if such attempt constitutes a felony
10 offense; or [any] A class B, C, D, or [class] E controlled substance or
11 marijuana felony offense as defined in article two hundred twenty or two
12 hundred twenty-one.

13 7. Upon completion of the drug treatment program at the drug treatment
14 campus, a parolee will be furnished with money, clothing and transporta-
15 tion in a manner consistent with section one hundred twenty-five of the
16 correction law to [permit] ASSURE the parolee's travel from the drug
17 treatment campus to the county in which the parolee's supervision will
18 continue. SUCH SUPERVISION SHALL INCLUDE PARTICIPATION IN A SUBSTANCE
19 ABUSE TREATMENT PROGRAM, AS SPECIFIED IN SUBDIVISION FOUR OF THIS
20 SECTION, AND PERIODIC URINALYSIS.

21 S 19. The criminal procedure law is amended by adding a new section
22 440.46 to read as follows:

23 S 440.46 MOTION FOR RESENTENCE; CERTAIN CLASS B FELONY CONTROLLED
24 SUBSTANCE AND CONTROLLED SUBSTANCE CONSPIRACY OFFENDERS.

25 1. ANY PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL
26 SERVICES WHO STANDS CONVICTED OF A CLASS B FELONY OFFENSE DEFINED IN
27 ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW WHICH WAS COMMITTED PRIOR TO
28 JANUARY THIRTEENTH, TWO THOUSAND FIVE, WHO IS SERVING AN INDETERMINATE
29 SENTENCE WITH A MAXIMUM TERM OF MORE THAN THREE YEARS, MAY, EXCEPT AS
30 PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, UPON NOTICE TO THE APPRO-
31 PRIATE DISTRICT ATTORNEY, APPLY TO BE RESENTENCED IN ACCORDANCE WITH
32 SECTIONS 60.04 AND 70.70 OF THE PENAL LAW IN THE COURT WHICH IMPOSED THE
33 SENTENCE.

34 2. ANY PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL
35 SERVICES WHO STANDS CONVICTED OF A FELONY DEFINED IN SECTION 105.15 OF
36 THE PENAL LAW IN WHICH THE UNDERLYING CONDUCT CONSTITUTES A CLASS A
37 FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, WHICH WAS
38 COMMITTED PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO
39 THOUSAND NINE WHICH ADDED THIS SUBDIVISION, MAY, EXCEPT AS PROVIDED IN
40 SUBDIVISION FIVE OF THIS SECTION, UPON NOTICE TO THE APPROPRIATE
41 DISTRICT ATTORNEY, MOVE TO BE RESENTENCED IN ACCORDANCE WITH, AS APPRO-
42 PRIATE, SECTIONS 60.04 AND 70.70 OF THE PENAL LAW IN THE COURT WHICH
43 IMPOSED THE SENTENCE.

44 3. ANY PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL
45 SERVICES WHO HAS BEEN RESENTENCED, OR IS ELIGIBLE TO BE RESENTENCED,
46 PURSUANT TO THIS SECTION, SECTION TWENTY-THREE OF CHAPTER SEVEN HUNDRED
47 THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR AND/OR SECTION ONE OF
48 CHAPTER SIX HUNDRED FORTY-THREE OF THE LAWS OF TWO THOUSAND FIVE MAY
49 ALSO, UPON NOTICE TO THE APPROPRIATE DISTRICT ATTORNEY, MOVE TO BE
50 RESENTENCED TO A DETERMINATE SENTENCE IN ACCORDANCE WITH SECTION 70.70
51 OF THE PENAL LAW FOR ANY ONE OR MORE CLASS C, D OR E FELONY OFFENSES
52 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE
53 PENAL LAW FOR WHICH THE PERSON IS SERVING AN INDETERMINATE SENTENCE. IF
54 THE CLASS C, D OR E FELONY SENTENCE WITH RESPECT TO WHICH SUCH MOTION IS
55 MADE WAS IMPOSED BY A COURT IN ANOTHER COUNTY, AND THE COURT BEFORE
56 WHICH THE MOTION IS MADE DOES NOT HAVE JURISDICTION TO RESENTENCE THE

1 PERSON, THEN THE COURT SHALL TRANSFER THE REQUEST FOR RESENTENCING ON
2 SUCH CLASS C, D OR E FELONY CONVICTION TO THE COURT THAT IMPOSED THE
3 SENTENCE FOR SUCH CONVICTION.

4 4. THE PROVISIONS OF SECTION TWENTY-ONE OF CHAPTER SEVEN HUNDRED THIR-
5 TY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR SHALL GOVERN THE PROCEEDINGS
6 ON AND DETERMINATION OF A MOTION BROUGHT PURSUANT TO THIS SECTION.
7 SUBDIVISION ONE OF SECTION SEVEN HUNDRED SEVENTEEN AND SUBDIVISION FOUR
8 OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW AND THE RELATED
9 PROVISIONS OF ARTICLE EIGHTEEN-A AND EIGHTEEN-B OF SUCH LAW SHALL APPLY
10 TO THE PREPARATION OF AND PROCEEDINGS ON MOTIONS PURSUANT TO THIS
11 SECTION, INCLUDING ANY APPEALS.

12 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON WHO IS
13 SERVING A SENTENCE FOR OR HAS A PREDICATE FELONY CONVICTION FOR AN
14 EXCLUSION OFFENSE. FOR PURPOSES OF THIS SUBDIVISION, AN "EXCLUSION
15 OFFENSE" IS:

16 A. A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL
17 LAW OR OFFENSE FOR WHICH A MERIT TIME ALLOWANCE MAY NOT BE RECEIVED
18 TOWARD THE SENTENCE PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF
19 SECTION EIGHT HUNDRED THREE OF THE CORRECTION LAW; PROVIDED, HOWEVER,
20 THAT UPON A DETERMINATION BY THE COURT FOLLOWING A HEARING THAT (1) THE
21 DEFENDANT WAS SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL
22 ABUSE; (2) THE ABUSE WAS INFLICTED BY A MEMBER OF THE DEFENDANT'S SAME
23 FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF
24 SECTION 530.11 OF THIS CHAPTER OR A MEMBER OF THE PERSON'S IMMEDIATE
25 FAMILY AS THAT TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 120.40 OF
26 THE PENAL LAW; AND (3) THE ABUSE WAS A SUBSTANTIAL FACTOR IN CAUSING THE
27 DEFENDANT TO COMMIT SUCH OFFENSE, THIS SUBDIVISION SHALL NOT APPLY TO
28 SUCH DEFENDANT;

29 B. A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO
30 HUNDRED TWENTY-ONE OF THE PENAL LAW IN WHICH THE DEFENDANT, BEING TWEN-
31 TY-ONE YEARS OF AGE OR MORE, SOLD OR ATTEMPTED TO SELL A CONTROLLED
32 SUBSTANCE TO A PERSON UNDER AGE EIGHTEEN; OR

33 C. (1) USE OF A CHILD TO COMMIT A CONTROLLED SUBSTANCE OFFENSE AS
34 DEFINED IN SECTION 220.28 OF THE PENAL LAW; (2) CRIMINAL SALE OF A
35 CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THE
36 PENAL LAW; (3) CRIMINAL SALE OF A CONTROLLED SUBSTANCE AS DEFINED IN
37 SUBDIVISION SEVEN OR EIGHT OF SECTION 220.34 OF THE PENAL LAW, WHERE
38 SUCH SALE TOOK PLACE, RESPECTIVELY, ON SCHOOL GROUNDS AS DEFINED IN
39 PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL
40 LAW; (4) CRIMINAL SALE OF A CONTROLLED SUBSTANCE AS DEFINED IN SECTION
41 220.44 OF THE PENAL LAW, WHERE SUCH SALE TOOK PLACE ON THE GROUNDS OF A
42 CHILD DAY CARE OR EDUCATIONAL FACILITY AS DEFINED IN PARAGRAPH (A) OF
43 SUBDIVISION FIVE OF SUCH SECTION 220.44; OR (5) TRAFFICKING THROUGH A
44 CONTROLLED SUBSTANCE ORGANIZATION AS DEFINED IN SECTION 220.68 OF THE
45 PENAL LAW.

46 S 20. Paragraph (c) of subdivision 8 of section 700.05 of the criminal
47 procedure law, as amended by chapter 394 of the laws of 2005, is amended
48 to read as follows:

49 (c) Criminal possession of a controlled substance in the seventh
50 degree as defined in section 220.03 of the penal law, criminal
51 possession of a controlled substance in the fifth degree as defined in
52 section 220.06 of the penal law, criminal possession of a controlled
53 substance in the fourth degree as defined in section 220.09 of the penal
54 law, criminal possession of a controlled substance in the third degree
55 as defined in section 220.16 of the penal law, criminal possession of a
56 controlled substance in the second degree as defined in section 220.18

1 of the penal law, criminal possession of a controlled substance in the
2 first degree as defined in section 220.21 of the penal law, criminal
3 sale of a controlled substance in the fifth degree as defined in section
4 220.31 of the penal law, criminal sale of a controlled substance in the
5 fourth degree as defined in section 220.34 of the penal law, criminal
6 sale of a controlled substance in the third degree as defined in section
7 220.39 of the penal law, criminal sale of a controlled substance in the
8 second degree as defined in section 220.41 of the penal law, criminal
9 sale of a controlled substance in the first degree as defined in section
10 220.43 of the penal law, criminally possessing a hypodermic instrument
11 as defined in section 220.45 of the penal law, CRIMINAL SALE OF A
12 CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THE
13 PENAL LAW, TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION AS
14 DEFINED IN SECTION 220.68 OF THE PENAL LAW, criminal possession of meth-
15 amphetamine manufacturing material in the second degree as defined in
16 section 220.70 of the penal law, criminal possession of methamphetamine
17 manufacturing material in the first degree as defined in section 220.71
18 of the penal law, criminal possession of precursors of methamphetamine
19 as defined in section 220.72 of the penal law, unlawful manufacture of
20 methamphetamine in the third degree as defined in section 220.73 of the
21 penal law, unlawful manufacture of methamphetamine in the second degree
22 as defined in section 220.74 of the penal law, unlawful manufacture of
23 methamphetamine in the first degree as defined in section 220.75 of the
24 penal law, unlawful disposal of methamphetamine laboratory material as
25 defined in section 220.76 of the penal law, criminal possession of mari-
26 huana in the first degree as defined in section 221.30 of the penal law,
27 criminal sale of marijuana in the first degree as defined in section
28 221.55 of the penal law, promoting gambling in the second degree as
29 defined in section 225.05 of the penal law, promoting gambling in the
30 first degree as defined in section 225.10 of the penal law, possession
31 of gambling records in the second degree as defined in section 225.15 of
32 the penal law, possession of gambling records in the first degree as
33 defined in section 225.20 of the penal law, [and] possession of a gambl-
34 ing device as defined in section 225.30 of the penal law AND CRIMINAL
35 POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED
36 SUBSTANCE AS DEFINED IN SECTION 265.18 OF THE PENAL LAW;

37 S 21. The criminal procedure law is amended by adding a new section
38 160.65 to read as follows:

39 S 160.65 PETITION TO CONDITIONALLY SEAL A CONVICTION FOR CERTAIN
40 CONTROLLED SUBSTANCE OR MARIJUANA OFFENSES.

41 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL MEAN AS FOLLOWS:

42 (A) "ELIGIBLE FELONY" SHALL BE A FELONY OFFENSE DEFINED IN ARTICLE TWO
43 HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OTHER THAN A
44 CLASS A FELONY OFFENSE OR AN OFFENSE DEFINED IN PARAGRAPH (B) OR (C) OF
45 SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER; AND

46 (B) "ELIGIBLE MISDEMEANOR" SHALL BE A MISDEMEANOR OFFENSE DEFINED IN
47 ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW.

48 2. A PERSON HAVING A CONVICTION FOR NO MORE THAN ONE ELIGIBLE FELONY,
49 WHO DOES NOT STAND CONVICTED OF ANY OTHER FELONY OR ANY OFFENSE FOR
50 WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION
51 TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW,
52 MAY PETITION FOR THE RECORD OF SUCH ELIGIBLE FELONY AND/OR NO MORE THAN
53 THREE ELIGIBLE MISDEMEANORS TO BE CONDITIONALLY SEALED:

54 (A) UPON THE PERSON'S COMPLETION OF THE SENTENCE, AND ANY PERIOD OF
55 POST-RELEASE SUPERVISION WHERE APPLICABLE, ON AN ELIGIBLE FELONY,

1 PROVIDED THAT SUCH PERSON HAS COMPLETED A SUBSTANCE ABUSE TREATMENT
2 PROGRAM;

3 (B) UPON COMPLETION OF A SENTENCE ON AN ELIGIBLE MISDEMEANOR;

4 (C) TWO YEARS OR MORE AFTER THE COMPLETION OF A SENTENCE, AND ANY
5 PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON A CLASS D OR E
6 ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS NOT BEEN CONVICTED OF ANY
7 CRIME FOR THE LAST TWO YEARS; OR

8 (D) FOUR YEARS OR MORE AFTER THE COMPLETION OF A SENTENCE, AND ANY
9 PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON A CLASS B OR C
10 ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS NOT BEEN CONVICTED OF ANY
11 CRIME FOR THE LAST FOUR YEARS.

12 3. A PETITION AUTHORIZED BY THIS SECTION SHALL INCLUDE:

13 (A) IDENTIFICATION OF THE CONVICTION OR CONVICTIONS FOR WHICH THE
14 PETITIONER IS SEEKING RELIEF;

15 (B) DOCUMENTATION THAT THE SENTENCE IMPOSED ON THE CONVICTION OR
16 CONVICTIONS HAS BEEN COMPLETED AND DATE OF COMPLETION, OR IF SUCH
17 DOCUMENTATION IS NOT REASONABLY AVAILABLE, A SWORN AFFIDAVIT THAT THE
18 SENTENCE IMPOSED ON THE CONVICTION OR CONVICTIONS HAS BEEN COMPLETED AND
19 DATE OF COMPLETION;

20 (C) FOR PETITIONS FILED UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS
21 SECTION, EVIDENCE THAT THE PETITIONER COMPLETED A SUBSTANCE ABUSE TREAT-
22 MENT PROGRAM AND THAT THE PETITIONER IS NOT DEPENDENT ON ALCOHOL OR A
23 CONTROLLED SUBSTANCE EXCEPT AS PRESCRIBED BY A MEDICAL PRACTITIONER;

24 (D) A SWORN AFFIDAVIT THAT NO CRIMINAL CHARGES ARE PENDING AGAINST THE
25 PETITIONER, THAT THE PETITIONER HAS BEEN CONVICTED OF NO FELONY, OR NO
26 MORE THAN ONE ELIGIBLE FELONY, AND DOES NOT STAND CONVICTED OF ANY OTHER
27 FELONY OR ANY OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS
28 REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED
29 SIXTY-EIGHT-A OF THE CORRECTION LAW; AND

30 (E) ANY OTHER SUPPORTING MATERIALS THAT WOULD ASSIST THE COURT IN
31 DETERMINING WHETHER IT WOULD BE IN THE INTEREST OF JUSTICE TO GRANT THE
32 PETITION.

33 4. THE PETITION AUTHORIZED BY THIS SECTION SHALL BE FILED AS FOLLOWS:

34 (A) WHERE THE RECORDS SOUGHT TO BE CONDITIONALLY SEALED INCLUDE AN
35 ELIGIBLE FELONY, THE PETITION SHALL BE FILED IN THE COURT OF RECORD THAT
36 IMPOSED SENTENCE UPON THE PETITIONER FOR SUCH ELIGIBLE FELONY;

37 (B) WHERE THE RECORDS SOUGHT TO BE CONDITIONALLY SEALED INCLUDE ONLY
38 AN ELIGIBLE MISDEMEANOR OR ELIGIBLE MISDEMEANORS, THE PETITION SHALL BE
39 FILED IN THE COURT THAT LAST IMPOSED A SENTENCE UPON PETITIONER FOR AN
40 ELIGIBLE MISDEMEANOR.

41 (C) THE PETITIONER SHALL NOTIFY AND SERVE A COPY OF THE PETITION ON
42 THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER WAS
43 CONVICTED OF A CRIME WITHIN TEN DAYS OF THE DATE THE PETITION WAS FILED.
44 THE DISTRICT ATTORNEY, WITHIN THIRTY DAYS OF RECEIVING NOTICE OF THE
45 PETITION, MAY SERVE AND SUBMIT MATERIALS IN SUPPORT OF THE PETITION OR
46 TO DEMONSTRATE THAT THE INTEREST OF JUSTICE WOULD NOT BE SERVED BY
47 GRANTING THE PETITION.

48 (D) UPON THE FILING OF A PETITION, THE SENTENCING COURT SHALL REQUEST
49 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES A COPY OF THE
50 PETITIONER'S CURRENT CRIMINAL HISTORY RECORD, INCLUDING ANY SEALED
51 CONVICTION INFORMATION. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL
52 ALSO INCLUDE A CRIMINAL HISTORY REPORT, IF ANY, FROM THE FEDERAL BUREAU
53 OF INVESTIGATION REGARDING CONVICTIONS THAT OCCURRED IN OTHER JURISDIC-
54 TIONS. THE DIVISION IS HEREBY AUTHORIZED TO RECEIVE SUCH INFORMATION
55 FROM THE FEDERAL BUREAU OF INVESTIGATION FOR THIS PURPOSE. THE PARTIES
56 SHALL BE PERMITTED TO EXAMINE THESE RECORDS.

1 5. UPON REQUEST OF THE PETITIONER OR A DISTRICT ATTORNEY OF A JURIS-
2 DICTION WHERE THE PETITIONER WAS CONVICTED OF A CRIME, THE COURT SHALL
3 CONDUCT A HEARING ON THE PETITION. SUCH HEARING SHALL BE CONDUCTED WITH-
4 IN NINETY DAYS OF THE DATE THE PETITION WAS FILED UNLESS THE PARTIES
5 CONSENT TO A LONGER PERIOD.

6 6. (A) THE SENTENCING COURT SHALL DETERMINE WHETHER THE PETITIONER IS
7 ELIGIBLE AND HAS DEMONSTRATED, BY A PREPONDERANCE OF THE EVIDENCE, THAT
8 IT WOULD BE IN THE INTEREST OF JUSTICE TO GRANT THE PETITION. IN MAKING
9 ITS DETERMINATION, THE COURT SHALL CONSIDER THE FOLLOWING FACTORS:

10 (I) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE OR OFFENSES THAT
11 RESULTED IN THE CONVICTION OR CONVICTIONS;

12 (II) THE CHARACTER OF THE PETITIONER, INCLUDING EVIDENCE THAT THE
13 PETITIONER PARTICIPATED IN AND SUCCESSFULLY COMPLETED ALCOHOL OR
14 SUBSTANCE ABUSE TREATMENT OR OTHERWISE ADDRESSED A HISTORY OF ALCOHOL OR
15 SUBSTANCE ABUSE OR CHEMICAL DEPENDENCE;

16 (III) THE CRIMINAL HISTORY OF THE PETITIONER;

17 (IV) THE IMPACT OF GRANTING THE PETITION UPON THE REHABILITATION OF
18 THE PETITIONER AND HIS OR HER SUCCESSFUL AND PRODUCTIVE REENTRY AND
19 REINTEGRATION INTO SOCIETY, AND ON PUBLIC SAFETY; AND

20 (V) ANY OTHER RELEVANT FACTORS.

21 (B) THE SENTENCING COURT SHALL MAKE A DETERMINATION ON THE PETITION
22 FOLLOWING THE CONCLUSION OF THE HEARING CONDUCTED PURSUANT TO SUBDIVI-
23 SION FIVE OF THIS SECTION, OR, WHERE NO HEARING IS CONDUCTED, WITHIN
24 NINETY DAYS OF THE DATE THE PETITION WAS FILED AND SHALL STATE IN WRIT-
25 ING THE REASONS FOR ITS DETERMINATION.

26 (C) UPON THE GRANTING OF A PETITION, THE SENTENCING COURT SHALL ISSUE
27 A CONDITIONAL SEALING ORDER AND PROMPTLY NOTIFY IN WRITING THE PETITION-
28 ER, THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER
29 WAS CONVICTED OF A CRIME, AND THE DIVISION OF CRIMINAL JUSTICE SERVICES.
30 THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOTIFY THE CLERK OF THE
31 COURT WHERE SUCH ACTIONS OR PROCEEDINGS SHALL BE SEALED, THE HEADS OF
32 ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES OF
33 THE CONDITIONAL SEALING ORDER. UPON SUCH NOTIFICATION, RECORDS SHALL BE
34 SEALED IN A MANNER CONSISTENT WITH SECTION 160.50 OF THIS ARTICLE. THE
35 SENTENCING COURT SHALL ALSO NOTIFY THE PETITIONER THAT ANY SUBSEQUENT
36 CHARGE FOR ANY MISDEMEANOR OR FELONY SHALL CONDITIONALLY UNSEAL THE
37 RECORD OF THE CONVICTION OR CONVICTIONS AND THAT IF SUCH CHARGE RESULTS
38 IN A CONVICTION FOR A CRIME, THE CONDITIONAL SEALING ORDER WILL BE AUTO-
39 MATICALLY VACATED.

40 (D) IF THE PETITION IS DENIED, THE SENTENCING COURT SHALL PROMPTLY
41 NOTIFY IN WRITING THE PETITIONER AND ANY DISTRICT ATTORNEY WHO SUBMITTED
42 MATERIALS PURSUANT TO THIS SUBDIVISION. THE PETITIONER MAY FILE A NEW
43 PETITION PURSUANT TO THIS SECTION NO LESS THAN TWO YEARS AFTER SUCH
44 DENIAL.

45 7. IN THE EVENT THAT A PERSON WHO HAS HAD A RECORD CONDITIONALLY
46 SEALED UNDER THIS SECTION IS SUBSEQUENTLY CHARGED WITH A CRIME, THE
47 RECORDS RELATING TO THE CONVICTION OR CONVICTIONS SHALL BE CONDITIONALLY
48 UNSEALED PENDING THE FINAL DISPOSITION OF THE CHARGE. IF SUCH CHARGE
49 RESULTS IN A CONVICTION OF A CRIME, THE CONDITIONAL SEALING ORDER SHALL
50 BE DEEMED AUTOMATICALLY VACATED. THE DIVISION OF CRIMINAL JUSTICE
51 SERVICES AND ANY OTHER ENTITY SUBJECT TO SUCH ORDER SHALL UNSEAL ANY
52 RECORDS THAT HAD BEEN SEALED BY VIRTUE OF THIS SECTION. ALL RECORDS
53 UNSEALED PURSUANT TO THIS SUBDIVISION SHALL BE RESTORED TO THEIR
54 ORIGINAL STATUS AND TREATED AS THOUGH THE CONDITIONAL SEALING ORDER HAD
55 NOT BEEN ENTERED. IF SUCH SUBSEQUENT CHARGE RESULTS IN PROCEEDINGS THAT
56 ARE TERMINATED IN FAVOR OF THE ACCUSED AS DESCRIBED IN SUBDIVISION THREE

1 OF SECTION 160.50 OF THIS ARTICLE OR BY CONVICTION FOR A NONCRIMINAL
2 OFFENSE AS DESCRIBED IN SECTION 160.55 OF THIS ARTICLE, THE ORIGINAL
3 CONDITIONAL SEALING ORDER SHALL BE RESTORED TO FULL EFFECT. THE COURT
4 HEARING SUCH SUBSEQUENT CHARGE SHALL THEN ISSUE AN ORDER CONSISTENT WITH
5 PARAGRAPH (C) OF SUBDIVISION SIX OF THIS SECTION.

6 8. FOR PURPOSES OF THIS SECTION, CONDITIONAL SEALING SHALL MEAN THAT
7 THE RECORDS OF THE SUBJECT CONVICTION OR CONVICTIONS ARE SEALED IN THE
8 MANNER PROVIDED IN SECTION 160.50 OF THIS ARTICLE, AND SHALL NOT BE MADE
9 AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY, EXCEPT SUCH RECORDS
10 SHALL BE MADE AVAILABLE TO: (A) THE PETITIONER OR TO SUCH PETITIONER'S
11 DESIGNATED AGENT; (B) A PROSECUTOR, A LAW ENFORCEMENT AGENCY, OR A COURT
12 WHICH HAS RESPONSIBILITY FOR CRIMINALLY INVESTIGATING, PROSECUTING, OR
13 ADJUDICATING THE PETITIONER; (C) ANY STATE OR LOCAL OFFICE OR AGENCY
14 WITH RESPONSIBILITY FOR THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN
15 THE PETITIONER HAS MADE APPLICATION FOR SUCH A LICENSE; (D) ANY PROSPEC-
16 TIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS THOSE TERMS ARE
17 DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF
18 THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOYMENT AS A POLICE
19 OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY PERSON WHO IS AN
20 APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE OFFICER SHALL BE
21 FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND
22 AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERETO; (E) PERSONS OR
23 PUBLIC OR PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGERPRINT INDI-
24 VIDUALS AS PART OF A BACKGROUND CHECK; (F) PROSPECTIVE EMPLOYERS OF
25 CAREGIVERS WHO SUBMIT FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE
26 SERVICES UNDER SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE EXECUTIVE
27 LAW; (G) THE NEW YORK STATE DIVISION OF PAROLE WHEN THE PETITIONER IS
28 UNDER PAROLE SUPERVISION; AND (H) THE LOCAL PROBATION DEPARTMENT RESPON-
29 SIBLE FOR SUPERVISION OF THE PETITIONER. RECORDS CONDITIONALLY SEALED
30 PURSUANT TO THIS SECTION SHALL ALSO BE MADE AVAILABLE, IF OTHERWISE
31 ADMISSIBLE, FOR USE BEFORE THE JURY, OR THE JUDGE AS TRIER OF FACT, IF
32 THE PERSON WHO IS THE SUBJECT OF THE RECORD IS A WITNESS AS DEFINED IN
33 PARAGRAPH (B) OR (C) OF SUBDIVISION ONE OR PARAGRAPH (B) OR (C) OF
34 SUBDIVISION TWO OF SECTION 240.45 OF THIS CHAPTER.

35 9. ANY PERSON OR AGENCY THAT KNOWINGLY RELEASES OR PERMITS THE RELEASE
36 OF ANY RECORD OR INFORMATION THAT IS SEALED PURSUANT TO THIS SECTION TO
37 ANY PERSON OR AGENCY NOT AUTHORIZED TO RECEIVE IT SHALL BE SUBJECT TO A
38 CIVIL PENALTY FOR EACH SUCH VIOLATION OF UP TO ONE THOUSAND DOLLARS.
39 SUCH PENALTIES MAY BE RECOVERED IN A CIVIL ACTION BROUGHT BY THE ATTOR-
40 NEY GENERAL OR BY THE PERSON WHO IS THE SUBJECT OF SUCH RECORD OR INFOR-
41 MATION. WHEN THE PREVAILING PLAINTIFF IN SUCH CIVIL ACTION IS THE PERSON
42 WHO IS THE SUBJECT OF SUCH RECORD OR INFORMATION, THE COURT SHALL
43 INCLUDE IN THE JUDGMENT AN AWARD OF COSTS AND ATTORNEYS FEES.

44 S 22. Section 160.60 of the criminal procedure law, as amended by
45 chapter 877 of the laws of 1976, is amended to read as follows:
46 S 160.60 Effect of termination of criminal actions in favor of the
47 accused.

48 Upon the termination of a criminal action or proceeding against a
49 person in favor of such person, as defined in subdivision two of section
50 160.50 of this [chapter] ARTICLE, OR UPON THE CONDITIONAL SEALING OF A
51 CONVICTION OR CONVICTIONS, AS DESCRIBED IN SECTION 160.65 OF THIS ARTI-
52 CLE, the arrest [and], prosecution AND CONVICTION OR CONVICTIONS CONDI-
53 TIONALLY SEALED shall be deemed a nullity and the accused shall be
54 restored, in contemplation of law, to the status he occupied before the
55 arrest [and], prosecution AND CONVICTION OR CONVICTIONS. The arrest
56 [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED shall

1 not operate as a disqualification of any person so accused to pursue or
2 engage in any lawful activity, occupation, profession, or calling
3 PROVIDED, HOWEVER, A PERSON WHO HAS HAD A CONVICTION OR CONVICTIONS
4 CONDITIONALLY SEALED PURSUANT TO SECTION 160.65 OF THIS ARTICLE SHALL
5 CONTINUE TO BE DISQUALIFIED FROM WORKING IN AN OCCUPATION OR PROFESSION
6 WHERE THE LAW MANDATES THAT SUCH PERSON IS SO DISQUALIFIED BASED ON THE
7 NATURE OF THE OFFENSE. Except where specifically required or permitted
8 by statute or upon specific authorization of a superior court, no such
9 person shall be required to divulge information pertaining to the arrest
10 [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED. IN
11 THE CASE OF A CONVICTION CONDITIONALLY SEALED, AN EMPLOYER, EXCEPT THOSE
12 PERSONS OR PUBLIC OR PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGER-
13 PRINT INDIVIDUALS AS PART OF A BACKGROUND CHECK AND PROSPECTIVE EMPLOY-
14 ERS OF CAREGIVERS UNDER SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE
15 EXECUTIVE LAW, MAY ONLY ASK WHETHER A PERSON HAS BEEN CONVICTED OF A
16 CRIME THAT HAS NOT BEEN CONDITIONALLY SEALED. IN THE EVENT THAT AN
17 EMPLOYER ASKS AN UNLAWFUL QUESTION, THE PERSON SHALL ONLY HAVE TO REVEAL
18 THOSE CRIMINAL CONVICTIONS THAT HAVE NOT BEEN CONDITIONALLY SEALED.

19 S 23. Section 450.10 of the criminal procedure law is amended by
20 adding two new subdivisions 6 and 7 to read as follows:

21 6. AN ORDER, ENTERED PURSUANT TO SECTION 160.65 OF THIS TITLE, DENYING
22 A PETITION TO CONDITIONALLY SEAL THE RECORD OF AN ELIGIBLE FELONY OR
23 MISDEMEANOR AS SUCH TERMS ARE DEFINED IN SUCH SECTION.

24 7. AN ORDER, ENTERED PURSUANT TO SECTION 440.46 OF THIS TITLE, DENYING
25 A MOTION FOR RESENTENCING MADE PURSUANT TO SUCH SECTION.

26 S 24. Subdivision 16 of section 296 of the executive law, as amended
27 by chapter 639 of the laws of 2007, is amended to read as follows:

28 16. It shall be an unlawful discriminatory practice, unless specif-
29 ically required or permitted by statute, for any person, agency, bureau,
30 corporation or association, including the state and any political subdivi-
31 sion thereof, to make any inquiry about, whether in any form of appli-
32 cation or otherwise, or to act upon adversely to the individual
33 involved, any arrest or criminal accusation of such individual not then
34 pending against that individual which was followed by a termination of
35 that criminal action or proceeding in favor of such individual, as
36 defined in subdivision two of section 160.50 of the criminal procedure
37 law, or by a youthful offender adjudication, as defined in subdivision
38 one of section 720.35 of the criminal procedure law, or by a conviction
39 for a violation sealed pursuant to section 160.55 of the criminal proce-
40 dure law in connection with the licensing, employment or providing of
41 credit or insurance to such individual, OR ANY CONVICTION OR CONVICTIONS
42 THAT HAVE BEEN CONDITIONALLY SEALED, AS DESCRIBED IN SECTION 160.65 OF
43 THE CRIMINAL PROCEDURE LAW; provided, however, that the provisions here-
44 of shall not apply to the licensing activities of governmental bodies in
45 relation to the regulation of guns, firearms and other deadly weapons or
46 in relation to an application for employment as a police officer or
47 peace officer as those terms are defined in subdivisions thirty-three
48 and thirty-four of section 1.20 of the criminal procedure law; provided
49 further that the provisions of this subdivision shall not apply to an
50 application for employment or membership in any law enforcement agency
51 with respect to any arrest or criminal accusation which was followed by
52 a youthful offender adjudication, as defined in subdivision one of
53 section 720.35 of the criminal procedure law, or by a conviction for a
54 violation sealed pursuant to section 160.55 of the criminal procedure
55 law.

1 S 25. Subdivision 2 of section 259-i of the executive law is amended
2 by adding a new paragraph (b-1) to read as follows:

3 (B-1) (I) AN INMATE CONVICTED AND SERVING A SENTENCE FOR AN OFFENSE
4 DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE
5 PENAL LAW, WHO WAS ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR
6 SUBSTANCE ABUSE DEPENDENCY BY THE DEPARTMENT, AND WHO IS RELEASED ON
7 PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION SHALL, AS A
8 CONDITION THEREOF, BE REQUIRED TO PARTICIPATE IN A SUBSTANCE ABUSE
9 TREATMENT PROGRAM CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE
10 ABUSE SERVICES FOR A MINIMUM OF ONE YEAR OR UNTIL TERMINATION OF SUCH
11 PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION, WHICHEVER
12 OCCURS FIRST. SUCH SUPERVISION SHALL INCLUDE PERIODIC URINALYSIS. THE
13 CONDITIONS MANDATED BY THIS SUBPARAGRAPH SHALL NOT BE REQUIRED IF THE
14 BOARD OR THE DIVISION FIND THAT SUCH CONDITIONS ARE INAPPROPRIATE IN ANY
15 INDIVIDUAL CASE. THE DIVISION SHALL PROVIDE ASSISTANCE IN FINDING AND
16 SECURING PLACEMENT IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM
17 FOR EACH RELEASEE SUBJECT TO THE CONDITION MANDATED BY THIS SUBPARA-
18 GRAPH.

19 (II) AN INMATE SERVING AN INDETERMINATE OR DETERMINATE SENTENCE, OTHER
20 THAN A SENTENCE FOR A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR
21 TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, WHO WAS ASSESSED AS HAVING AN
22 ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY BY THE DEPARTMENT, AND WHO IS
23 RELEASED ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION
24 SHALL, AS A CONDITION OF SUCH PAROLE, CONDITIONAL RELEASE OR POST-RE-
25 LEASE SUPERVISION, BE REQUIRED TO PARTICIPATE IN A SUBSTANCE ABUSE
26 TREATMENT PROGRAM CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE
27 ABUSE SERVICES FOR A MINIMUM OF ONE YEAR OR UNTIL TERMINATION OF SUCH
28 PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION, WHICHEVER FIRST
29 OCCURS. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS
30 MANDATED BY THIS SUBPARAGRAPH SHALL NOT BE REQUIRED IF THE BOARD OR THE
31 DIVISION FIND THAT SUCH CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL
32 CASE. THE DIVISION SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING
33 PLACEMENT IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH
34 RELEASEE SUBJECT TO THE CONDITION MANDATED BY THIS SUBPARAGRAPH.

35 S 26. The executive law is amended by adding a new section 837-s to
36 read as follows:

37 S 837-S. COMBINED LAW ENFORCEMENT AND COMMUNITY STRATEGY TARGETING
38 STREET-LEVEL DRUG CRIME PROGRAM. THE DIVISION SHALL CONTRACT WITH AN
39 OUTSIDE ACADEMIC INSTITUTION TO COORDINATE THREE PILOT PROGRAMS IN
40 DISCRETE, TARGETED NEIGHBORHOODS LOCATED IN THREE DIFFERENT GEOGRAPHIC
41 AREAS OF THE STATE TO SIGNIFICANTLY REDUCE STREET-LEVEL UNLAWFUL DRUG
42 ACTIVITY, ESPECIALLY AS IT RELATES TO VIOLENT CRIME AND CRIMINAL ACTIV-
43 ITY IN SUCH AREAS, THROUGH A "COMBINED LAW ENFORCEMENT AND COMMUNITY
44 STRATEGY TO ELIMINATE STREET-LEVEL DRUG CRIME". FOR PURPOSES OF THIS
45 SECTION, A "COMBINED LAW ENFORCEMENT AND COMMUNITY STRATEGY TO ELIMINATE
46 STREET-LEVEL DRUG CRIME" SHALL MEAN A PROGRAM WHICH:

47 1. USES CRIME MAPPING INFORMATION TO TARGET GEOGRAPHIC DRUG MARKETS,
48 DRUG-DEALERS, DRUG SUPPLIERS AND STREET LEVEL DRUG SALES THAT IMPACT
49 COMMUNITY SAFETY;

50 2. BUILDING ON A STATISTICAL AND MAPPING FOUNDATION, GATHERS EXTENSIVE
51 INTELLIGENCE ON NETWORKS OF INDIVIDUALS INVOLVED IN THE LOCAL DRUG SCENE
52 AND INDIVIDUAL PATTERNS OF CRIMINAL BEHAVIOR;

53 3. USES A JOINT POLICE-COMMUNITY PARTNERSHIP TO IDENTIFY INDIVIDUAL
54 OFFENDERS, NOTIFY THEM OF THE CONSEQUENCES OF CONTINUED ILLEGAL ACTIV-
55 ITY, AND UNDERTAKE MEASURES DESIGNED TO ELIMINATE SUCH CRIMINAL BEHAVIOR
56 THROUGH A COMMUNITY-BASED COORDINATOR WHO IDENTIFIES ALTERNATIVES TO

1 CONTINUED UNLAWFUL DRUG ACTIVITY AND ACTS TO REDUCE RECIDIVISM AND
2 VIOLENT CRIME AND ENHANCE PUBLIC SAFETY; AND

3 4. PROVIDES FOR THE BRINGING OF CRIMINAL CHARGES AGAINST OFFENDERS WHO
4 DO NOT CEASE ILLEGAL ACTIVITY.

5 S 27. Subdivision 1 of section 211 of the judiciary law is amended by
6 adding a new paragraph (m) to read as follows:

7 (M) THE ESTABLISHMENT AND OPERATION OF DRUG COURTS AND THEIR EFFECTIVE
8 AND EFFICIENT UTILIZATION OF FUNDS, SERVICES AND JUDICIAL AND NON-JUDI-
9 CIAL PERSONNEL.

10 S 28. Subdivision 1 of section 212 of the judiciary law is amended by
11 adding a new paragraph (w) to read as follows:

12 (W) SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS TO FUND THE COSTS
13 THEREOF: (I) DESIGNATE AT LEAST ONE COURT IN EACH COUNTY OF THE STATE AS
14 A DRUG COURT, AND (II) IN CONSULTATION WITH SUCH PUBLIC AND PRIVATE
15 AGENCIES AS MAY BE NECESSARY, ESTABLISH AN APPROPRIATE TRAINING PROGRAM
16 PARTICIPATION IN WHICH SHALL BE REQUIRED FOR JUDICIAL AND NON-JUDICIAL
17 PERSONNEL WHO SERVE IN A DRUG COURT. SUCH TRAINING PROGRAM SHALL
18 INCLUDE BUT NOT BE LIMITED TO A SUBSTANCE ABUSE TREATMENT CURRICULA
19 APPROVED BY THE OFFICE OF ALCOHOL AND SUBSTANCE ABUSE SERVICES, A TRAIN-
20 ING SESSION TO BE PRESENTED BY A PROSECUTION REPRESENTATIVE DESIGNATED
21 BY THE NEW YORK STATE DISTRICT ATTORNEY'S ASSOCIATION AND A TRAINING
22 SESSION TO BE PRESENTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION.

23 S 29. Subdivisions 3, 5 and 6 of section 60.04 of the penal law, as
24 added by chapter 738 of the laws of 2004, are amended to read as
25 follows:

26 3. Class B felonies. Every person convicted of a class B felony must
27 be sentenced to imprisonment in accordance with the applicable
28 provisions of section 70.70 of this title, [unless such person is
29 convicted of a class B felony and is sentenced to] A DEFINITE SENTENCE
30 OF IMPRISONMENT WITH A TERM OF ONE YEAR OR LESS OR probation in accord-
31 ance with section 65.00 of this title PROVIDED, HOWEVER, A PERSON
32 CONVICTED OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS
33 DEFINED IN SECTION 220.48 OF THIS CHAPTER MUST BE SENTENCED TO A DETER-
34 MINATE SENTENCE OF IMPRISONMENT ACCORDING TO THE APPLICABLE PROVISIONS
35 OF SECTION 70.70 OF THIS TITLE.

36 5. Multiple felony offender. Where the court imposes a sentence upon a
37 second felony drug offender, as defined in paragraph (b) of subdivision
38 one of section 70.70 of this title, it must sentence such offender to
39 imprisonment in accordance with the applicable provisions of section
40 70.70 of this title, A DEFINITE SENTENCE OF IMPRISONMENT WITH A TERM OF
41 ONE YEAR OR LESS, OR PROBATION IN ACCORDANCE WITH SECTION 65.00 OF THIS
42 TITLE, PROVIDED, HOWEVER, THAT SUCH A PERSON TO BE SENTENCED FOR OR WITH
43 A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION
44 FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW MUST BE SENTENCED
45 TO A DETERMINATE SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THE APPLI-
46 CABLE PROVISIONS OF SECTION 70.70 OF THIS TITLE.

47 6. Substance abuse treatment. When the court imposes a sentence of
48 imprisonment which requires a commitment to the state department of
49 correctional services upon a person who stands convicted of a controlled
50 substance or marijuana offense, the court may, upon motion of the
51 defendant in its discretion, issue an order directing that the depart-
52 ment of correctional services enroll the defendant in the comprehensive
53 alcohol and substance abuse treatment program in an alcohol and
54 substance abuse correctional annex as defined in subdivision eighteen of
55 section two of the correction law, provided that the defendant will
56 satisfy the statutory eligibility criteria for participation in such

1 program. Notwithstanding the foregoing provisions of this subdivision,
2 any defendant to be enrolled in such program pursuant to this subdivi-
3 sion shall be governed by the same rules and regulations promulgated by
4 the department of correctional services, including without limitation
5 those rules and regulations establishing requirements for completion and
6 those rules and regulations governing discipline and removal from the
7 program. No such period of court ordered corrections based drug abuse
8 treatment pursuant to this subdivision shall be required to extend
9 beyond the defendant's conditional release date. AFTER THE DEFENDANT'S
10 ARRIVAL IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL SERVICES, THE
11 COMMISSIONER OF SUCH DEPARTMENT SHALL NOTIFY THE SENTENCING COURT AND
12 THE DEFENDANT IN WRITING CONCERNING THE DEFENDANT'S ENROLLMENT IN SUCH
13 COMPREHENSIVE ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM.

14 S 30. Section 60.05 of the penal law is amended by adding a new subdivi-
15 sion 8 to read as follows:

16 8. JUDICIALLY SENTENCED SHOCK INCARCERATION. WHERE THE COURT IMPOSES A
17 SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THIS SECTION AND THE DEFEND-
18 ANT IS ELIGIBLE FOR SENTENCING PURSUANT TO SUBDIVISION THREE OF SECTION
19 EIGHT HUNDRED SIXTY-FIVE OF THE CORRECTION LAW, THEN THE COURT MAY
20 SENTENCE THE DEFENDANT AS A JUDICIALLY SENTENCED SHOCK INCARCERATION
21 INMATE. AFTER THE DEFENDANT'S ARRIVAL IN THE CUSTODY OF THE DEPARTMENT
22 OF CORRECTIONAL SERVICES, THE COMMISSIONER OF SUCH DEPARTMENT SHALL
23 NOTIFY THE SENTENCING COURT AND THE DEFENDANT IN WRITING CONCERNING THE
24 DEFENDANT'S ENROLLMENT IN SUCH SHOCK INCARCERATION PROGRAM.

25 S 31. The opening paragraph of paragraph (b) of subdivision 1 of
26 section 65.00 of the penal law, as amended by chapter 410 of the laws of
27 1979, is amended to read as follows:

28 The court, with the concurrence of either the administrative judge of
29 the court or of the judicial district within which the court is situated
30 or such administrative judge as the presiding justice of the appropriate
31 appellate division shall designate, may sentence a person to a period of
32 probation upon conviction of a class A-II felony [or a class B felony]
33 defined in article two hundred twenty, OR THE CLASS B FELONY DEFINED IN
34 SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY DEFINED IN SECTION
35 220.44 OF THIS CHAPTER, AS A SECOND FELONY DRUG OFFENDER, COMMITTED IN
36 THE MANNER SPECIFIED IN SUBPARAGRAPH FOUR OF PARAGRAPH C OF SUBDIVISION
37 FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW, if the prosecutor
38 either orally on the record or in a writing filed with the indictment
39 recommends that the court sentence such person to a period of probation
40 upon the ground that such person has or is providing material assistance
41 in the investigation, apprehension or prosecution of any person for a
42 felony defined in article two hundred twenty or the attempt or the
43 conspiracy to commit any such felony, and if the court, having regard to
44 the nature and circumstances of the crime and to the history, character
45 and condition of the defendant is of the opinion that:

46 S 32. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 3 of
47 section 65.00 of the penal law, subparagraph (i) as amended by chapter
48 264 of the laws of 2003, subparagraph (ii) as amended by chapter 738 of
49 the laws of 2004, are amended to read as follows:

50 (i) For a felony, other than a class A-II felony [or a class B felony]
51 defined in article two hundred twenty of this chapter, OR THE CLASS B
52 FELONY DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY,
53 COMMITTED BY A SECOND FELONY DRUG OFFENDER, DESCRIBED IN PARAGRAPH (B)
54 OF SUBDIVISION ONE OF THIS SECTION or a sexual assault, the period of
55 probation shall be five years;

1 (ii) For a class A-II felony controlled substance offender as defined
2 in paragraph (a) of subdivision one of section 70.71 of this [chapter or
3 a class B second felony drug offender as defined in paragraph (b) of
4 subdivision one of section 70.70 of this] chapter, OR THE CLASS B FELONY
5 DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY,
6 COMMITTED BY A SECOND FELONY DRUG OFFENDER, DESCRIBED IN PARAGRAPH (B)
7 OF SUBDIVISION ONE OF THIS SECTION the period of probation shall be
8 life[, and for a class B felony drug offender as defined in paragraph
9 (a) of subdivision one of section 70.70 of this chapter, the period of
10 probation shall be twenty-five years];

11 S 33. Paragraph (e) of subdivision 2 of section 65.10 of the penal
12 law, as amended by chapter 742 of the laws of 1981, is amended to read
13 as follows:

14 (e) Participate in an alcohol or substance abuse program LICENSED BY
15 THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES or an intervention
16 program approved by the court after consultation with the local
17 probation department having jurisdiction, or such other public or
18 private agency as the court determines to be appropriate;

19 S 34. Section 65.10 of the penal law is amended by adding two new
20 subdivisions 4-b and 4-c to read as follows:

21 4-B. MANDATORY CONDITION FOR CERTAIN PERSONS CONVICTED OF A FELONY
22 OFFENSE IN VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWEN-
23 TY-ONE OF THIS CHAPTER. WHEN IMPOSING A SENTENCE OF PROBATION UPON A
24 PERSON CONVICTED OF A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED
25 TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER AND ASSESSED AND IDEN-
26 TIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY, THE COURT
27 SHALL REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH
28 PERSON PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY
29 THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A PERIOD OF
30 ONE YEAR OR UNTIL TERMINATION OF SUCH PROBATION, WHICHEVER OCCURS FIRST.
31 SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED
32 BY THIS SUBDIVISION SHALL NOT BE REQUIRED IF THE COURT FINDS THAT SUCH
33 CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. LOCAL PROBATION
34 DEPARTMENTS SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT
35 IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH PERSON
36 SUBJECT TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION.

37 4-C. MANDATORY CONDITION FOR CERTAIN PERSONS CONVICTED OF A FELONY
38 OFFENSE OTHER THAN A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO
39 HUNDRED TWENTY-ONE OF THIS CHAPTER. WHEN IMPOSING A SENTENCE OF
40 PROBATION UPON A PERSON CONVICTED OF A FELONY OFFENSE OTHER THAN AN
41 OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE
42 OF THIS CHAPTER AND SUCH PERSON HAS BEEN ASSESSED AND IDENTIFIED AS
43 HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY, THE COURT SHALL
44 REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON
45 PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY THE
46 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A PERIOD OF ONE
47 YEAR OR UNTIL TERMINATION OF SUCH PROBATION, WHICHEVER OCCURS FIRST.
48 SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED
49 BY THIS SUBDIVISION SHALL NOT BE REQUIRED IF THE COURT FINDS THAT SUCH
50 CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. LOCAL PROBATION
51 DEPARTMENTS SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT
52 IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH PERSON
53 SUBJECT TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION.

54 S 35. Section 70.00 of the penal law is amended by adding a new subdi-
55 vision 7 to read as follows:

1 7. TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION. THE
2 SENTENCE FOR THE CLASS A-I FELONY OFFENSE SPECIFIED IN SECTION 220.68 OF
3 THIS CHAPTER ("TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION")
4 SHALL BE AN INDETERMINATE SENTENCE, THE MAXIMUM TERM OF WHICH SHALL BE
5 LIFE IMPRISONMENT IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION TWO OF
6 THIS SECTION, AND THE MINIMUM PERIOD OF WHICH SHALL BE NOT LESS THAN
7 FIFTEEN YEARS NOR MORE THAN THIRTY YEARS IN ACCORDANCE WITH PARAGRAPH
8 (A) OF SUBDIVISION THREE OF THIS SECTION.

9 S 36. Paragraph (b) of subdivision 1 of section 70.02 of the penal
10 law, as separately amended by chapters 764 and 765 of the laws of 2005,
11 is amended to read as follows:

12 (b) Class C violent felony offenses: an attempt to commit any of the
13 class B felonies set forth in paragraph (a); aggravated criminally
14 negligent homicide as defined in section 125.11, aggravated manslaughter
15 in the second degree as defined in section 125.21, aggravated sexual
16 abuse in the second degree as defined in section 130.67, assault on a
17 peace officer, police officer, fireman or emergency medical services
18 professional as defined in section 120.08, gang assault in the second
19 degree as defined in section 120.06, burglary in the second degree as
20 defined in section 140.25, robbery in the second degree as defined in
21 section 160.10, criminal possession of a weapon in the second degree as
22 defined in section 265.03, criminal use of a firearm in the second
23 degree as defined in section 265.08, criminal sale of a firearm in the
24 second degree as defined in section 265.12, criminal sale of a firearm
25 with the aid of a minor as defined in section 265.14, soliciting or
26 providing support for an act of terrorism in the first degree as defined
27 in section 490.15, hindering prosecution of terrorism in the second
28 degree as defined in section 490.30, CRIMINAL POSSESSION OF A WEAPON
29 WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE AS DEFINED IN
30 SECTION 265.18 and criminal possession of a chemical weapon or biolog-
31 ical weapon in the third degree as defined in section 490.37.

32 S 37. Subdivision 3 of section 70.02 of the penal law is amended by
33 adding a new paragraph (b-1) to read as follows:

34 (B-1) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVI-
35 SION, FOR THE CLASS C FELONY OF CRIMINAL POSSESSION OF A WEAPON WHILE
36 SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE AS DEFINED IN
37 SECTION 265.18, THE TERM MUST BE AT LEAST FIVE YEARS AND MUST NOT EXCEED
38 FIFTEEN YEARS.

39 S 38. Paragraphs (a) and (b) of subdivision 1 of section 70.70 of the
40 penal law, as added by chapter 738 of the laws of 2004, are amended to
41 read as follows:

42 (a) "Felony drug offender" means a defendant who stands convicted of
43 any felony[,] defined in article two hundred twenty or two hundred twen-
44 ty-one of this chapter other than a class A felony, OR WHO STANDS
45 CONVICTED OF A FELONY DEFINED IN SECTION 105.15 OF THIS CHAPTER IN WHICH
46 THE UNDERLYING CONDUCT CONSTITUTES A CLASS A FELONY DEFINED IN SECTION
47 220.18, 220.21, 220.41 OR 220.43 OF THIS CHAPTER.

48 (b) "Second felony drug offender" means a second felony offender as
49 that term is defined in subdivision one of section 70.06 of this arti-
50 cle, who stands convicted of any felony[,] defined in article two
51 hundred twenty or two hundred twenty-one of this chapter other than a
52 class A felony, OR WHO STANDS CONVICTED OF A FELONY DEFINED IN SECTION
53 105.15 OF THIS CHAPTER IN WHICH THE UNDERLYING CONDUCT CONSTITUTES A
54 CLASS A FELONY DEFINED IN SECTION 220.18, 220.21, 220.41 OR 220.43 OF
55 THIS CHAPTER.

1 S 39. Paragraphs (b) and (c) of subdivision 2 of section 70.70 of the
2 penal law, as added by chapter 738 of the laws of 2004, are amended to
3 read as follows:

4 (b) Probation. Notwithstanding any other provision of law, the court
5 may sentence a defendant convicted of a class B, OTHER THAN THE CRIME OF
6 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION
7 220.48 OF THIS CHAPTER, class C, class D or class E felony offense
8 defined in article two hundred twenty or two hundred twenty-one of this
9 chapter to probation in accordance with the provisions of section 65.00
10 of this chapter.

11 (c) Alternative definite sentence for CLASS B, class C, class D, and
12 class E felonies. If the court, having regard to the nature and circum-
13 stances of the crime and to the history and character of the defendant,
14 is of the opinion that a sentence of imprisonment is necessary but that
15 it would be unduly harsh to impose a determinate sentence upon a person
16 convicted of a CLASS B, class C, class D or class E felony offense
17 defined in article two hundred twenty or two hundred twenty-one of this
18 chapter, OTHER THAN THE CRIME OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE
19 TO A CHILD AS DEFINED IN SECTION 220.48 OF THIS CHAPTER, the court may
20 impose a definite sentence of imprisonment and fix a term of one year or
21 less.

22 S 40. Paragraph (b) of subdivision 3 of section 70.70 of the penal
23 law, as added by chapter 738 of the laws of 2004, is amended to read as
24 follows:

25 (b) Authorized sentence. Except as provided in paragraph [(c) or] (d)
26 of this subdivision, when the court has found pursuant to the provisions
27 of section 400.21 of the criminal procedure law that a defendant is a
28 second felony drug offender who stands convicted of a class B, class C,
29 class D or class E felony offense defined in article two hundred twenty
30 or two hundred twenty-one of this chapter the court shall impose a
31 determinate sentence of imprisonment[. Such], A DEFINITE SENTENCE OF
32 IMPRISONMENT WITH A TERM OF ONE YEAR OR LESS, OR PROBATION IN ACCORDANCE
33 WITH SECTION 65.00 OF THIS TITLE, PROVIDED, HOWEVER, THAT A PERSON TO BE
34 SENTENCED FOR OR WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE
35 DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCE-
36 DURE LAW MUST BE SENTENCED TO A DETERMINATE PERIOD OF IMPRISONMENT IN
37 ACCORDANCE WITH THIS PARAGRAPH. WHERE THE COURT IMPOSES A DETERMINATE
38 SENTENCE OF IMPRISONMENT, SUCH determinate sentence shall include as a
39 part thereof a period of post-release supervision in accordance with
40 section 70.45 of this article. The terms of such determinate sentence
41 shall be imposed by the court in whole or half years as follows:

42 S 41. Paragraph (c) of subdivision 3 of section 70.70 of the penal
43 law, as added by chapter 738 of the laws of 2004, is amended to read as
44 follows:

45 (c) Lifetime probation. Notwithstanding any other provision of law,
46 the court may sentence a defendant convicted of a class B felony
47 [defined in article two hundred twenty of this chapter] DEFINED IN
48 SECTION 220.44 OF THIS CHAPTER, AS A SECOND FELONY DRUG OFFENDER, WHERE
49 SUCH OFFENSE WAS COMMITTED IN THE MANNER SPECIFIED IN SUBPARAGRAPH C OF
50 SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW, to
51 lifetime probation in accordance with the provisions of section 65.00 of
52 this chapter.

53 S 42. Paragraphs (a) and (b) of subdivision 1 of section 70.71 of the
54 penal law, as added by chapter 738 of the laws of 2004, are amended to
55 read as follows:

1 (a) "Felony drug offender" means a defendant who stands convicted of
2 any class A felony as defined in article two hundred twenty of this
3 chapter; PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE A DEFENDANT
4 WHO STANDS CONVICTED OF AND IS TO BE SENTENCED FOR THE CLASS A-I FELONY
5 OFFENSE SPECIFIED IN SECTION 220.68 OF THIS CHAPTER ("TRAFFICKING
6 THROUGH A CONTROLLED SUBSTANCE ORGANIZATION"), WHO SHALL BE SENTENCED IN
7 ACCORDANCE WITH SUBDIVISION SEVEN OF SECTION 70.00 OF THIS ARTICLE.

8 (b) "Second felony drug offender" means a second felony offender as
9 that term is defined in subdivision one of section 70.06 of this arti-
10 cle, who stands convicted of and is to be sentenced for any class A
11 felony as defined in article two hundred twenty of this chapter;
12 PROVIDED HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE SUCH A SECOND FELONY
13 OFFENDER WHO STANDS CONVICTED OF AND IS TO BE SENTENCED FOR THE CLASS
14 A-I FELONY OFFENSE SPECIFIED IN SECTION 220.68 OF THIS CHAPTER ("TRAF-
15 FICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION"), WHO SHALL BE
16 SENTENCED IN ACCORDANCE WITH SUBDIVISION SEVEN OF SECTION 70.00 OF THIS
17 ARTICLE.

18 S 43. Subdivision 1 of section 110.05 of the penal law, as amended by
19 chapter 93 of the laws of 2006, is amended to read as follows:

20 1. Class A-I felony when the crime attempted is the A-I felony of
21 murder in the first degree, aggravated murder as defined in subdivision
22 one of section 125.26 of this chapter, criminal possession of a
23 controlled substance in the first degree, criminal sale of a controlled
24 substance in the first degree, TRAFFICKING THROUGH A CONTROLLED
25 SUBSTANCE ORGANIZATION, criminal possession of a chemical or biological
26 weapon in the first degree or criminal use of a chemical or biological
27 weapon in the first degree;

28 S 44. Section 220.18 of the penal law, as amended by chapter 75 of the
29 laws of 1995, the opening paragraph and subdivision 1 as amended by
30 chapter 738 of the laws of 2004, is amended to read as follows:

31 S 220.18 Criminal possession of a controlled substance in the second
32 degree.

33 A person is guilty of criminal possession of a controlled substance in
34 the second degree when he or she knowingly and unlawfully possesses:

35 1. one or more preparations, compounds, mixtures or substances
36 containing a narcotic drug and said preparations, compounds, mixtures or
37 substances are of an aggregate weight of four ounces or more; or

38 2. one or more preparations, compounds, mixtures or substances
39 containing methamphetamine, its salts, isomers or salts of isomers and
40 said preparations, compounds, mixtures or substances are of an aggregate
41 weight of [two] FOUR ounces or more; or

42 3. a stimulant and said stimulant weighs [ten] TWENTY grams or more;
43 or

44 4. lysergic acid diethylamide and said lysergic acid diethylamide
45 weighs [twenty-five] FIFTY milligrams or more; or

46 5. a hallucinogen and said hallucinogen weighs [six hundred twenty-
47 five] ONE THOUSAND TWO HUNDRED FIFTY milligrams or more; or

48 6. a hallucinogenic substance and said hallucinogenic substance
49 weighs [twenty-five] FIFTY grams or more; or

50 7. methadone and said methadone weighs [two thousand eight hundred
51 eighty] FIVE THOUSAND SEVEN HUNDRED SIXTY milligrams or more.

52 Criminal possession of a controlled substance in the second degree is
53 a class A-II felony.

54 S 45. Section 220.21 of the penal law, as amended by chapter 75 of the
55 laws of 1995, the opening paragraph and subdivision 1 as amended by
56 chapter 738 of the laws of 2004, is amended to read as follows:

1 S 220.21 Criminal possession of a controlled substance in the first
2 degree.

3 A person is guilty of criminal possession of a controlled substance in
4 the first degree when he or she knowingly and unlawfully possesses:

5 1. one or more preparations, compounds, mixtures or substances
6 containing a narcotic drug and said preparations, compounds, mixtures or
7 substances are of an aggregate weight of eight ounces or more; or

8 2. methadone and said methadone weighs [five thousand seven hundred
9 sixty] ELEVEN THOUSAND FIVE HUNDRED TWENTY milligrams or more.

10 Criminal possession of a controlled substance in the first degree is a
11 class A-I felony.

12 S 46. Section 220.25 of the penal law, as amended by chapter 276 of
13 the laws of 1973, subdivision 1 as amended by chapter 278 of the laws of
14 1973 and subdivision 2 as amended by chapter 341 of the laws of 1985, is
15 amended to read as follows:

16 S 220.25 Criminal possession of a controlled substance; presumption.

17 1. The presence of a controlled substance in an automobile, other than
18 a public omnibus, [is presumptive evidence] CREATES A PERMISSIBLE INFER-
19 ENCE of knowing possession thereof by each and every person in the auto-
20 mobile at the time such controlled substance was found; except that such
21 [presumption] PERMISSIBLE INFERENCE does not apply (a) to a duly
22 licensed operator of an automobile who is at the time operating it for
23 hire in the lawful and proper pursuit of his trade, or (b) to any person
24 in the automobile if one of them, having obtained the controlled
25 substance and not being under duress, is authorized to possess it and
26 such controlled substance is in the same container as when he received
27 possession thereof, or (c) when the controlled substance is concealed
28 upon the person of one of the occupants, OR (D) WHEN THE CONTROLLED
29 SUBSTANCE IS CONCEALED BEYOND THE IMMEDIATE GRABBABLE AREA OF THE
30 DEFENDANT AND THE DEFENDANT IS NOT THE OWNER OR OPERATOR OF THE VEHICLE.

31 2. The presence of a narcotic drug, narcotic preparation, marihuana or
32 phencyclidine in open view in a room, other than a public place, under
33 circumstances evincing an intent to unlawfully mix, compound, package or
34 otherwise prepare for sale such controlled substance [is presumptive
35 evidence] CREATES A PERMISSIBLE INFERENCE of knowing possession thereof
36 by each and every person in close proximity to such controlled substance
37 at the time such controlled substance was found; except that such
38 [presumption] PERMISSIBLE INFERENCE does not apply to any such persons
39 if (a) one of them, having obtained such controlled substance and not
40 being under duress, is authorized to possess it and such controlled
41 substance is in the same container as when he received possession there-
42 of, or (b) one of them has such controlled substance upon his person.

43 S 47. Section 220.41 of the penal law, as added by chapter 276 of the
44 laws of 1973 and subdivisions 1, 2, 3, 4, 5, 6 and 7 as amended by chap-
45 ter 75 of the laws of 1995, is amended to read as follows:

46 S 220.41 Criminal sale of a controlled substance in the second degree.

47 A person is guilty of criminal sale of a controlled substance in the
48 second degree when he OR SHE knowingly and unlawfully sells:

49 1. one or more preparations, compounds, mixtures or substances
50 containing a narcotic drug and the preparations, compounds, mixtures or
51 substances are of an aggregate weight of [one-half] ONE ounce or more;
52 or

53 2. one or more preparations, compounds, mixtures or substances
54 containing methamphetamine, its salts, isomers or salts of isomers and
55 the preparations, compounds, mixtures or substances are of an aggregate
56 weight of [one-half] ONE ounce or more; or

- 1 3. a stimulant and the stimulant weighs [five] TEN grams or more; or
2 4. lysergic acid diethylamide and the lysergic acid diethylamide
3 weighs [five] TEN milligrams or more; or
4 5. a hallucinogen and the hallucinogen weighs [one] TWO hundred
5 [twenty-five] FIFTY milligrams or more; or
6 6. a hallucinogenic substance and the hallucinogenic substance weighs
7 [five] TEN grams or more; or
8 7. methadone and the methadone weighs [three] SEVEN hundred [sixty]
9 TWENTY milligrams or more.

10 Criminal sale of a controlled substance in the second degree is a
11 class A-II felony.

12 S 48. Section 220.43 of the penal law, as amended by chapter 785 of
13 the laws of 1975 and subdivisions 1 and 2 as amended by chapter 75 of
14 the laws of 1995, is amended to read as follows:

15 S 220.43 Criminal sale of a controlled substance in the first degree.

16 A person is guilty of criminal sale of a controlled substance in the
17 first degree when he OR SHE knowingly and unlawfully sells:

- 18 1. one or more preparations, compounds, mixtures or substances
19 containing a narcotic drug and the preparations, compounds, mixtures or
20 substances are of an aggregate weight of [two] FOUR ounces or more; or
21 2. methadone and the methadone weighs [two thousand eight hundred
22 eighty] FIVE THOUSAND SEVEN HUNDRED SIXTY milligrams or more.

23 Criminal sale of a controlled substance in the first degree is a class
24 A-I felony.

25 S 49. The penal law is amended by adding a new section 220.48 to read
26 as follows:

27 S 220.48 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD.

28 A PERSON IS GUILTY OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A
29 CHILD WHEN, BEING OVER TWENTY-ONE YEARS OLD, HE OR SHE KNOWINGLY AND
30 UNLAWFULLY SELLS TO A PERSON LESS THAN SIXTEEN YEARS OF AGE A CONTROLLED
31 SUBSTANCE IN VIOLATION OF ANY ONE OF SUBDIVISIONS ONE THROUGH SIX-A OR
32 SUBDIVISION NINE OF SECTION 220.34 OF THIS ARTICLE.

33 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD IS A CLASS B FELO-
34 NY.

35 S 50. The penal law is amended by adding a new section 220.68 to read
36 as follows:

37 S 220.68 TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION.

38 A PERSON IS GUILTY OF TRAFFICKING THROUGH A CONTROLLED SUBSTANCE
39 ORGANIZATION WHEN HE OR SHE ENGAGES IN THREE OR MORE CLASS B OR HIGHER
40 CONTROLLED SUBSTANCE SALE OFFENSES DEFINED IN THIS ARTICLE, IN THE
41 MANNER SPECIFIED IN PARAGRAPHS (B) AND (C) OF SUBDIVISION FOUR OF
42 SECTION 460.10 OF THIS CHAPTER, IN EACH OF WHICH HE OR SHE (A) DIRECTED
43 THE ACTIVITIES OF SUCH ORGANIZATION AND SUPERVISED MORE THAN THREE
44 ACCOMPLICES ENGAGED IN SUCH CONDUCT; AND (B) DERIVED PROFITS EXCEEDING
45 FIFTY THOUSAND DOLLARS.

46 TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION IS A CLASS A-I
47 FELONY.

48 S 51. The penal law is amended by adding a new section 265.18 to read
49 as follows:

50 S 265.18 CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO
51 SELL A CONTROLLED SUBSTANCE.

52 A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR
53 ATTEMPTING TO SELL A CONTROLLED SUBSTANCE WHEN HE OR SHE PHYSICALLY
54 POSSESSES A LOADED FIREARM, A MACHINE GUN OR A DISGUISED GUN, WITH THE
55 INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER WHILE SELLING OR

1 ATTEMPTING TO SELL A CONTROLLED SUBSTANCE IN VIOLATION OF ARTICLE TWO
2 HUNDRED TWENTY OF THIS CHAPTER.

3 CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A
4 CONTROLLED SUBSTANCE IS A CLASS C FELONY.

5 S 52. The opening paragraph of subdivision a of section 265.20 of the
6 penal law, as amended by chapter 496 of the laws of 1991, is amended to
7 read as follows:

8 Sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11,
9 265.12, 265.13, 265.15, 265.18 and 270.05 shall not apply to:

10 S 53. Paragraph (a) of subdivision 1 of section 460.10 of the penal
11 law, as separately amended by chapters 312 and 472 of the laws of 2008,
12 is amended to read as follows:

13 (a) Any of the felonies set forth in this chapter: sections 120.05,
14 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
15 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
16 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
17 ing to labor trafficking; section 135.65 relating to coercion; sections
18 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10
19 and 145.12 relating to criminal mischief; article one hundred fifty
20 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
21 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
22 health care fraud; article one hundred sixty relating to robbery;
23 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
24 possession of stolen property; sections 165.72 and 165.73 relating to
25 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,
26 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
27 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
28 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
29 and 178.25 relating to criminal diversion of prescription medications
30 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
31 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
32 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
33 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage
34 fraud, sections 190.40 and 190.42 relating to criminal usury; section
35 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relat-
36 ing to hindering prosecution; sections 210.10, 210.15, and 215.51 relat-
37 ing to perjury and contempt; section 215.40 relating to tampering with
38 physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21,
39 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 [and], 220.60 AND
40 220.68 relating to controlled substances; sections 225.10 and 225.20
41 relating to gambling; sections 230.25, 230.30, and 230.32 relating to
42 promoting prostitution; section 230.34 relating to sex trafficking;
43 sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;
44 sections 263.10 and 263.15 relating to promoting a sexual performance by
45 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13, 265.18
46 and the provisions of section 265.10 which constitute a felony relating
47 to firearms and other dangerous weapons; and sections 265.14 and 265.16
48 relating to criminal sale of a firearm; and section 275.10, 275.20,
49 275.30, or 275.40 relating to unauthorized recordings; and sections
50 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

51 S 54. Paragraph (a) of subdivision 7 of section 480.00 of the penal
52 law, as added by chapter 655 of the laws of 1990, is amended to read as
53 follows:

54 (a) a conviction of a person for a violation of section 220.18,
55 220.21, 220.41, [or] 220.43, 220.68 OR 265.18 of this chapter, or where
56 the accusatory instrument charges one or more of such offenses,

1 conviction upon a plea of guilty to any of the felonies for which such
2 plea is otherwise authorized by law or a conviction of a person for
3 conspiracy to commit a violation of section 220.18, 220.21, 220.41, [or]
4 220.43, 220.68 OR 265.18 of [the penal law] THIS CHAPTER, where the
5 controlled substances which are the object of the conspiracy are located
6 in the real property which is the subject of the forfeiture action; or

7 S 55. Paragraphs (a) and (c) of subdivision 4-b of section 1310 of the
8 civil practice law and rules, as added by chapter 655 of the laws of
9 1990, are amended to read as follows:

10 (a) a conviction of a person for a violation of section 220.18,
11 220.21, 220.41, [or] 220.43, OR 220.68 of the penal law, or where the
12 accusatory instrument charges one or more of such offenses, conviction
13 upon a plea of guilty to any of the felonies for which such plea is
14 otherwise authorized by law or a conviction of a person for conspiracy
15 to commit a violation of section 220.18, 220.21, 220.41, [or] 220.43 OR
16 220.68 of the penal law, where the controlled substances which are the
17 object of the conspiracy are located in the real property which is the
18 subject of the forfeiture action; or

19 (c) a conviction of a person for a violation of section 220.09,
20 220.16, 220.34 [or], 220.39 OR 265.18 of the penal law, or a conviction
21 of a criminal defendant for a violation of section 221.30 of the penal
22 law, or where the accusatory instrument charges any such felony,
23 conviction upon a plea of guilty to a felony for which the plea is
24 otherwise authorized by law, together with evidence which: (i) provides
25 substantial indicia that the defendant used the real property to engage
26 in a continual, ongoing course of conduct involving the unlawful mixing,
27 compounding, manufacturing, warehousing, or packaging of controlled
28 substances or where the conviction is for a violation of section 221.30
29 of the penal law, marijuana, as part of an illegal trade or business for
30 gain; and (ii) establishes, where the conviction is for possession of a
31 controlled substance or where the conviction is for a violation of
32 section 221.30 of the penal law, marijuana, that such possession was
33 with the intent to sell it.

34 S 56. Section 8 of the state finance law is amended by adding a new
35 subdivision 21 to read as follows:

36 21. COMMENCING WITH THE ENACTMENT OF THE CHAPTER OF THE LAWS OF TWO
37 THOUSAND NINE WHICH ADDED THIS SUBDIVISION, THE COMPTROLLER MAY: (A)
38 EXAMINE, AUDIT AND, PRIOR TO MARCH FIFTEENTH OF EACH YEAR, CERTIFY TO
39 THE GOVERNOR, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE
40 CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE THE ACTUAL ANNUAL
41 SAVINGS BY THE DEPARTMENT OF CORRECTIONAL SERVICES IN THE PREVIOUS
42 CALENDAR YEAR WHICH IS ATTRIBUTABLE TO THE IMPLEMENTATION OF CHAPTER
43 SEVEN HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR, CHAPTER SIX
44 HUNDRED FORTY-THREE OF THE LAWS TWO THOUSAND FIVE AND THE CHAPTER OF THE
45 LAWS OF TWO THOUSAND NINE WHICH ADDED THIS SUBDIVISION. SUCH CERTIF-
46 ICATION SHALL BE BASED ON THE DECREASE IN THE NUMBER OF INMATE ADMIS-
47 SIONS AND THE REDUCTION IN INMATE LENGTH OF STAY FOR OFFENSES DEFINED IN
48 ARTICLES TWO HUNDRED TWENTY AND TWO HUNDRED TWENTY-ONE OF THE PENAL LAW,
49 AS WELL AS AN ESTIMATE OF THE EXTENT, IF ANY, BY WHICH ANY REDUCTION IN
50 THE CRIME RATE DURING SUCH CALENDAR YEAR AND ANY CORRESPONDING REDUCTION
51 IN THE NUMBER OF INMATE ADMISSIONS OR LENGTH OF STAY DURING SUCH PERIOD
52 WAS ATTRIBUTABLE TO THE PROVISION OF INCREASED DRUG TREATMENT, OFFENDER
53 SUPERVISION AND RELATED INITIATIVES, ENACTED BY SUCH CHAPTER; (B)
54 AUTHORIZE AND DIRECT THE TRANSFER OF FUNDS EQUAL TO SEVENTY-FIVE PERCENT
55 OF THE AMOUNT OF SAVINGS CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVI-
56 SION FROM THE GENERAL FUND TO THE CRIME REDUCTION FUND AUTHORIZED BY

1 SECTION NINETY-SEVEN-J OF THIS CHAPTER; AND (C) AUTHORIZE AND DIRECT THE
2 TRANSFER OF FUNDS EQUAL TO TWENTY-FIVE PERCENT OF THE AMOUNT OF SAVINGS
3 CERTIFIED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION FROM THE GENERAL
4 FUND TO THE SCHOOL DRUG ABUSE PREVENTION FUND AUTHORIZED BY SECTION
5 NINETY-SEVEN-K OF THIS CHAPTER.

6 S 57. The state finance law is amended by adding two new sections
7 97-j and 97-k to read as follows:

8 S 97-J. CRIME REDUCTION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE
9 CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE
10 "CRIME REDUCTION FUND".

11 2. SUCH FUND SHALL CONSIST OF ALL MONEYS TRANSFERRED BY THE STATE
12 COMPTROLLER TO SUCH FUND FROM THE GENERAL FUND PURSUANT TO PARAGRAPH (B)
13 OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER.

14 3. MONEYS IN THE CRIME REDUCTION FUND SHALL BE AVAILABLE PURSUANT TO
15 APPROPRIATION BY THE LEGISLATURE TO THE OFFICE OF ALCOHOLISM AND
16 SUBSTANCE ABUSE SERVICES FOR PAYMENT TO LOCAL GOVERNMENTS AND
17 NOT-FOR-PROFIT CORPORATIONS, THE DIVISION OF PROBATION AND CORRECTIONAL
18 ALTERNATIVES FOR PAYMENT TO LOCAL PROBATION DEPARTMENTS AND NOT-FOR-PRO-
19 FIT CORPORATIONS, THE DIVISION OF PAROLE, THE OFFICE OF COURT ADMINIS-
20 TRATION, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DEPARTMENT
21 OF CORRECTIONAL SERVICES. MONEYS FROM THE FUND SHALL BE EXPENDED FOR
22 ALCOHOL AND SUBSTANCE ABUSE TREATMENT INCLUDING TREATMENT FOR PERSONS
23 WHO HAVE A SUBSTANCE ABUSE DEPENDENCY BUT HAVE NOT HAD CONTACT WITH THE
24 CRIMINAL JUSTICE SYSTEM WITH RESPECT TO SUCH DEPENDENCY, OFFENDER SUPER-
25 VISION AND RELATED SERVICES WHICH OPERATE PURSUANT TO THE CHAPTER OF THE
26 LAWS WHICH ADDED THIS SUBDIVISION. IN EACH YEAR, AT LEAST TWENTY PERCENT
27 OF THE FUNDS IN THE CRIME REDUCTION FUND ESTABLISHED PURSUANT TO THIS
28 SECTION SHALL BE APPROPRIATED TO THE DIVISION OF CRIMINAL JUSTICE
29 SERVICES OF WHICH AMOUNT HALF SHALL BE APPORTIONED TO DISTRICT ATTORNEYS
30 AND HALF SHALL BE APPORTIONED TO LEGAL AID SOCIETIES, PUBLIC DEFENDERS
31 AND OTHER PUBLIC DEFENSE ENTITIES. ALL SUCH FUNDING SHALL BE USED TO
32 FINANCE SERVICES AND EXPENSES RELATED TO DRUG TREATMENT ALTERNATIVES TO
33 PRISON PROGRAMS, DRUG COURT PROGRAMS AND OTHER ALTERNATIVE TO INCARCERA-
34 TION PROGRAMS. ALL PROGRAMS FUNDED PURSUANT TO THIS SECTION SHALL BE
35 DESIGNED TO THE MAXIMUM EXTENT POSSIBLE TO REDUCE OFFENDER RECIDIVISM
36 AND CRIME. NOTWITHSTANDING THE FOREGOING, IN ANY STATE FISCAL YEAR, THE
37 LEGISLATURE MAY PROVIDE THAT UP TO FIVE PERCENT OF THE TOTAL AMOUNT OF
38 MONEYS TRANSFERRED TO THE CRIME REDUCTION FUND PURSUANT TO PARAGRAPH (B)
39 OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER BE APPROPRI-
40 ATED TO THE CRIME VICTIMS BOARD TO BE USED FOR CRIME VICTIM SERVICES.

41 4. MONEYS SHALL BE PAYABLE FROM THE FUND ON THE AUDIT AND WARRANT OF
42 THE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE DIRECTOR OF
43 THE BUDGET.

44 5. MONEYS IN THE CRIME REDUCTION FUND SHALL BE USED TO SUPPLEMENT, NOT
45 SUPPLANT, OTHER FUNDING SOURCES.

46 S 97-K. SCHOOL DRUG ABUSE PREVENTION FUND. 1. THERE IS HEREBY ESTAB-
47 LISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE
48 KNOWN AS THE "SCHOOL DRUG ABUSE PREVENTION FUND".

49 2. SUCH FUND SHALL CONSIST OF ALL MONEYS TRANSFERRED BY THE STATE
50 COMPTROLLER TO SUCH FUND FROM THE GENERAL FUND PURSUANT TO PARAGRAPH (C)
51 OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER.

52 3. MONEYS IN THE SCHOOL DRUG ABUSE PREVENTION FUND SHALL BE AVAILABLE
53 PURSUANT TO APPROPRIATION BY THE LEGISLATURE TO THE STATE EDUCATION
54 DEPARTMENT FOR DRUG PREVENTION AND TREATMENT PROGRAMS SERVING STUDENTS
55 IN PRE-KINDERGARTEN THROUGH GRADE TWELVE INCLUDING, BUT NOT LIMITED TO,
56 DRUG PREVENTION AND EDUCATION PROGRAMS, SCHOOL-BASED COUNSELING AND

1 TREATMENT FOR STUDENTS IDENTIFIED AS ABUSING DRUGS OR ALCOHOL, MENTORING
2 PROGRAMS, LIFE-SKILLS PROGRAMS WHICH INCLUDE DRUG RESISTANCE SKILLS AND
3 PROGRAMS DESIGNED TO EDUCATE AND HELP PARENTS REDUCE THEIR CHILDREN'S
4 RISK OF ABUSING DRUGS AND ALCOHOL, INCLUDING PROGRAMS OFFERING PRAGMAT-
5 IC, SAFETY-FOCUSED INITIATIVES, OUTREACH AND SUPPORT. NOTWITHSTANDING
6 THE FOREGOING, IN ANY STATE FISCAL YEAR, THE LEGISLATURE MAY PROVIDE
7 THAT UP TO FIVE PERCENT OF THE TOTAL AMOUNT OF MONEYS TRANSFERRED TO THE
8 SCHOOL DRUG ABUSE PREVENTION FUND PURSUANT TO PARAGRAPH (B) OF SUBDIVI-
9 SION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER BE APPROPRIATED TO THE
10 CRIME VICTIMS BOARD TO BE USED FOR CRIME VICTIM SERVICES.

11 4. MONEYS SHALL BE PAYABLE FROM THE FUND ON THE AUDIT AND WARRANT OF
12 THE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE COMMISSIONER
13 OF THE STATE EDUCATION DEPARTMENT.

14 5. MONEYS IN THE SCHOOL DRUG ABUSE PREVENTION FUND SHALL BE USED TO
15 SUPPLEMENT, NOT SUPPLANT, OTHER FUNDING SOURCES.

16 S 58. This act shall take effect on the sixtieth day after it shall
17 have become a law; provided, however, that:

18 (a) the amendments to section 410.91 of the criminal procedure law
19 made by section eighteen of this act shall not affect the repeal of such
20 section and shall be deemed repealed therewith;

21 (b) effective immediately, the addition, amendment and/or repeal of
22 any rule or regulation necessary for the implementation of the foregoing
23 sections of this act on their effective date is authorized and directed
24 to be made and completed within 120 days after the date on which this
25 act becomes a law;

26 (c) the amendments to subdivision 18 of section 2 of the correction
27 law, made by section two of this act shall be subject to the expiration
28 and reversion of such subdivision pursuant to subdivision (q) of section
29 427 of chapter 55 of the laws of 1992, as amended, and subdivision (c)
30 of section 46 of chapter 60 of the laws of 1994, as amended, when upon
31 such date the provisions of section three of this act shall take effect;

32 (d) the amendments to section 851 of the correction law made by
33 section six of this act shall not affect the expiration of such section
34 and shall be deemed repealed therewith;

35 (e) with respect to subparagraph (ii) of paragraph (b-1) of subdivi-
36 sion 2 of section 259-i of the executive law as added by section twen-
37 ty-five of this act, the division of parole, in consultation with the
38 office of alcoholism and substance abuse services, shall, on or before
39 such effective date, promulgate a plan to implement the provisions of
40 such subparagraph (ii). Such plan shall provide for the enrollment and
41 participation of one-third of the persons described in such subparagraph
42 in such appropriate substance abuse treatment program services within
43 one year of the promulgation of the plan, an additional one-third of
44 such persons within 2 years of the promulgation of the plan and the
45 final one-third of such persons within 3 years of the promulgation of
46 the plan. A copy of such plan, and any updates thereto, shall be
47 provided to the chairs of the assembly committee on correction, commit-
48 tee on codes, committee on health and committee on alcoholism and drug
49 abuse, as well as the chairs of the senate committee on codes, committee
50 on health, committee on crime victims, crime and correction, and commit-
51 tee on alcoholism and drug abuse;

52 (f) with respect to subdivision 4-c of section 65.10 of the penal law
53 as added by section thirty-four of this act, the department of probation
54 and correctional alternatives, in consultation with the office of alco-
55 holism and substance abuse services, shall, on or before such effective
56 date, promulgate a plan that will assure full implementation of the

1 provisions of such subdivision 4-c. Such plan shall provide for the
2 enrollment and participation of one-third of the persons described in
3 such subdivision in such appropriate substance abuse treatment program
4 services within one year of the promulgation of the plan, an additional
5 one-third of such persons within 2 years of the promulgation of the plan
6 and the final one-third of such persons within 3 years of the promulga-
7 tion of the plan. A copy of such plan, and any updates thereto, shall be
8 provided to the chairs of the assembly committee on correction, commit-
9 tee on codes, committee on health, and committee on alcoholism and drug
10 abuse, as well as the chairs of the senate committee on codes, committee
11 on health, committee on crime victims, crime and correction, and commit-
12 tee on alcoholism and drug abuse;

13 (g) subdivision 4 of section 440.46 of the criminal procedure law as
14 added by section nineteen of this act shall take effect immediately;

15 (h) section fifty-six of this act shall take effect April 1, 2009; and

16 (i) the provisions of sections twenty-one, twenty-two, twenty-three,
17 and twenty-four of this act shall apply to convictions entered before,
18 on or after such date.