

2009-2010 Regular Sessions

I N S E N A T E

January 18, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the correction law, the criminal procedure law, the executive law and the penal law, in relation to establishing drug treatment alternatives to incarceration for certain offenders; and making an appropriation therefor

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

1 Section 1. The correction law is amended by adding a new section 72-c
2 to read as follows:

3 S 72-C. SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAMS FOR CERTAIN
4 OFFENDERS. 1. THE COMMISSIONER, THE COMMISSIONER OF ALCOHOLISM AND
5 SUBSTANCE ABUSE SERVICES, THE CHAIRPERSON OF THE DIVISION OF PAROLE AND
6 THE DIRECTOR OF THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES
7 SHALL IDENTIFY AND ENTER INTO AGREEMENTS WITH RESIDENTIAL SUBSTANCE
8 ABUSE, ALCOHOL ABUSE, SUBSTANCE DEPENDENCY AND/OR ALCOHOL DEPENDENCY
9 TREATMENT PROGRAMS TO PROVIDE FOR THE CARE AND TREATMENT OF ELIGIBLE
10 OFFENDERS PURSUANT TO SECTION 70.06 OF THE PENAL LAW.

11 2. THE PROGRAMS SHALL EITHER BE LICENSED BY THE OFFICE OF ALCOHOLISM
12 AND SUBSTANCE ABUSE SERVICES OR SHALL BE APPROVED BY THE DIVISION OF
13 PAROLE OR THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES. ANY
14 PROGRAM THAT IS NOT LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE
15 ABUSE SERVICES SHALL PROVIDE TREATMENT SERVICES IN ACCORDANCE WITH ALL
16 BUT NOT LIMITED TO THE FOLLOWING CRITERIA:

17 (A) RELIANCE UPON TRADITIONAL SELF-HELP TECHNIQUES AND PROGRAMS SUCH
18 AS ALCOHOLICS ANONYMOUS OR NARCOTICS ANONYMOUS;

19 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PROVIDE COUNSELING BY
20 SUCCESSFULLY RECOVERING SUBSTANCE ABUSERS ABSTAINING FROM THEIR DEPEND-
21 ENCY FOR AT LEAST TWO YEARS;

22 (C) PROVIDE FOR GROUP LIVING SO LONG AS REQUIRED FOR THE TREATMENT OF
23 THE OFFENDERS;

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

- 1 (D) PROVIDE DAILY COUNSELING FOR AT LEAST THE FIRST NINETY DAYS;
2 (E) PROVIDE LIFE-SKILLS TEACHING; AND
3 (F) PROVIDE FOR DETOXIFICATION SERVICES AND HEALTH-CARE.

4 3. UPON THE SATISFACTORY COMPLETION OF THE COURSE OF TREATMENT, THE
5 ELIGIBLE OFFENDER SHALL HAVE THE COURT IMPOSED SENTENCE OF CONDITIONAL
6 DISCHARGE TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 410.90
7 OF THE CRIMINAL PROCEDURE LAW.

8 4. OFFENDERS ASSIGNED TO A PROGRAM SHALL BE SENTENCED AS A SECOND
9 FELONY OFFENDER IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF
10 SECTION 70.06 OF THE PENAL LAW AND SHALL BE COMMITTED TO THE CUSTODY OF
11 THE DEPARTMENT IF THE COURT DETERMINES:

12 (A) THAT THE OFFENDER ABSCONDED FROM THE SUBSTANCE ABUSE TREATMENT
13 ALTERNATIVE PROGRAM;

14 (B) THAT THE CONFINEMENT OF AN OFFENDER IN THE SUBSTANCE ABUSE TREAT-
15 MENT ALTERNATIVE PROGRAM IS NO LONGER SUITABLE BECAUSE IT ENDANGERS THE
16 SAFETY, SECURITY OR ORDER OF SUCH TREATMENT FACILITY; OR

17 (C) THAT THE OFFENDER VIOLATED THE TERMS AND CONDITIONS OF THE
18 SENTENCE.

19 S 2. Paragraph (a) of subdivision 3 of section 390.30 of the criminal
20 procedure law, as added by chapter 14 of the laws of 1985, is amended to
21 read as follows:

22 (a) The report of the pre-sentence investigation must contain an anal-
23 ysis of as much of the information gathered in the investigation as the
24 agency that conducted the investigation deems relevant to the question
25 of sentence. WHERE APPROPRIATE, THE REPORT MUST INCLUDE A TREATMENT
26 PLAN INCLUDING BUT NOT LIMITED TO A LISTING OF AVAILABLE LICENSED
27 SUBSTANCE ABUSE PROGRAMS BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE
28 SERVICES OR A PROGRAM APPROVED BY THE DIVISION OF PAROLE OR THE DIVISION
29 OF PROBATION AND CORRECTIONAL ALTERNATIVES TO PROVIDE FOR THE CARE AND
30 TREATMENT OF OFFENDERS SENTENCED IN ACCORDANCE WITH THE PROVISIONS OF
31 SUBDIVISION TWO OF SECTION 70.06 OF THE PENAL LAW. The report must also
32 include any other [information] INFORMATION that the court directs to be
33 included and the material required by paragraph (b) of this subdivision
34 which shall be considered part of the report.

35 S 3. The executive law is amended by adding a new section 837-s to
36 read as follows:

37 S 837-S. SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM; SPECIAL
38 PROVISIONS. 1. IN COUNTIES WITH FIVE HUNDRED OR LESS ELIGIBLE OFFENDERS
39 PARTICIPATING IN SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAMS AS
40 ESTABLISHED PURSUANT TO SECTION SEVENTY-TWO-C OF THE CORRECTION LAW,
41 SUCH COUNTY SHALL UTILIZE THE ENFORCEMENT MECHANISM PROVIDED HEREIN. THE
42 COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ESTAB-
43 LISH A UNIT WITHIN THE DIVISION OF PAROLE TO WORK WITH THE DISTRICT
44 ATTORNEY OF SUCH COUNTY AND THE TREATMENT PROGRAMS FOR THE PURPOSE OF
45 LOCATING, APPREHENDING AND REARRESTING OFFENDERS WHO HAVE ABSCONDED
46 FROM, OR VIOLATED THE TERMS AND CONDITIONS OF CONDITIONAL DISCHARGE
47 DURING PARTICIPATION IN A SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM.

48 2. IN COUNTIES WITH FIVE HUNDRED OR MORE ELIGIBLE OFFENDERS PARTIC-
49 IPATING IN SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAMS AS ESTABLISHED
50 PURSUANT TO SECTION SEVENTY-TWO-C OF THE CORRECTION LAW, THE DISTRICT
51 ATTORNEY OF SUCH COUNTY SHALL APPLY TO THE COMMISSIONER OF THE DIVISION
52 OF CRIMINAL JUSTICE SERVICES FOR FUNDS TO ESTABLISH A UNIT TO WORK WITH
53 THE TREATMENT PROGRAMS FOR THE PURPOSE OF LOCATING, APPREHENDING AND
54 REARRESTING OFFENDERS WHO HAVE ABSCONDED FROM, OR VIOLATED THE TERMS AND
55 CONDITIONS OF CONDITIONAL DISCHARGE DURING PARTICIPATION IN A SUBSTANCE
56 ABUSE TREATMENT ALTERNATIVE PROGRAM.

1 S 4. Subdivision 2 of section 70.06 of the penal law, as amended by
2 section 38 of chapter 7 of the laws of 2007, is amended to read as
3 follows:

4 2. Authorized sentence. (A) Except as provided in subdivision [five
5 or] six of this section, or as provided in subdivision five of section
6 70.80 of this article, when the court has found, pursuant to the
7 provisions of the criminal procedure law, that a person is a second
8 felony offender the court must impose an indeterminate sentence of
9 imprisonment. The maximum term of such sentence must be in accordance
10 with the provisions of subdivision three of this section and the minimum
11 period of imprisonment under such sentence must be in accordance with
12 subdivision four of this section. HOWEVER, IN CASES INVOLVING A
13 CONVICTION OF A CLASS D OR E FELONY AS DEFINED IN ARTICLES TWO HUNDRED
14 TWENTY AND TWO HUNDRED TWENTY-ONE OF THIS CHAPTER, OTHERWISE SUBJECT TO
15 SENTENCE UNDER THIS SECTION, WHERE THE PREDICATE OFFENSE DID NOT SUBJECT
16 THE OFFENDER TO A SENTENCE PURSUANT TO THE PROVISIONS OF: (A) SECTION
17 70.02 OF THIS ARTICLE, (B) AN A-I FELONY OFFENSE, (C) MANSLAUGHTER IN
18 THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, VEHICU-
19 LAR MANSLAUGHTER IN THE FIRST DEGREE, AND CRIMINALLY NEGLIGENT HOMICIDE
20 AS DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER, (D) RAPE
21 IN THE SECOND DEGREE, RAPE IN THE THIRD DEGREE, CRIMINAL SEXUAL ACT IN
22 THE SECOND DEGREE, CRIMINAL SEXUAL ACT IN THE THIRD DEGREE, ATTEMPTED
23 SEXUAL ABUSE IN THE FIRST DEGREE, ATTEMPTED RAPE IN THE SECOND DEGREE
24 AND ATTEMPTED CRIMINAL SEXUAL ACT IN THE SECOND DEGREE AS DEFINED IN
25 ARTICLES ONE HUNDRED TEN AND ONE HUNDRED THIRTY OF THIS CHAPTER, AND
26 WHERE IT IS DETERMINED THAT: (I) EXTENDED INSTITUTIONAL CONFINEMENT IS
27 NOT NECESSARY FOR THE PROTECTION OF THE PUBLIC; (II) THE OFFENDER IS IN
28 NEED OF TREATMENT TO RECOGNIZE, MODIFY AND ELIMINATE A SUBSTANCE ABUSE,
29 ALCOHOL ABUSE, SUBSTANCE DEPENDENCY AND/OR ALCOHOL DEPENDENCY; (III) THE
30 OFFENDER DID NOT HAVE SUBSTANTIAL PROPRIETARY OR OTHER AUTHORITATIVE
31 CONTROL OF AN ENTERPRISE DEDICATED TO THE UNLAWFUL MANUFACTURE OR SALE
32 OR DISTRIBUTION OF A CONTROLLED SUBSTANCE OR MARIHUANA; AND (IV) SUCH
33 DISPOSITION IS NOT INCONSISTENT WITH THE ENDS OF JUSTICE, THE COURT MAY
34 IMPOSE A SENTENCE OF CONDITIONAL DISCHARGE PURSUANT TO SECTION 65.05 OF
35 THIS TITLE.

36 (B) IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE FOUR HUNDRED TEN OF
37 THE CRIMINAL PROCEDURE LAW, THE COURT MAY IMPOSE SUCH A SENTENCE ON THE
38 CONDITION THAT THE OFFENDER PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT
39 ALTERNATIVE PROGRAM FOR A SPECIFIED TIME PURSUANT TO SECTION
40 SEVENTY-TWO-C OF THE CORRECTION LAW.

41 (C) UPON COMPLETION OF A COURSE OF TREATMENT, THE COURT SHALL TERMI-
42 NATE THE SENTENCE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 410.90 OF
43 THE CRIMINAL PROCEDURE LAW. IF THE COURT DETERMINES THAT THE OFFENDER
44 ABSCONDED FROM THE SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM OR THAT
45 THE SENTENCE IS NO LONGER SUITABLE BECAUSE IT ENDANGERS THE SAFETY, THE
46 SECURITY OR ORDER OF SUCH TREATMENT FACILITY OR THAT THE OFFENDER OTHER-
47 WISE VIOLATES THE TERMS AND CONDITIONS OF THE SENTENCE, THE SENTENCE MAY
48 BE REVOKED. UPON REVOCATION, THE OFFENDER SHALL BE SENTENCED AS A SECOND
49 FELONY OFFENDER PURSUANT TO THIS SUBDIVISION.

50 (D) THE COURT SHALL CONDUCT AN ONGOING EVALUATION OF THE PROGRAM. THE
51 COURT SHALL UNDERTAKE STUDIES IN CONJUNCTION WITH THE DIVISION OF
52 PROBATION AND CORRECTIONAL ALTERNATIVES, THE DIVISION OF PAROLE, THE
53 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES TO ENSURE THAT THE
54 PROGRAMMATIC OBJECTIVES ARE MET.

1 S 5. Subdivision 2 of section 70.06 of the penal law, as amended by
2 section 39 of chapter 7 of the laws of 2007, is amended to read as
3 follows:

4 2. Authorized sentence. (A) Except [as provided in subdivision five of
5 this section, or] as provided in subdivision five of section 70.80 of
6 this article, when the court has found, pursuant to the provisions of
7 the criminal procedure law, that a person is a second felony offender
8 the court must impose an indeterminate sentence of imprisonment. The
9 maximum term of such sentence must be in accordance with the provisions
10 of subdivision three of this section and the minimum period of imprison-
11 ment under such sentence must be in accordance with subdivision four of
12 this section. HOWEVER, IN CASES INVOLVING A CONVICTION OF A CLASS D OR
13 E FELONY AS DEFINED IN ARTICLES TWO HUNDRED TWENTY AND TWO HUNDRED TWEN-
14 TY-ONE OF THIS CHAPTER, OTHERWISE SUBJECT TO SENTENCE UNDER THIS
15 SECTION, WHERE THE PREDICATE OFFENSE DID NOT SUBJECT THE OFFENDER TO A
16 SENTENCE PURSUANT TO THE PROVISIONS OF: (A) SECTION 70.02 OF THIS ARTI-
17 CLE, (B) AN A-I FELONY OFFENSE, (C) MANSLAUGHTER IN THE SECOND DEGREE,
18 VEHICULAR MANSLAUGHTER IN THE SECOND DEGREE, VEHICULAR MANSLAUGHTER IN
19 THE FIRST DEGREE, AND CRIMINALLY NEGLIGENT HOMICIDE AS DEFINED IN ARTI-
20 CLE ONE HUNDRED TWENTY-FIVE OF THIS CHAPTER, (D) RAPE IN THE SECOND
21 DEGREE, RAPE IN THE THIRD DEGREE, CRIMINAL SEXUAL ACT IN THE SECOND
22 DEGREE, CRIMINAL SEXUAL ACT IN THE THIRD DEGREE, ATTEMPTED SEXUAL ABUSE
23 IN THE FIRST DEGREE, ATTEMPTED RAPE IN THE SECOND DEGREE AND ATTEMPTED
24 CRIMINAL SEXUAL ACT IN THE SECOND DEGREE AS DEFINED IN ARTICLES ONE
25 HUNDRED TEN AND ONE HUNDRED THIRTY OF THIS CHAPTER, AND WHERE IT IS
26 DETERMINED THAT: (I) EXTENDED INSTITUTIONAL CONFINEMENT IS NOT NECESSARY
27 FOR THE PROTECTION OF THE PUBLIC; (II) THE OFFENDER IS IN NEED OF TREAT-
28 MENT TO RECOGNIZE, MODIFY AND ELIMINATE A SUBSTANCE ABUSE, ALCOHOL
29 ABUSE, SUBSTANCE DEPENDENCY AND/OR ALCOHOL DEPENDENCY; (III) THE OFFEN-
30 DER DID NOT HAVE SUBSTANTIAL PROPRIETARY OR OTHER AUTHORITATIVE CONTROL
31 OF AN ENTERPRISE DEDICATED TO THE UNLAWFUL MANUFACTURE OR SALE OR
32 DISTRIBUTION OF A CONTROLLED SUBSTANCE OR MARIHUANA; AND (IV) SUCH
33 DISPOSITION IS NOT INCONSISTENT WITH THE ENDS OF JUSTICE, THE COURT MAY
34 IMPOSE A SENTENCE OF CONDITIONAL DISCHARGE PURSUANT TO SECTION 65.05 OF
35 THIS TITLE.

36 (B) IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE FOUR HUNDRED TEN OF
37 THE CRIMINAL PROCEDURE LAW, THE COURT MAY IMPOSE SUCH A SENTENCE ON THE
38 CONDITION THAT THE OFFENDER PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT
39 ALTERNATIVE PROGRAM FOR A SPECIFIED TIME PURSUANT TO SECTION
40 SEVENTY-TWO-C OF THE CORRECTION LAW.

41 (C) UPON COMPLETION OF A COURSE OF TREATMENT, THE COURT SHALL TERMI-
42 NATE THE SENTENCE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 410.90 OF
43 THE CRIMINAL PROCEDURE LAW. IF THE COURT DETERMINES THAT THE OFFENDER
44 ABSCONDED FROM THE SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM OR THAT
45 THE SENTENCE IS NO LONGER SUITABLE BECAUSE IT ENDANGERS THE SAFETY, THE
46 SECURITY OR ORDER OF SUCH TREATMENT FACILITY OR THAT THE OFFENDER OTHER-
47 WISE VIOLATES THE TERMS AND CONDITIONS OF THE SENTENCE, THE SENTENCE MAY
48 BE REVOKED. UPON REVOCATION, THE OFFENDER SHALL BE SENTENCED AS A SECOND
49 FELONY OFFENDER PURSUANT TO THIS SUBDIVISION.

50 (D) THE COURT SHALL CONDUCT AN ONGOING EVALUATION OF THE PROGRAM. THE
51 COURT SHALL UNDERTAKE STUDIES IN CONJUNCTION WITH THE DIVISION OF
52 PROBATION AND CORRECTIONAL ALTERNATIVES, THE DIVISION OF PAROLE, THE
53 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES TO ENSURE THAT THE
54 PROGRAMMATIC OBJECTIVES ARE MET.

55 S 6. The penal law is amended by adding a new section 220.77 to read
56 as follows:

1 S 220.77 OPERATING AN ILLEGAL DRUG ENTERPRISE.

2 A PERSON IS GUILTY OF OPERATING AN ILLEGAL DRUG ENTERPRISE WHEN HE OR
3 SHE KNOWINGLY AND UNLAWFULLY HAS SUBSTANTIAL PROPRIETARY OR OTHER
4 AUTHORITATIVE CONTROL OF AN ENTERPRISE DEDICATED TO THE UNLAWFUL MANU-
5 FACTURE, SALE OR DISTRIBUTION OF A CONTROLLED SUBSTANCE OR MARIHUANA.
6 OPERATING AN ILLEGAL DRUG ENTERPRISE IS A CLASS C FELONY.

7 S 7. The sum of twenty-one million dollars (\$21,000,000), or so much
8 thereof as may be necessary, is hereby appropriated to the division of
9 criminal justice services in consultation and coordination with the
10 commissioner of alcoholism and substance abuse services, the chairperson
11 of the division of parole, and the director of the division of probation
12 and correctional alternatives out of any moneys in the state treasury in
13 the general fund to the credit of the state purposes account not other-
14 wise appropriated, for carrying out the provisions of this act. Such
15 sum shall be payable on the audit and warrant of the state comptroller
16 on vouchers certified or approved by the commissioner of the division of
17 criminal justice services, or his or her duly designated representative
18 in the manner provided by law. No expenditure shall be made from this
19 appropriation until a certificate of approval of availability shall have
20 been issued by the director of the budget and filed with the state comp-
21 troller and a copy filed with the chairperson of the senate finance
22 committee and the chairperson of the assembly ways and means committee.
23 Such certificate may be amended from time to time by the director of the
24 budget and a copy of each such amendment shall be filed with the state
25 comptroller, the chairperson of the senate finance committee and the
26 chairperson of the assembly ways and means committee.

27 S 8. This act shall take effect on the first of November next succeed-
28 ing the date on which it shall have become a law; provided that the
29 amendments to subdivision 2 of section 70.06 of the penal law made by
30 section four of this act shall be subject to the expiration and rever-
31 sion of such subdivision pursuant to section 74 of chapter 3 of the laws
32 of 1995, as amended, when upon such date the provisions of section five
33 of this act shall take effect.