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

816

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:

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

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

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

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

(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PROVIDE COUNSELING BY SUCCESSFULLY RECOVERING SUBSTANCE ABUSERS ABSTAINING FROM THEIR DEPENDENCY FOR AT LEAST TWO YEARS;

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

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

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(D) PROVIDE DAILY COUNSELING FOR AT LEAST THE FIRST NINETY DAYS;
(E) PROVIDE LIFE-SKILLS TEACHING; AND
(F) PROVIDE FOR DETOXIFICATION SERVICES AND HEALTH-CARE.
3. UPON THE SATISFACTORY COMPLETION OF THE COURSE OF TREATMENT, THE ELIGIBLE OFFENDER SHALL HAVE THE COURT IMPOSED SENTENCE OF CONDITIONAL DISCHARGE TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 410.90 OF THE CRIMINAL PROCEDURE LAW.
4. OFFENDERS ASSIGNED TO A PROGRAM SHALL BE SENTENCED AS A SECOND FELONY OFFENDER IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION 70.06 OF THE PENAL LAW AND SHALL BE COMMITTED TO THE CUSTODY OF THE DEPARTMENT IF THE COURT DETERMINES:
(A) THAT THE OFFENDER ABSCONDED FROM THE SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM;
(B) THAT THE CONFINEMENT OF AN OFFENDER IN THE SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM IS NO LONGER SUITABLE BECAUSE IT ENDANGERS THE SAFETY, SECURITY OR ORDER OF SUCH TREATMENT FACILITY; OR
(C) THAT THE OFFENDER VIOLATED THE TERMS AND CONDITIONS OF THE SENTENCE.
S 2. Paragraph (a) of subdivision 3 of section 390.30 of the criminal procedure law, as added by chapter 14 of the laws of 1985, is amended to read as follows:
(a) The report of the pre-sentence investigation must contain an analysis of as much of the information gathered in the investigation as the agency that conducted the investigation deems relevant to the question of sentence. WHERE APPROPRIATE, THE REPORT MUST INCLUDE A TREATMENT PLAN INCLUDING BUT NOT LIMITED TO A LISTING OF AVAILABLE LICENSED SUBSTANCE ABUSE PROGRAMS BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES OR A PROGRAM APPROVED BY THE DIVISION OF PAROLE OR THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES TO PROVIDE FOR THE CARE AND TREATMENT OF OFFENDERS SENTENCED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION 70.06 OF THE PENAL LAW. The report must also include any other [imformation] INFORMATION that the court directs to be included and the material required by paragraph (b) of this subdivision which shall be considered part of the report.
S 3. The executive law is amended by adding a new section 837-s to read as follows:
S 837-S. SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM; SPECIAL PROVISIONS. 1. IN COUNTIES WITH FIVE HUNDRED OR LESS ELIGIBLE OFFENDERS PARTICIPATING IN SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAMS AS ESTABLISHED PURSUANT TO SECTION SEVENTY-TWO-C OF THE CORRECTION LAW, SUCH COUNTY SHALL UTILIZE THE ENFORCEMENT MECHANISM PROVIDED HEREIN. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ESTABLISH A UNIT WITHIN THE DIVISION OF PAROLE TO WORK WITH THE DISTRICT ATTORNEY OF SUCH COUNTY AND THE TREATMENT PROGRAMS FOR THE PURPOSE OF LOCATING, APPREHENDING AND REARRESTING OFFENDERS WHO HAVE ABSCONDED FROM, OR VIOLATED THE TERMS AND CONDITIONS OF CONDITIONAL DISCHARGE DURING PARTICIPATION IN A SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM.
2. IN COUNTIES WITH FIVE HUNDRED OR MORE ELIGIBLE OFFENDERS PARTICIPATING IN SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAMS AS ESTABLISHED PURSUANT TO SECTION SEVENTY-TWO-C OF THE CORRECTION LAW, THE DISTRICT ATTORNEY OF SUCH COUNTY SHALL APPLY TO THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR FUNDS TO ESTABLISH A UNIT TO WORK WITH THE TREATMENT PROGRAMS FOR THE PURPOSE OF LOCATING, APPREHENDING AND REARRESTING OFFENDERS WHO HAVE ABSCONDED FROM, OR VIOLATED THE TERMS AND CONDITIONS OF CONDITIONAL DISCHARGE DURING PARTICIPATION IN A SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM.

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

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

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

(C) UPON COMPLETION OF A COURSE OF TREATMENT, THE COURT SHALL TERMINATE THE SENTENCE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 410.90 OF THE CRIMINAL PROCEDURE LAW. IF THE COURT DETERMINES THAT THE OFFENDER ABSCONDED FROM THE SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM OR THAT THE SENTENCE IS NO LONGER SUITABLE BECAUSE IT ENDANGERS THE SAFETY, THE SECURITY OR ORDER OF SUCH TREATMENT FACILITY OR THAT THE OFFENDER OTHERWISE VIOLATES THE TERMS AND CONDITIONS OF THE SENTENCE, THE SENTENCE MAY BE REVOKED. UPON REVOCATION, THE OFFENDER SHALL BE SENTENCED AS A SECOND FELONY OFFENDER PURSUANT TO THIS SUBDIVISION.

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

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

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

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

(C) UPON COMPLETION OF A COURSE OF TREATMENT, THE COURT SHALL TERMINATE THE SENTENCE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 410.90 OF THE CRIMINAL PROCEDURE LAW. IF THE COURT DETERMINES THAT THE OFFENDER ABSCONDED FROM THE SUBSTANCE ABUSE TREATMENT ALTERNATIVE PROGRAM OR THAT THE SENTENCE IS NO LONGER SUITABLE BECAUSE IT ENDANGERS THE SAFETY, THE SECURITY OR ORDER OF SUCH TREATMENT FACILITY OR THAT THE OFFENDER OTHERWISE VIOLATES THE TERMS AND CONDITIONS OF THE SENTENCE, THE SENTENCE MAY BE REVOKED. UPON REVOCATION, THE OFFENDER SHALL BE SENTENCED AS A SECOND FELONY OFFENDER PURSUANT TO THIS SUBDIVISION.

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

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

S 220.77 OPERATING AN ILLEGAL DRUG ENTERPRISE.

A PERSON IS GUILTY OF OPERATING AN ILLEGAL DRUG ENTERPRISE WHEN HE OR SHE KNOWINGLY AND UNLAWFULLY HAS SUBSTANTIAL PROPRIETARY OR OTHER AUTHORITATIVE CONTROL OF AN ENTERPRISE DEDICATED TO THE UNLAWFUL MANUFACTURE, SALE OR DISTRIBUTION OF A CONTROLLED SUBSTANCE OR MARIHUANA.

OPERATING AN ILLEGAL DRUG ENTERPRISE IS A CLASS C FELONY.

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

S 8. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided that the amendments to subdivision 2 of section 70.06 of the penal law made by section four of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 74 of chapter 3 of the laws of 1995, as amended, when upon such date the provisions of section five of this act shall take effect.