

1675

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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

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

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

1     Section 1. Subdivision 2 of section 243 of the executive law, as  
2     amended by chapter 574 of the laws of 1985, is amended to read as  
3     follows:  
4     2. The director shall exercise general supervision over the utilization  
5     of correctional alternative programs throughout the state. [He] THE  
6     DIRECTOR shall collect statistical and other information and make recommendations  
7     regarding the availability, identification, coordination and  
8     utilization of such programs. The director shall endeavor to facilitate  
9     communication and coordination among and between correctional alternative  
10    programs and probation services in order to assist in making effective  
11    use of such programs. A correctional alternative program shall be  
12    deemed to refer to those programs, including eligible programs as  
13    defined in paragraph b of subdivision one of section two hundred sixty-  
14    one of this chapter, which by themselves, or when used in conjunction  
15    with one or more programs or with probation services, may serve as an  
16    alternative to a sentence or disposition of incarceration or a portion  
17    thereof, and which shall serve the interests of justice. The director  
18    shall further exercise general supervision over the administration and  
19    implementation of alternatives to incarceration service plans under the  
20    provisions of article thirteen-A of this chapter. [He] THE DIRECTOR  
21    shall adopt general rules and regulations which shall regulate methods  
22    and procedures in the administration and funding of alternative to  
23    incarceration service plans, and any other correctional alternative  
24    program funded by the state through the division[, including but not

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

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

13 S 2. Subdivision 4 of section 262 of the executive law, as added by  
14 chapter 907 of the laws of 1984 and paragraph a as amended by chapter  
15 421 of the laws of 1988, is amended to read as follows:

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

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

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

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

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

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

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

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

29 S 5. Paragraph b of subdivision 2 and subdivision 3 of section 265 of  
30 the executive law, paragraph b of subdivision 2 and the opening para-  
31 graph of subdivision 3 as amended by chapter 338 of the laws of 1989,  
32 subdivision 3 as added by chapter 907 of the laws of 1984 and paragraph  
33 b of subdivision 3 as amended by chapter 320 of the laws of 1989, are  
34 amended to read as follows:

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

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

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

5 [b.] In [the first] ANY year of the approved service plan [an agree-  
6 ment by] the division SHALL AGREE to reimburse to the municipality up to  
7 fifty percent of [the state's share of the] DIVISION APPROVED MUNICI-  
8 PALITY'S costs at the initial approval OR RENEWAL of the plan[; one-half  
9 of the remaining fifty percent of the state's share shall be allocated  
10 to municipalities during the implementation of the plan, provided there  
11 is substantial compliance with timetables and any other provisions of  
12 the plan deemed necessary by the division. The balance of the state's  
13 share of the costs shall be allocated to the municipality in a manner  
14 determined by the division. In any subsequent year, the division shall  
15 reimburse to the municipality the state's share of actual costs incurred  
16 under the plan]. In no event shall the state's [share exceed fifty  
17 percent of the total cost of the plan, nor shall it] REIMBURSEMENT be  
18 used to replace current expenditures by the municipality for such alter-  
19 natives programs. However, in determining the amount of the municipal  
20 [share of the] cost of a program, the division shall [reduce the amount  
21 of the municipal share] CREDIT THE MUNICIPALITY by an amount equal to  
22 the costs incurred by such municipality on implementation of any of the  
23 plan's provisions during the year immediately preceding approval of the  
24 plan by the division. [Any such amount resulting in a reduction of the  
25 municipal share shall not be considered in calculating the municipal  
26 share of any future program;] IN SUCH INSTANCES, THE DIVISION MAY REIM-  
27 BURSE UP TO ONE HUNDRED PERCENT OF THE MUNICIPALITY'S COST OF THE  
28 PROGRAM.

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

33 d.] Any costs in excess of the [amount] MAXIMUM DIVISION REIMBURSEMENT  
34 provided for in this subdivision will be the responsibility of the muni-  
35 cipality [except as otherwise provided in this article;].

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

44 [f. An agreement that in] IN the event [of] private [financial assist-  
45 ance, which was not included in the calculation of the municipal payment  
46 and which] FUNDING becomes available to the municipality[, such finan-  
47 cial assistance shall result in a reduction of the municipal share by  
48 said amount] FOR THE OPERATION OF ANY PROGRAM, THE DIVISION SHALL REIM-  
49 BURSE UP TO FIFTY PERCENT OF THE PRIVATE FUNDS EXPENDED BY THE MUNICI-  
50 PALITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and crime and the success of the eligible alcohol and substance abuse  
2 programs and sentencing decisions together with any recommendations with  
3 respect to the proper operation or improvement of planning and implemen-  
4 tation of effective alternatives to detention and alternatives to incar-  
5 ceration programs in counties.

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