

1801

2009-2010 Regular Sessions

I N A S S E M B L Y

January 12, 2009

Introduced by M. of A. DINOWITZ -- Multi-Sponsored by -- M. of A. PHEFFER -- read once and referred to the Committee on Codes

AN ACT to amend the alcoholic beverage control law, the correction law, the environmental conservation law, the executive law, the parks, recreation and historic preservation law and the vehicle and traffic law, in relation to compensatory service

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

1 Section 1. Paragraphs (a), (b) and (c) of subdivision 3 and subdivi-
2 sion 4 of section 65-b of the alcoholic beverage control law, as amended
3 by chapter 519 of the laws of 1999, are amended to read as follows:
4 (a) For a first violation, the court shall order payment of a fine of
5 not more than one hundred dollars and/or an appropriate amount of
6 [community] COMPENSATORY service not to exceed thirty hours. In addi-
7 tion, the court may order completion of an alcohol awareness program
8 established pursuant to section 19.25 of the mental hygiene law.
9 (b) For a second violation, the court shall order payment of a fine of
10 not less than fifty dollars nor more than three hundred fifty dollars
11 and/or an appropriate amount of [community] COMPENSATORY service not to
12 exceed thirty hours. The court also shall order completion of an alcohol
13 awareness program as referenced in paragraph (a) of this subdivision if
14 such program has not previously been completed by the offender, unless
15 the court determines that attendance at such program is not feasible due
16 to the lack of availability of such program within a reasonably close
17 proximity to the locality in which the offender resides or matriculates,
18 as appropriate.
19 (c) For third and subsequent violations, the court shall order payment
20 of a fine of not less than fifty dollars nor more than seven hundred
21 fifty dollars and/or an appropriate amount of [community] COMPENSATORY
22 service not to exceed thirty hours. The court also shall order that such
23 person submit to an evaluation by an appropriate agency certified or

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

LBD02765-01-9

1 licensed by the office of alcoholism and substance abuse services to
2 determine whether the person suffers from the disease of alcoholism or
3 alcohol abuse, unless the court determines that under the circumstances
4 presented such an evaluation is not necessary, in which case the court
5 shall state on the record the basis for such determination. Payment for
6 such evaluation shall be made by such person. If, based on such evalu-
7 ation, a need for treatment is indicated, such person may choose to
8 participate in a treatment plan developed by an agency certified or
9 licensed by the office of alcoholism and substance abuse services. If
10 such person elects to participate in recommended treatment, the court
11 shall order that payment of such fine and [community] COMPENSATORY
12 service be suspended pending the completion of such treatment.

13 4. A person violating the provisions of paragraph (b) of subdivision
14 two of this section shall be guilty of a violation punishable by a fine
15 of not more than one hundred dollars, and/or an appropriate amount of
16 [community] COMPENSATORY service not to exceed thirty hours. In addi-
17 tion, the court may order completion of an alcohol training awareness
18 program established pursuant to subdivision twelve of section seventeen
19 of this chapter where such program is located within a reasonably close
20 proximity to the locality in which the offender is employed or resides.

21 S 2. Paragraphs (a), (b) and (c) of subdivision 2 and subdivision 3 of
22 section 65-b of the alcoholic beverage control law, as amended by chap-
23 ter 383 of the laws of 1998, are amended to read as follows:

24 (a) For a first violation, the court shall order payment of a fine of
25 not more than one hundred dollars and/or an appropriate amount of
26 [community] COMPENSATORY service not to exceed thirty hours. In addi-
27 tion, the court may order completion of an alcohol awareness program
28 established pursuant to section 19.25 of the mental hygiene law.

29 (b) For a second violation, the court shall order payment of a fine of
30 not less than fifty dollars nor more than three hundred fifty dollars
31 and/or an appropriate amount of [community] COMPENSATORY service not to
32 exceed thirty hours. The court also shall order completion of an alcohol
33 awareness program as referenced in paragraph (a) of this subdivision if
34 such program has not previously been completed by the offender, unless
35 the court determines that attendance at such program is not feasible due
36 to the lack of availability of such program within a reasonably close
37 proximity to the locality in which the offender resides or matriculates,
38 as appropriate.

39 (c) For third and subsequent violations, the court shall order payment
40 of a fine of not less than fifty dollars nor more than seven hundred
41 fifty dollars and/or an appropriate amount of [community] COMPENSATORY
42 service not to exceed thirty hours. The court also shall order that such
43 person submit to an evaluation by an appropriate agency certified or
44 licensed by the office of alcoholism and substance abuse services to
45 determine whether the person suffers from the disease of alcoholism or
46 alcohol abuse, unless the court determines that under the circumstances
47 presented such an evaluation is not necessary, in which case the court
48 shall state on the record the basis for such determination. Payment for
49 such evaluation shall be made by such person. If, based on such evalu-
50 ation, a need for treatment is indicated, such person may choose to
51 participate in a treatment plan developed by an agency certified or
52 licensed by the office of alcoholism and substance abuse services. If
53 such person elects to participate in recommended treatment, the court
54 shall order that payment of such fine and [community] COMPENSATORY
55 service be suspended pending the completion of such treatment.

1 3. A person violating the provisions of paragraph (b) of subdivision
2 one of this section shall be guilty of a violation punishable by a fine
3 of not more than one hundred dollars, and/or an appropriate amount of
4 [community] COMPENSATORY service not to exceed thirty hours. In addi-
5 tion, the court may order completion of an alcohol training awareness
6 program established pursuant to subdivision twelve of section seventeen
7 of this chapter where such program is located within a reasonably close
8 proximity to the locality in which the offender is employed or resides.

9 S 3. Subdivision 5 of section 851 of the correction law, as amended by
10 chapter 691 of the laws of 1977, is amended to read as follows:

11 5. "[Community] COMPENSATORY services program" means a program under
12 which eligible inmates may be granted the privilege of leaving the prem-
13 ises of an institution for a period not exceeding fourteen hours in any
14 day for the purpose of participation in religious services, volunteer
15 work, or athletic events, or for any matter necessary to the furtherance
16 of any such purposes.

17 S 4. Subdivision 2 of section 855 of the correction law, as amended by
18 chapter 691 of the laws of 1977, is amended to read as follows:

19 2. Any eligible inmate may make application to the temporary release
20 committee for participation in a furlough program or [community] COMPEN-
21 SATORY services program, or for an industrial training leave or educa-
22 tional leave.

23 S 5. Paragraph hh of subdivision 1 of section 3-0301 of the environ-
24 mental conservation law, as amended by chapter 461 of the laws of 1990,
25 is amended to read as follows:

26 hh. Cooperate with the division of probation and correctional alter-
27 natives by identifying appropriate worksites where persons performing
28 [community] COMPENSATORY service as part of a criminal disposition may
29 be assigned to provide cleanup and other maintenance services in order
30 to preserve and enhance the state's natural beauty and human-made scenic
31 qualities. Such sites may include but are not limited to the state's
32 shorelines, beaches, parks, roadways, historic sites and other natural
33 or human-made resources.

34 S 6. Paragraph b of subdivision 1 of section 261 of the executive law,
35 as amended by chapter 461 of the laws of 1990, is amended to read as
36 follows:

37 b. "Eligible programs" means existing programs, enhancement of exist-
38 ing programs or initiation of new programs or, if submitting an approved
39 amendment pursuant to section two hundred sixty-six of this article,
40 eligible alcohol and substance abuse programs as defined in paragraph c
41 of this subdivision which serve to assist the court, public officers or
42 others in identifying and avoiding the inappropriate use of incarceration.
43 Such programs may be administered by either the county or private,
44 community-based organizations and may include, but shall not be limited
45 to: new or enhanced specialized probation services which exceed those
46 probation services otherwise required to be performed in accordance with
47 applicable law, rule or regulation of the state division of probation
48 and correctional alternatives subject to the provisions of this article;
49 a pre-trial alternative to detention program, including a comprehensive
50 pre-arraignment program which screens all defendants and ensures that
51 the court is fully advised of the availability of alternatives based
52 upon the defendant's suitability and needs prior to its determination
53 regarding the issuance of a securing order, or an effective bail review
54 program; alternatives to post-adjudicatory incarceration programs,
55 including [community] COMPENSATORY service, substance abuse or alcohol
56 intervention programs; and management information systems designed to

1 improve the county's ability to identify appropriate persons for alter-
2 natives to detention or incarceration, as well as for improved classi-
3 fication of persons within jail. For purposes of this paragraph, [commu-
4 nity] COMPENSATORY service programs may place persons performing
5 [community] COMPENSATORY service at worksites identified by the commis-
6 sioner of the department of environmental conservation and the commis-
7 sioner of the office of parks, recreation and historic preservation.

8 S 7. Subdivision 2-f of section 3.09 of the parks, recreation and
9 historic preservation law, as amended by chapter 461 of the laws of 1990
10 and as separately renumbered by chapters 460 and 552 of the laws of
11 2001, is amended to read as follows:

12 2-f. Cooperate with the division of probation and correctional alter-
13 natives by identifying appropriate worksites where persons performing
14 [community] COMPENSATORY service as part of a criminal disposition may
15 be assigned to provide cleanup and other maintenance services in order
16 to preserve and enhance the state's natural beauty and human-made scenic
17 qualities. Such sites may include but are not limited to the state's
18 shorelines, beaches, parks, roadways, historic sites and other natural
19 or human-made resources.

20 S 8. Paragraph (e) of subdivision 3 of section 1198 of the vehicle and
21 traffic law, as amended by chapter 669 of the laws of 2007, is amended
22 to read as follows:

23 (e) Nothing contained [herein] IN THIS SUBDIVISION shall prevent the
24 court from applying any other conditions of probation allowed by law,
25 including treatment for alcohol or drug abuse, restitution and [communi-
26 ty] COMPENSATORY service.

27 S 9. This act shall take effect immediately; provided, that the amend-
28 ments to section 65-b of the alcoholic beverage control law made by
29 section one of this act shall be subject to the expiration and reversion
30 of such section pursuant to section 4 of chapter 519 of the laws of
31 1999, as amended, when upon such date the provisions of section two of
32 this act shall take effect; and provided, further, that the amendments
33 to subdivision 5 of section 851 and the amendments to subdivision 2 of
34 section 855 of the correction law made by sections three and four of
35 this act shall not affect the expiration of such sections and shall be
36 deemed to expire therewith; provided further that the amendments to
37 paragraph b of subdivision 1 of section 261 of the executive law and the
38 amendments to paragraph (e) of subdivision 3 of section 1198 of the
39 vehicle and traffic law made by sections six and eight of this act shall
40 not affect the repeal of such sections and shall be deemed repealed
41 therewith.