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

3984

2009-2010 Regular Sessions

I N A S S E M B L Y

January 29, 2009

Introduced by M. of A. AUBRY, GANTT, WRIGHT, CLARK, PRETLOW, GREENE, JAFFEE, JEFFRIES, ROSENTHAL -- Multi-Sponsored by -- M. of A. ARROYO, BOYLAND, BRADLEY, COOK, DIAZ, ESPAILLAT, FARRELL, GLICK, GOTTFRIED, HEASTIE, HOOPER, HOYT, JACOBS, JOHN, McENENY, ORTIZ, PAULIN, PERRY, PHEFFER, SCARBOROUGH, TOWNS, WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the state finance law, in relation to authorized sentences of imprisonment for possession and sale of controlled substances; to amend the state finance law, in relation to establishing the crime reduction fund; and making an appropriation therefor

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

Section 1. Section 60.05 of the penal law, as amended by chapter 410 of the laws of 1979, the section heading and subdivisions 2, 3, 4 and 5 as amended by chapter 738 of the laws of 2004 and subdivision 1 as amended by chapter 7 of the laws of 2007, is amended to read as follows:

S 60.05 Authorized dispositions; other class A, B, certain C and D felonies and multiple felony offenders.

1. Applicability. Except as provided in section 60.04 of this article governing the authorized dispositions applicable to felony offenses defined in article two hundred twenty or two hundred twenty-one of this chapter or in section 60.13 of this article governing the authorized dispositions applicable to felony sex offenses defined in paragraph (a) of subdivision one of section 70.80 of this title, this section shall govern the dispositions authorized when a person is to be sentenced upon a conviction of a class A felony, a class B felony or a class C, class D or class E felony specified herein, or when a person is to be sentenced upon a conviction of a felony as a multiple felony offender.

2. Class A felony. Except as provided in subdivisions three and four of section 70.06 of this [chapter] TITLE, every person convicted of a

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

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class A felony must be sentenced to imprisonment in accordance with section 70.00 of this title, unless such person is convicted of murder in the first degree and is sentenced in accordance with section 60.06 of this article.

3. Class B felony. Except as provided in subdivision six of this section, every person convicted of a class B violent felony offense as defined in subdivision one of section 70.02 of this title, must be sentenced to imprisonment in accordance with such section 70.02; and, except as provided in subdivision six of this section, every person convicted of any other class B felony must be sentenced to imprisonment in accordance with section 70.00 of this title OR TO PROBATION IN ACCORDANCE WITH SECTION 65.00 OF THIS TITLE.

4. Certain class C felonies. Except as provided in subdivision six, every person convicted of a class C violent felony offense as defined in subdivision one of section 70.02 of this title, must be sentenced to imprisonment in accordance with section 70.02 of this title; and, except as provided in subdivision six of this section, every person convicted of the class C felonies of: attempt to commit any of the class B felonies of bribery in the first degree as defined in section 200.04, bribe receiving in the first degree as defined in section 200.12, conspiracy in the second degree as defined in section 105.15 and criminal mischief in the first degree as defined in section 145.12; criminal usury in the first degree as defined in section 190.42, rewarding official misconduct in the first degree as defined in section 200.22, receiving reward for official misconduct in the first degree as defined in section 200.27, attempt to promote prostitution in the first degree as defined in section 230.32, promoting prostitution in the second degree as defined in section 230.30, arson in the third degree as defined in section 150.10 of this chapter, must be sentenced to imprisonment in accordance with section 70.00 of this title OR TO PROBATION IN ACCORDANCE WITH SECTION 65.00 OF THIS TITLE.

5. Certain class D felonies. Except as provided in subdivision six of this section, every person convicted of the class D felonies of assault in the second degree as defined in section 120.05 or attempt to commit a class C felony as defined in section 230.30 of this chapter, must be sentenced in accordance with section 70.00 or 85.00 of this title.

6. Multiple felony offender. When the court imposes sentence upon a second violent felony offender, as defined in section 70.04,[or a second felony offender, as defined in section 70.06,] the court must impose a sentence of imprisonment in accordance with section 70.04 [or 70.06, as the case may be], unless it imposes a sentence of imprisonment in accordance with section 70.08 [or 70.10]. WHEN THE COURT IMPOSES SENTENCE UPON A SECOND FELONY OFFENDER, AS DEFINED IN SECTION 70.06, THE COURT MUST IMPOSE A SENTENCE IN ACCORDANCE WITH SUCH SECTION 70.06, UNLESS IT IMPOSES A SENTENCE IN ACCORDANCE WITH SECTION 70.10.

7. Fines. Where the court imposes a sentence of imprisonment in accordance with this section, the court also may impose a fine authorized by article eighty and in such case the sentence shall be both imprisonment and a fine.

S 2. Section 65.00 of the penal law, subdivisions 1 and 2 as amended by chapter 835 of the laws of 1974, the opening paragraph of paragraph (a) of subdivision 1 and subparagraph (ii) of paragraph (a) of subdivision 3 as amended by chapter 738 of the laws of 2004, the opening paragraph of paragraph (b) of subdivision 1 as amended by chapter 410 of the laws of 1979, the closing paragraph of subdivision 1 as amended by chapter 3 of the laws of 1995, subdivisions 3 and 4 as amended by chapter

264 of the laws of 2003, paragraph (c) of subdivision 3 as amended by chapter 568 of the laws of 2004 and the closing paragraph of subdivision 3 as amended by chapter 320 of the laws of 2006, is amended to read as follows:

S 65.00 Sentence of probation.

1. Criteria. [(a)] Except as otherwise required by section 60.04 or 60.05 of this title, [and except as provided by paragraph (b) hereof,] the court may sentence a person to a period of probation upon conviction of any crime if the court, having regard to the nature and circumstances of the crime and to the history, character and condition of the defendant, is of the opinion that:

[(i)] (A) Institutional confinement for the term authorized by law of the defendant is or may not be necessary for the protection of the public;

[(ii)] (B) the defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision; and

[(iii)] (C) such disposition is not inconsistent with the ends of justice.

[(b) The court, with the concurrence of either the administrative judge of the court or of the judicial district within which the court is situated or such administrative judge as the presiding justice of the appropriate appellate division shall designate, may sentence a person to a period of probation upon conviction of a class A-II felony or a class B felony defined in article two hundred twenty if the prosecutor either orally on the record or in a writing filed with the indictment recommends that the court sentence such person to a period of probation upon the ground that such person has or is providing material assistance in the investigation, apprehension or prosecution of any person for a felony defined in article two hundred twenty or the attempt or the conspiracy to commit any such felony, and if the court, having regard to the nature and circumstances of the crime and to the history, character and condition of the defendant is of the opinion that:

(i) Institutional confinement of the defendant is not necessary for the protection of the public;

(ii) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through probation supervision;

(iii) The defendant has or is providing material assistance in the investigation, apprehension or prosecution of a person for a felony defined in article two hundred twenty or the attempt or conspiracy to commit any such felony; and

(iv) Such disposition is not inconsistent with the ends of justice.]

Provided, however, that the court shall not, except to the extent authorized by paragraph (d) of subdivision two of section 60.01 of this [chapter] TITLE, impose a sentence of probation in any case where it sentences a defendant for more than one crime and imposes a sentence of imprisonment for any one of the crimes, or where the defendant is subject to an undischarged indeterminate or determinate sentence of imprisonment which was imposed at a previous time by a court of this state and has more than one year to run.

2. Sentence. When a person is sentenced to a period of probation the court shall, except to the extent authorized by paragraph (d) of subdivision two of section 60.01 of this [chapter] TITLE, impose the period authorized by subdivision three of this section and shall specify, in accordance with section 65.10, the conditions to be complied with. The

court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation.

3. Periods of probation. Unless terminated sooner in accordance with the criminal procedure law, the period of probation shall be as follows:

(a) [(i)] For a felony, [other than a class A-II felony or a class B felony defined in article two hundred twenty of this chapter or a sexual assault,] the period of probation shall be five years;

[(ii) For a class A-II felony controlled substance offender as defined in paragraph (a) of subdivision one of section 70.71 of this chapter or a class B second felony drug offender as defined in paragraph (b) of subdivision one of section 70.70 of this chapter, the period of probation shall be life, and for a class B felony drug offender as defined in paragraph (a) of subdivision one of section 70.70 of this chapter, the period of probation shall be twenty-five years;

(iii) For a felony sexual assault, the period of probation shall be ten years.]

(b) (i) For a class A misdemeanor, other than a sexual assault, the period of probation shall be three years;

(ii) For a class A misdemeanor sexual assault, the period of probation shall be six years.

(c) For a class B misdemeanor, the period of probation shall be one year, except the period of probation shall be no less than one year and no more than three years for the class B misdemeanor of public lewdness as defined in section 245.00 of this chapter;

(d) For an unclassified misdemeanor, the period of probation shall be three years if the authorized sentence of imprisonment is in excess of three months, otherwise the period of probation shall be one year.

For the purposes of this section, the term "sexual assault" means an offense defined in article one hundred thirty or two hundred sixty-three, or in section 255.25, 255.26 or 255.27 of this chapter, or an attempt to commit any of the foregoing offenses.

4. In any case where a court pursuant to its authority under subdivision four of section 60.01 of this [chapter] TITLE revokes probation and sentences such person to imprisonment and probation, as provided in paragraph (d) of subdivision two of section 60.01 of this [chapter] TITLE, the period of probation shall be the remaining period of the original probation sentence or one year whichever is greater.

S 3. Subdivision 1 of section 70.00 of the penal law, as amended by section 36 of chapter 7 of the laws of 2007, is amended and two new subdivisions 4-a and 4-b are added to read as follows:

1. Indeterminate sentence. Except as provided in subdivisions four, five and six of this section or section 70.80 of this article, a sentence of imprisonment for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be an indeterminate sentence. When such a sentence is imposed, the court, EXCEPT AS PROVIDED IN SUBDIVISIONS FOUR-A AND FOUR-B OF THIS SECTION, shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

4-A. ALTERNATIVE SENTENCE FOR CERTAIN CLASS A FELONIES. WHEN A PERSON, OTHER THAN A PERSISTENT FELONY OFFENDER, IS SENTENCED FOR A CLASS A FELONY SPECIFIED IN ARTICLE TWO HUNDRED TWENTY AND THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT A SENTENCE OF

IMPRISONMENT IS NECESSARY BUT THAT IT WOULD BE UNDULY HARSH TO IMPOSE AN INDETERMINATE SENTENCE IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION TWO AND PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION, THE COURT MAY IMPOSE A LESSER SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH ANY OTHER PROVISION OF THIS SECTION.

4-B. ALTERNATIVE SENTENCE FOR CERTAIN CLASS B FELONIES. WHEN A PERSON, OTHER THAN A PERSISTENT FELONY OFFENDER, IS SENTENCED FOR A CLASS B FELONY SPECIFIED IN ARTICLE TWO HUNDRED TWENTY OR ANY OTHER CLASS B FELONY NOT DEFINED IN SUBDIVISION ONE OF SECTION 70.02 AND THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY AND CHARACTER OF THE DEFENDANT, IS OF THE OPINION THAT A SENTENCE OF IMPRISONMENT IS NECESSARY BUT THAT IT WOULD BE UNDULY HARSH TO IMPOSE AN INDETERMINATE SENTENCE IN ACCORDANCE WITH PARAGRAPH (B) OF SUBDIVISION TWO AND PARAGRAPH (B) OF SUBDIVISION THREE OF THIS SECTION, THE COURT MAY IMPOSE A LESSER SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH ANY OTHER PROVISION OF THIS SECTION.

S 4. Subdivision 1 of section 70.00 of the penal law, as amended by section 37 of chapter 7 of the laws of 2007, is amended to read as follows:

1. Indeterminate sentence. Except as provided in subdivisions four and five of this section or section 70.80 of this article, a sentence of imprisonment for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be an indeterminate sentence. When such a sentence is imposed, the court, EXCEPT AS PROVIDED IN SUBDIVISIONS FOUR-A AND FOUR-B OF THIS SECTION, shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

S 5. Section 70.06 of the penal law is amended by adding a new subdivision 2-a to read as follows:

2-A. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, THE COURT, HAVING REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE HISTORY, CHARACTER AND CONDITION OF THE DEFENDANT, MAY, IN THE INTEREST OF JUSTICE, SENTENCE A SECOND FELONY OFFENDER IN ACCORDANCE WITH SECTION 70.00 OR SECTION 65.00.

S 6. Section 110.05 of the penal law, as amended by chapter 276 of the laws of 1973, subdivision 1 as amended by chapter 93 of the laws of 2006 and subdivisions 3, 4, 5, 6, 7 and 8 as renumbered by chapter 410 of the laws of 1979, is amended to read as follows:

S 110.05 Attempt to commit a crime; punishment.

An attempt to commit a crime is a:

1. Class A-I felony when the crime attempted is the A-I felony of murder in the first degree, aggravated murder as defined in subdivision one of section 125.26 of this chapter, criminal possession of a controlled substance in the first degree[, criminal sale of a controlled substance in the first degree, criminal possession of a chemical or biological weapon in the first degree or criminal use of a chemical or biological weapon in the first degree;

2. Class A-II felony when the crime attempted is a class A-II felony];

[3]2. Class B felony when the crime attempted is a class A-I OR A-II felony except as provided in subdivision one hereof;

[4]3. Class C felony when the crime attempted is a class B felony;

[5]4. Class D felony when the crime attempted is a class C felony;

[6]5. Class E felony when the crime attempted is a class D felony;

[7]6. Class A misdemeanor when the crime attempted is a class E felony;

[8]7. Class B misdemeanor when the crime attempted is a misdemeanor.

S 7. Subdivision 15 of section 220.09 of the penal law, as added by chapter 264 of the laws of 2003, is amended and a new subdivision 16 is added to read as follows:

15. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of two hundred grams or more[.]; OR

16. A NARCOTIC DRUG WITH INTENT TO SELL IT AND THE NARCOTIC DRUG WEIGHS TEN GRAINS OR LESS.

S 8. Subdivision 1 of section 220.16 of the penal law, as amended by chapter 75 of the laws of 1995, is amended to read as follows:

1. a narcotic drug with intent to sell it AND THE NARCOTIC DRUG WEIGHS MORE THAN TEN GRAINS; or

S 9. Subdivision 9 of section 220.34 of the penal law, as added by chapter 264 of the laws of 2003, is amended and a new subdivision 10 is added to read as follows:

9. one or more preparations, compounds, mixtures or substances containing gamma hydroxybutyric acid, as defined in paragraph four of subdivision (e) of schedule I of section thirty-three hundred six of the public health law, and said preparations, compounds, mixtures or substances are of an aggregate weight of twenty-eight grams or more[.]; OR

10. A NARCOTIC DRUG AND THE NARCOTIC DRUG WEIGHS TEN GRAINS OR LESS.

S 10. Subdivision 1 of section 220.39 of the penal law, as amended by chapter 1051 of the laws of 1973, is amended to read as follows:

1. a narcotic drug AND THE NARCOTIC DRUG WEIGHS MORE THAN TEN GRAINS; or

S 11. Paragraphs (a), (b) and (c) of subdivision 5 of section 220.10 of the criminal procedure law, as amended by chapter 410 of the laws of 1979, subparagraph (i) of paragraph (a) as amended by chapter 738 of the laws of 2004, are amended to read as follows:

(a) [(i)] Where the indictment charges one of the class A felonies defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony, then any plea of guilty entered pursuant to subdivision three or four of this section must be or must include at least a plea of guilty of a class [B] C felony.

[(iii) Where the indictment charges one of the class B felonies defined in article two hundred twenty of the penal law then any plea of guilty entered pursuant to subdivision three or four must be or must include at least a plea of guilty of a class D felony.]

(b) Where the indictment charges any class B felony, other than a [class B felony defined in article two hundred twenty of the penal law or a] class B violent felony offense as defined in subdivision one of section 70.02 of the penal law, then any plea of guilty entered pursuant to subdivision three or four must be or must include at least a plea of guilty of a felony.

(c) Where the indictment charges a felony, other than a class A felony [or class B felony] defined in article two hundred twenty of the penal law or class B or class C violent felony offense as defined in subdivision one of section 70.02 of the penal law, and it appears that the defendant has previously been subjected to a predicate felony conviction as defined in [penal law] section 70.06 OF THE PENAL LAW then

any plea of guilty entered pursuant to subdivision three or four must be or must include at least a plea of guilty of a felony.

S 12. Paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 1051 of the laws of 1973, subparagraph (i) as amended and subparagraphs (viii) and (ix) as added by chapter 410 of the laws of 1979, subparagraphs (ii) and (vi) as amended by chapter 481 of the laws of 1978, subparagraphs (iii) and (iv) as added and subparagraphs (vi), (viii) and (ix) as renumbered by chapter 233 of the laws of 1980, subparagraph (v) as amended by chapter 189 of the laws of 2000 and subparagraph (vii) as amended by chapter 1 of the laws of 1995, is amended to read as follows:

(b) (i) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than AT LEAST a class [A] C felony, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class [A-I] A felony as defined in article two hundred twenty of the penal law [or the attempt to commit any such class A-I felony, except that an eligible youth, as defined in subdivision two of section 720.10, may plea to a class B felony, upon consent of the district attorney, for purposes of adjudication as a youthful offender].

(ii) Where it appears that the defendant has previously been subjected to a predicate felony conviction as defined in paragraph (b) of subdivision [(1)] ONE of section 70.06 of the penal law, a plea of guilty, whether to the entire indictment or to part of the indictment, of any offense other than a felony may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a felony, other than a class A felony or a class B or class C violent felony offense as defined in subdivision one of section 70.02 of the penal law.

(iii) A plea of guilty, whether to the entire indictment or part of the indictment for any crime other than a class A felony NOT DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW or a class B or class C violent felony offense as defined in subdivision one of section 70.02 of the penal law, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class A felony, other than those defined in article two hundred twenty of the penal law, or a class B violent felony offense which is also an armed felony offense.

(iv) Except as provided in subparagraph (iii) of this paragraph, a plea of guilty, whether to the entire indictment or part of the indictment, for any crime other than a class A felony NOT DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW or a class B, C, or D violent felony offense as defined in subdivision one of section 70.02 of the penal law, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class B or class C violent felony offense as defined in subdivision one of section 70.02 of the penal law[,].

(v) A plea of guilty, whether to the entire indictment or part of the indictment, for any crime other than a violent felony offense as defined in section 70.02 of the penal law, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision [four,] five, seven or eight of section 265.02 of the penal law; provided, however, a plea of guilty, whether to the

entire indictment or part of the indictment, for the class A misdemeanor of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 of the penal law may be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged the class D violent felony offense of criminal possession of a weapon in the third degree as defined in [subdivision four of] section 265.02 of the penal law when the defendant has not been previously convicted of a class A misdemeanor defined in the penal law in the five years preceding the commission of the offense.

(vi) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a felony, may not be accepted on the condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class B felony other than a class B violent felony offense as defined in subdivision one of section 70.02 of the penal law.

(vii) A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment without parole or a term of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole.

[(viii) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class A or class B felony may not be accepted on condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class A-II felony defined in article two hundred twenty of the penal law or the attempt to commit any such felony.

(ix) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class B, a class C, or a class D felony, may not be accepted on condition that it constitutes a complete disposition of one or more other indictments against the defendant wherein is charged a class B felony defined in article two hundred twenty of the penal law.]

S 13. Subdivision 1 of section 440.20 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, is amended to read as follows:

1. At any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that

(A) it was unauthorized, illegally imposed or otherwise invalid as a matter of law, OR

(B) THE DEFENDANT WAS CONVICTED ON OR AFTER SEPTEMBER FIRST, NINETEEN HUNDRED SEVENTY-THREE AND NEW SENTENCING OPTIONS WERE ENACTED SINCE THE ENTRY OF JUDGMENT AGAINST THE DEFENDANT WHICH, HAD THEY BEEN AVAILABLE AT TIME OF SENTENCING, COULD HAVE BEEN APPLIED BY THE COURT WHEN IMPOSING SENTENCE; PROVIDED, HOWEVER, THAT SUCH NEW SENTENCING OPTIONS WERE ENACTED PURSUANT TO THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH ADDED THIS PARAGRAPH.

Where the judgment includes a sentence of death, the court may also set aside the sentence upon any of the grounds set forth in paragraph (b), (c), (f), (g) or (h) of subdivision one of section 440.10 as applied to a separate sentencing proceeding under section 400.27, provided, however, that to the extent the ground or grounds asserted include one or more of the aforesaid paragraphs of subdivision one of

section 440.10, the court must also apply subdivisions two and three of section 440.10, other than paragraph (d) of subdivision two of such section, in determining the motion. In the event the court enters an order granting a motion to set aside a sentence of death under this section, the court must either direct a new sentencing proceeding in accordance with section 400.27 or, to the extent that the defendant cannot be resentenced to death consistent with the laws of this state or the constitution of this state or of the United States, resentence the defendant to life imprisonment without parole or to a sentence of imprisonment for the class A-I felony of murder in the first degree other than a sentence of life imprisonment without parole. Upon granting the motion upon any of the grounds set forth in the aforesaid paragraphs of subdivision one of section 440.10 and setting aside the sentence, the court must afford the people a reasonable period of time, which shall not be less than ten days, to determine whether to take an appeal from the order setting aside the sentence of death. The taking of an appeal by the people stays the effectiveness of that portion of the court's order that directs a new sentencing proceeding.

S 14. Section 8 of the state finance law is amended by adding a new subdivision 21 to read as follows:

21. A. EXAMINE, AUDIT AND, PRIOR TO MARCH FIFTEENTH OF EACH YEAR, CERTIFY TO THE GOVERNOR, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE THE ACTUAL ANNUAL SAVINGS BY THE DEPARTMENT OF CORRECTIONAL SERVICES IN THE PREVIOUS CALENDAR YEAR WHICH IS ATTRIBUTABLE TO THE IMPLEMENTATION OF CHAPTER SEVEN HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR, CHAPTER SIX HUNDRED FORTY-THREE OF THE LAWS OF TWO THOUSAND FIVE AND THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH ADDED THIS SUBDIVISION. SUCH CERTIFICATION SHALL BE BASED ON THE DECREASE IN THE NUMBER OF INMATE ADMISSIONS AND THE REDUCTION IN INMATE LENGTH OF STAY FOR OFFENSES DEFINED IN ARTICLES TWO HUNDRED TWENTY AND TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, AS WELL AS AN ESTIMATE OF THE EXTENT, IF ANY, BY WHICH ANY REDUCTION IN THE CRIME RATE DURING SUCH CALENDAR YEAR AND ANY CORRESPONDING REDUCTION IN THE NUMBER OF INMATE ADMISSIONS OR LENGTH OF STAY DURING SUCH PERIOD WAS ATTRIBUTABLE TO THE PROVISION OF INCREASED DRUG TREATMENT, OFFENDER SUPERVISION AND RELATED INITIATIVES, ENACTED BY THE CHAPTER OF THE LAWS OF TWO THOUSAND EIGHT WHICH ADDED THIS SUBDIVISION; AND

B. AUTHORIZE AND DIRECT THE TRANSFER OF FUNDS EQUAL TO THE AMOUNT OF SUCH SAVINGS CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVISION FROM THE GENERAL FUND TO THE CRIME REDUCTION FUND AS AUTHORIZED BY SECTION NINETY-SEVEN-J OF THIS CHAPTER.

S 15. The state finance law is amended by adding a new section 97-j to read as follows:

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

2. SUCH FUND SHALL CONSIST OF ALL MONEYS TRANSFERRED BY THE STATE COMPTROLLER TO SUCH FUND FROM THE GENERAL FUND PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER AND OTHER MONIES CREDITED, APPROPRIATED OR TRANSFERRED TO SUCH FUND FROM THE GENERAL FUND AND ANY OTHER FUND OR SOURCE.

3. MONEYS IN THE CRIME REDUCTION FUND SHALL BE AVAILABLE PURSUANT TO APPROPRIATION BY THE LEGISLATURE TO THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES, THE DIVISION OF PAROLE, THE OFFICE OF COURT ADMINIS-

TRATION, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DEPARTMENT OF CORRECTIONAL SERVICES FOR PAYMENT TO LOCAL GOVERNMENTS AND NOT-FOR-PROFIT CORPORATIONS. ALL MONEYS FROM THE FUND SHALL BE EXPENDED FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT, SERVICES AND EXPENSES RELATED TO DRUG TREATMENT ALTERNATIVES TO PRISON AND REENTRY PROGRAMS, AND DRUG COURT PROGRAMS TO REDUCE OFFENDER RECIDIVISM AND CRIME.

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

S 16. The sum of one hundred twenty million dollars ($120,000,000), or so much thereof as may be necessary, is hereby appropriated to the crime reduction fund, established pursuant to section 97-j of the state finance law, out of any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated for its expenses, in 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 in the manner prescribed by law.

S 17. This act shall take effect immediately; provided, however, that the amendments to the closing paragraph of subdivision 1 of section 65.00 of the penal law made by section two of this act shall not affect the expiration of such provisions and shall be deemed to expire therewith; provided, further, that the amendments to subdivision 1 of section 70.00 of the penal law made by section three 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 four of this act shall take effect.