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

2855

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sens. SCHNEIDERMAN, HASSELL-THOMPSON, MONTGOMERY, DUANE, ADAMS, BRESLIN, DIAZ, DILAN, HUNTLEY, KRUEGER, PARKER, PERKINS, SAMPSON, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, in relation to drug abuse treatment in state prisons; to amend the criminal procedure law, in relation to sentencing proceedings; to amend the executive law, in relation to sentences of parole supervision and a combined law enforcement and community strategy to eliminate street-level drug crime; to amend the judiciary law, the penal law, the civil practice law and rules and the state finance law, in relation to determinate sentences for certain drug offenses and the creation of new offenses for criminal sale of a controlled substance to a child, trafficking through a controlled substance organization, and criminal possession of a weapon while selling or attempting to sell a controlled substance; to amend the state finance law, in relation to establishing the crime reduction fund and the school drug abuse prevention fund; and to repeal certain provisions of the criminal procedure law relating thereto

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

Section 1. Subdivision 17 of section 2 of the correction law, as added by chapter 338 of the laws of 1989, is amended to read as follows:

17. (A) "Alcohol and substance abuse treatment [facility] SERVICES." A correctional [facility] PROGRAM designed [to house medium security inmates as defined by department rules and regulations and operated] for the purpose of providing intensive alcohol and substance abuse treatment services TO INMATES OF THE DEPARTMENT. Such services shall ensure comprehensive treatment for alcoholism and substance abuse, PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, to ALL inmates UNDER CUSTODY OF THE DEPARTMENT who have been identified by the commissioner or his or her

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

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designee, OR BY THE SENTENCING COURT, as having had or presently having a history of alcoholism or substance abuse. Such services shall be provided [in the facility] WITHIN THE DEPARTMENT FOR A MINIMUM OF TWELVE MONTHS (PROVIDED, HOWEVER, THAT INMATES WHO SUCCESSFULLY COMPLETE SIX MONTHS OF SUCH ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM, AND ARE OTHERWISE ELIGIBLE FOR DRUG ABUSE TREATMENT PURSUANT TO SUBDIVISION EIGHTEEN OF THIS SECTION, MAY PARTICIPATE IN SUCH TREATMENT AT A CORRECTIONAL ANNEX PURSUANT TO SUBDIVISION EIGHTEEN OF THIS SECTION), OR UNTIL RELEASE FROM THE DEPARTMENT, WHICHEVER OCCURS FIRST, TO ALL INMATES WHO WERE ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY BY THE DEPARTMENT OR BY THE SENTENCING COURT. SUCH PROGRAM SHALL BE PROVIDED in accordance with minimum standards promulgated by [the department after consultation with the division of alcoholism and alcohol abuse and the division of substance abuse services] THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, AFTER CONSULTATION WITH THE DEPARTMENT. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS.

(B) THE DEPARTMENT SHALL ENSURE COMPLIANCE WITH THE REGULATIONS OF THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES AND SHALL REQUIRE, EITHER DIRECTLY OR THROUGH FORMAL AGREEMENT WITH COMMUNITY-BASED NOT-FOR-PROFIT SUBSTANCE ABUSE TREATMENT PROVIDERS LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, THAT INMATES WHO ARE RELEASED ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION AND WHO ARE, AS A CONDITION OF SUCH RELEASE, REQUIRED TO PARTICIPATE IN TREATMENT AND INMATES WHO ARE TRANSFERRED TO A COMMUNITY-BASED TREATMENT PROGRAM IN ACCORDANCE WITH THE COMMUNITY REINTEGRATION PHASE OF THE COMPREHENSIVE ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM, SHALL BE PROVIDED WITH A SUBSTANCE ABUSE TREATMENT ASSESSMENT AND COMMUNITY-BASED ALCOHOL AND SUBSTANCE ABUSE TREATMENT SERVICES PROVIDING AN APPROPRIATE CONTINUUM OF TREATMENT AND DESIGNED TO REDUCE OFFENDER RECIDIVISM AND CRIME. THE DIVISION OF PAROLE SHALL ASSIST THE DEPARTMENT IN ANY MANNER NECESSARY TO ASSURE THAT THE PURPOSES AND OBJECTIVES OF THIS PARAGRAPH ARE EFFECTIVELY ACCOMPLISHED.

S 2. Subdivision 18 of section 2 of the correction law, as amended by section 1 of chapter 738 of the laws of 2004, is amended to read as follows:

18. "Alcohol and substance abuse treatment correctional annex." A medium security correctional facility consisting of one or more residential dormitories which provide intensive alcohol and substance abuse treatment services to inmates who: (i) are otherwise eligible for temporary release, or (ii) stand convicted of a felony defined in article two hundred twenty or two hundred twenty-one of the penal law, and are within [six] EIGHTEEN months of being an eligible inmate as that term is defined in subdivision two of section eight hundred fifty-one of this chapter including such inmates who are participating in such program pursuant to subdivision six of section 60.04 of the penal law. Notwithstanding the foregoing provisions of this subdivision, any inmate to be enrolled in this program pursuant to subdivision six of section 60.04 of the penal law shall be governed by the same rules and regulations promulgated by the department, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date. Such treatment services may be provided by one or more outside service providers pursuant to contractual agreements with both the department and the division of parole,

provided, however, that any such provider shall be required to continue to provide, either directly or through formal or informal agreement with other providers, alcohol and substance abuse treatment services to inmates who have successfully participated in such provider's incarcerative treatment services and who have been paroled or conditionally released under the supervision of the division of parole and who are, as a condition of their parole or conditional release, required to participate in alcohol or substance abuse treatment. Such incarcerative services shall be provided in the facility in accordance with minimum standards promulgated by the department after consultation with the office of alcoholism and substance abuse services. Such services to parolees shall be provided in accordance with standards promulgated by the division of parole after consultation with the office of alcoholism and substance abuse services. Notwithstanding any other provision of law, any person who has successfully completed no less than six months of intensive alcohol and substance abuse treatment services in one of the department's eight designated alcohol and substance abuse treatment correctional annexes having a combined total capacity of two thousand five hundred fifty beds may be transferred to a program operated by or at a residential treatment facility[, provided however, that a person under a determinate sentence as a second felony drug offender for a class B felony offense defined in article two hundred twenty of the penal law, who was sentenced pursuant to section 70.70 of such law, shall not be eligible to be transferred to a program operated at a residential treatment facility until the time served under imprisonment for his or her determinate sentence, including any jail time credited pursuant to the provisions of article seventy of the penal law, shall be at least eighteen months]. The commissioner shall report annually to the temporary president of the senate and the speaker of the assembly commencing January first, nineteen hundred ninety-two as to the efficacy of such programs including but not limited to a comparative analysis of state-operated and private sector provision of treatment services and recidivism. Such report shall also include the number of inmates received by the department during the reporting period who are subject to a sentence which includes enrollment in substance abuse treatment in accordance with subdivision six of section 60.04 of the penal law, the number of such inmates who are not placed in such treatment program and the reasons for such occurrences.

S 3. Subdivision 18 of section 2 of the correction law, as amended by section 2 of chapter 738 of the laws of 2004, is amended to read as follows:

18. "Alcohol and substance abuse treatment correctional annex." A medium security correctional facility consisting of one or more residential dormitories which provide intensive alcohol and substance abuse treatment services to inmates who: (i) are otherwise eligible for temporary release, or (ii) stand convicted of a felony defined in article two hundred twenty or two hundred twenty-one of the penal law, and are within [six] EIGHTEEN months of being an eligible inmate as that term is defined in subdivision two of section eight hundred fifty-one of this chapter including such inmates who are participating in such program pursuant to subdivision six of section 60.04 of the penal law. Notwithstanding the foregoing provisions of this subdivision, any inmate to be enrolled in this program pursuant to subdivision six of section 60.04 of the penal law shall be governed by the same rules and regulations promulgated by the department, including without limitation those rules and regulations establishing requirements for completion and those rules

and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date. Such treatment services may be provided by one or more outside service providers pursuant to contractual agreements with both the department and the division of parole, provided, however, that any such provider shall be required to continue to provide, either directly or through formal or informal agreement with other providers, alcohol and substance abuse treatment services to inmates who have successfully participated in such provider's incarcerative treatment services and who have been paroled or conditionally released under the supervision of the division of parole and who are, as a condition of their parole or conditional release, required to participate in alcohol or substance abuse treatment. Such incarcerative services shall be provided in the facility in accordance with minimum standards promulgated by the department after consultation with the office of alcoholism and substance abuse services. Such services to parolees shall be provided in accordance with standards promulgated by the division of parole after consultation with the office of alcoholism and substance abuse services. The commissioner shall report annually to the majority leader of the senate and the speaker of the assembly commencing January first, nineteen hundred ninety-two as to the efficacy of such programs including but not limited to a comparative analysis of state-operated and private sector provision of treatment services and recidivism. Such report shall also include the number of inmates received by the department during the reporting period who are subject to a sentence which includes enrollment in substance abuse treatment in accordance with subdivision six of section 60.04 of the penal law, the number of such inmates who are not placed in such treatment program and the reasons for such occurrences.

S 4. Section 71 of the correction law is amended by adding a new subdivision 2-a to read as follows:

2-A. PERSONS WHO ARE COMMITTED, TRANSFERRED, CERTIFIED TO OR CONFINED BY THE DEPARTMENT AND HAVE A HISTORY OF ALCOHOL OR SUBSTANCE ABUSE SHALL BE DELIVERED TO THE GREATEST EXTENT PRACTICABLE TO A CORRECTIONAL FACILITY THAT OFFERS ALCOHOL OR SUBSTANCE ABUSE SERVICES, AS APPLICABLE, AS DEFINED IN SUBDIVISION SEVENTEEN OF SECTION TWO OF THIS CHAPTER.

S 5. The correction law is amended by adding a new section 149-a to read as follows:

S 149-A. RELEASED INMATES; TRANSITIONAL SERVICES PROGRAM. 1. AS USED IN THIS SECTION, "TRANSITIONAL SERVICES PROGRAM" SHALL MEAN A COMPREHENSIVE SKILLS-BASED TRAINING PROGRAM OF THE DEPARTMENT DESIGNED TO PREPARE INMATES FOR REINTEGRATION INTO THE COMMUNITY. EACH TRANSITIONAL SERVICES PROGRAM SHALL BE DESIGNED TO REDUCE OFFENDER RECIDIVISM AND CRIME. SUCH PREPARATION FOR REINTEGRATION SHALL INCLUDE REFERRALS TO APPROPRIATE MEDICAL SERVICES, EDUCATIONAL AND VOCATIONAL SERVICES, MENTAL HEALTH SERVICES AND HOUSING SERVICES AND SHALL BE CONSISTENT WITH THE REQUIREMENT THAT ALL OFFENDERS RELEASED FROM PRISON WITH A SUBSTANCE ABUSE DEPENDENCY BE REQUIRED TO UNDERGO A MANDATORY ALCOHOL OR SUBSTANCE ABUSE TREATMENT PROGRAM. THE DEPARTMENT SHALL MAINTAIN A CURRENT LIST OF REFERRAL SOURCES TO EFFECTUATE EACH TRANSITIONAL SERVICES PROGRAM WHICH LIST SHALL BE UPDATED NO LESS THAN ANNUALLY. SUCH PREPARATION FOR REINTEGRATION SHALL INCLUDE ASSISTANCE IN OBTAINING NECESSARY PERSONAL IDENTIFICATION INFORMATION.

2. A. THE COMMISSIONER SHALL DESIGNATE STAFF AT EACH TRANSITIONAL SERVICES PROGRAM TO PREPARE AND SUBMIT APPLICATIONS FOR MEDICAL ASSIST-

ANCE ESTABLISHED UNDER TITLES ELEVEN AND ELEVEN-D OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW, ON BEHALF OF EACH INMATE WHO WAS NOT RECEIVING SUCH MEDICAL ASSISTANCE IMMEDIATELY BEFORE BEING ADMITTED TO THE CUSTODY OF THE DEPARTMENT. SUCH APPLICATIONS SHALL BE SUBMITTED TO THE COMMISSIONER OF HEALTH PURSUANT TO SUBDIVISION TWENTY-FOUR OF SECTION TWO HUNDRED SIX OF THE PUBLIC HEALTH LAW AT LEAST FORTY-FIVE DAYS BEFORE THE ANTICIPATED RELEASE, CONDITIONAL RELEASE OR DISCHARGE OF SUCH INMATES.

B. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, UPON RECEIPT OF AN APPLICATION FOR MEDICAL ASSISTANCE FOR AN INMATE PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION, THE COMMISSIONER OF HEALTH SHALL DETERMINE THE ELIGIBILITY OF SUCH INMATE FOR ENROLLMENT IN THE MEDICAL ASSISTANCE PROGRAM ESTABLISHED UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW OR THE FAMILY HEALTH PLUS PROGRAM ESTABLISHED UNDER TITLE ELEVEN-D OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW. SUCH DETERMINATION SHALL BE BASED ON WHETHER THE INMATE, EXCEPT FOR HIS OR HER STATUS AS AN INMATE, WOULD BE ELIGIBLE TO RECEIVE MEDICAL ASSISTANCE. ENROLLMENT IN THE MEDICAL ASSISTANCE PROGRAM SHALL BE EFFECTIVE ON THE DATE AN ELIGIBLE INMATE IS RELEASED, CONDITIONALLY RELEASED OR DISCHARGED FROM THE DEPARTMENT AND THE MEDICAL ASSISTANCE IDENTIFICATION CARD SHALL BE PROVIDED TO THE INMATE UPON HIS OR HER RELEASE, CONDITIONAL RELEASE OR DISCHARGE FROM THE DEPARTMENT.

C. THE DIVISION OF PAROLE SHALL ASSIST THE DEPARTMENT IN ANY MANNER NECESSARY TO ASSURE THAT THE PURPOSES AND OBJECTIVES OF THIS SECTION ARE EFFECTIVELY ACCOMPLISHED.

3. THE DEPARTMENT SHALL ESTABLISH TRANSITIONAL SERVICES PROGRAMS AT ALL DEPARTMENT FACILITIES FROM WHICH INMATES ARE SCHEDULED TO BE RELEASED FROM CONFINEMENT BY THE DEPARTMENT.

S 6. Subdivision 2-b of section 851 of the correction law, as added by chapter 738 of the laws of 2004, is amended to read as follows:

2-b. When calculating in advance the date on which a person is or will be eligible for release on parole or conditional release, for purposes of determining eligibility for temporary release or for placement at an alcohol and substance abuse treatment correctional annex, the commissioner shall consider and include credit for all potential credits and reductions including but not limited to merit time, ADDITIONAL MERIT TIME and good behavior allowances. Nothing in this subdivision shall be interpreted as precluding the consideration and inclusion of credit for all potential credits and reductions including, but not limited to, merit time, ADDITIONAL MERIT TIME and good behavior allowances when calculating in advance for any other purpose the date on which a person is or will be eligible for release on parole or conditional release.

S 7. Subdivision 1 of section 865 of the correction law, as amended by chapter 738 of the laws of 2004, is amended to read as follows:

1. "Eligible inmate" means a person sentenced to an indeterminate term of imprisonment who will become eligible for release on parole within three years or sentenced to a determinate term of imprisonment who will become eligible for conditional release within three years, who has not reached the age of [forty] FIFTY years, who (EXCEPT WITH RESPECT TO A JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE AS DEFINED IN SUBDIVISION THREE OF THIS SECTION) has not previously been convicted of a felony upon which an indeterminate or determinate term of imprisonment was imposed and who was between the ages of sixteen and [forty] FIFTY years at the time of commission of the crime upon which his or her present sentence was based [except, however, an eligible inmate shall not include a person sentenced to a determinate sentence of three and one-half years or more as a second felony drug offender pursuant to subdivi-

sion three of section 70.70 of the penal law for a conviction of a class B felony offense defined in article two hundred twenty of the penal law]. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be deemed eligible to participate in this program: (a) a violent felony offense as defined in article seventy of the penal law, (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 the penal law, (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 the penal law and (e) any escape or absconding offense as defined in article two hundred five of the penal law.

S 8. Subdivision 2 of section 865 of the correction law, as added by chapter 261 of the laws of 1987, is amended to read as follows:

2. "Shock incarceration program" means a program pursuant to which eligible inmates are selected [directly at reception centers] BY THE SENTENCING COURT, PURSUANT TO SUBDIVISION THREE OF THIS SECTION, OR BY THE DEPARTMENT to participate in the program and serve a period of six months in a shock incarceration facility, which shall provide rigorous physical activity, intensive regimentation and discipline and rehabilitation therapy and programming. INMATES SELECTED BY THE DEPARTMENT MAY BE SELECTED EITHER: (I) AT A RECEPTION CENTER; OR (II) AT A GENERAL CONFINEMENT FACILITY WHEN THE OTHERWISE ELIGIBLE INMATE THEN BECOMES ELIGIBLE FOR RELEASE ON PAROLE WITHIN THREE YEARS IN THE CASE OF AN INDETERMINATE TERM OF IMPRISONMENT, OR THEN BECOMES ELIGIBLE FOR CONDITIONAL RELEASE WITHIN THREE YEARS IN THE CASE OF A DETERMINATE TERM OF IMPRISONMENT.

S 9. Section 865 of the correction law is amended by adding a new subdivision 3 to read as follows:

3. "JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE" MEANS A PERSON, OTHER THAN A PERSON WHO IS CHARGED WITH, SERVING A SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW, CONVICTED OF A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW WHO, ON HIS OR HER MOTION, WAS FOUND BY THE SENTENCING COURT TO BE AN "ELIGIBLE INMATE" AS DEFINED IN SUBDIVISION ONE OF THIS SECTION, AND SENTENCED BY SUCH COURT TO PARTICIPATE IN A SHOCK INCARCERATION PROGRAM PURSUANT TO THIS ARTICLE.

S 10. Section 867 of the correction law is amended by adding a new subdivision 2-a to read as follows:

2-A. SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL NOT APPLY TO A JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE. NOTWITHSTANDING SUBDIVISION FIVE OF THIS SECTION, A JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE SHALL PROMPTLY COMMENCE PARTICIPATION IN THE PROGRAM. EACH JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE DETERMINED TO BE IN NEED OF SUBSTANCE ABUSE TREATMENT SHALL BE REQUIRED TO UNDERGO A SUBSTANCE ABUSE TREATMENT PROGRAM WHILE PARTICIPATING IN THE SHOCK INCARCERATION PROGRAM. SUCH PROGRAM SHALL COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (B) OF SUBDIVISION SEVENTEEN OF SECTION TWO OF THIS CHAPTER. EACH JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE DETERMINED TO BE IN NEED OF SUBSTANCE ABUSE TREATMENT SHALL ALSO BE REQUIRED TO UNDERGO AN ADDITIONAL YEAR-LONG SUBSTANCE ABUSE TREATMENT PROGRAM FOLLOWING RELEASE

FROM SUCH SHOCK INCARCERATION PROGRAM, IN ACCORDANCE WITH THE REQUIREMENTS OF THIS CHAPTER.

S 11. Section 1.20 of the criminal procedure law is amended by adding a new subdivision 44 to read as follows:

44. "DIVERSION PROGRAM" MEANS AN ALCOHOL OR SUBSTANCE ABUSE PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES OR AN INTERVENTION PROGRAM APPROVED BY THE COURT AFTER CONSULTATION WITH THE LOCAL PROBATION DEPARTMENT HAVING JURISDICTION, OR SUCH OTHER PUBLIC OR PRIVATE AGENCY AS THE COURT DETERMINES TO BE APPROPRIATE.

S 12. Subdivision 4 of section 170.15 of the criminal procedure law, as amended by chapter 67 of the laws of 2000, is amended to read as follows:

4. Notwithstanding any provision of this section to the contrary, in any county outside a city having a population of one million or more, upon or after arraignment of a defendant on an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a local criminal court, such court may, upon motion of the defendant, and with the consent of the district attorney (EXCEPT THAT SUCH CONSENT SHALL NOT BE REQUIRED WHEN THE DEFENDANT IS CHARGED WITH AN OFFENSE OR OFFENSES DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW OTHER THAN A CLASS A FELONY, STANDS CHARGED WITH NO OTHER FELONY CRIME OR CRIMES, AND IS NOT CHARGED WITH, SERVING A SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER), order that the action be removed from the court in which the matter is pending to another local criminal court in the same county which has been designated a drug court by the chief administrator of the courts, and such drug court may then conduct such action to [judgement] JUDGMENT or other final disposition; provided, however, that an order of removal issued under this subdivision shall not take effect until five days after the date the order is issued unless, prior to such effective date, the drug court notifies the court that issued the order that:

(a) it will not accept the action, in which event the order shall not take effect, or

(b) it will accept the action on a date prior to such effective date, in which event the order shall take effect upon such prior date.

Upon providing notification pursuant to paragraph (a) or (b) of this subdivision, the drug court shall promptly give notice to the defendant, his or her counsel and the district attorney.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION THAT MAY BE REMOVED PURSUANT TO THIS SUBDIVISION MAY BE REMOVED TO A SUPERIOR COURT JUDGE SITTING AS A LOCAL CRIMINAL COURT AND SUCH JUDGE MAY THEN CONDUCT SUCH ACTION TO JUDGMENT OR OTHER FINAL DISPOSITION.

S 13. Section 170.40 of the criminal procedure law is amended by adding a new subdivision 1-a to read as follows:

1-A. EXCEPT IN THE CASE OF A PERSON WHO IS CHARGED WITH, SERVING A SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER, THE SUCCESSFUL COMPLETION OF A DIVERSION PROGRAM BY A PERSON WHO STANDS CHARGED IN AN ACCUSATORY INSTRUMENT OR A COUNT THEREOF WITH A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OR WITH A VIOLATION OF PROBATION IMPOSED AS A SENTENCE FOR SUCH OFFENSE, MAY, IN AND OF ITSELF, CONSTITUTE A COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE DEMONSTRATING THAT CONVICTION OR PROSECUTION OF THE DEFENDANT UPON SUCH CHARGE IN SUCH ACCUSATORY INSTRUMENT OR COUNT WOULD CONSTITUTE OR RESULT IN INJUSTICE. IN CONSIDERING WHETHER TO GRANT

A MOTION TO DISMISS UNDER SUCH CIRCUMSTANCES, THE COURT SHALL ALSO, TO THE EXTENT APPLICABLE, EXAMINE AND CONSIDER THE FACTORS SET FORTH IN PARAGRAPHS (A) THROUGH (J) OF SUBDIVISION ONE OF THIS SECTION.

S 14. Subdivision 3 of section 180.20 of the criminal procedure law, as amended by chapter 67 of the laws of 2000, is amended to read as follows:

3. Notwithstanding any provision of this section to the contrary, in any county outside a city having a population of one million or more, upon or after arraignment of a defendant on a felony complaint pending in a local criminal court having preliminary jurisdiction thereof, such court may, upon motion of the defendant, and with the consent of the district attorney (EXCEPT THAT SUCH CONSENT SHALL NOT BE REQUIRED WHEN THE DEFENDANT IS CHARGED WITH AN OFFENSE OR OFFENSES DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW OTHER THAN A CLASS A FELONY, IS CHARGED WITH NO OTHER FELONY CRIME OR CRIMES, AND IS NOT CHARGED WITH, SERVING A SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER), order that the action be removed from the court in which the matter is pending to another local criminal court in the same county which has been designated a drug court by the chief administrator of the courts, and such drug court may then dispose of such felony complaint pursuant to this article; provided, however, that an order of removal issued under this subdivision shall not take effect until five days after the date the order is issued unless, prior to such effective date, the drug court notifies the court that issued the order that:

(a) it will not accept the action, in which event the order shall not take effect, or

(b) it will accept the action on a date prior to such effective date, in which event the order shall take effect upon such prior date.

Upon providing notification pursuant to paragraph (a) or (b) of this subdivision, the drug court shall promptly give notice to the defendant, his or her counsel and the district attorney.

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION THAT MAY BE REMOVED PURSUANT TO THIS SUBDIVISION MAY BE REMOVED TO A SUPERIOR COURT JUDGE SITTING AS A LOCAL CRIMINAL COURT AND SUCH JUDGE MAY THEN DISPOSE OF SUCH FELONY COMPLAINT PURSUANT TO THIS ARTICLE.

S 15. Section 210.40 of the criminal procedure law is amended by adding a new subdivision 1-a to read as follows:

1-A. EXCEPT IN THE CASE OF A PERSON WHO IS CHARGED WITH, SERVING A SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER, THE SUCCESSFUL COMPLETION OF A DIVERSION PROGRAM BY A PERSON WHO STANDS CHARGED IN AN ACCUSATORY INSTRUMENT OR A COUNT THEREOF WITH A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OR WITH A SPECIFIED OFFENSE OR OFFENSES, AS DEFINED IN SUBDIVISION FIVE OF SECTION 410.91 OF THIS CHAPTER, OR WITH A VIOLATION OF PROBATION IMPOSED AS A SENTENCE FOR SUCH OFFENSE, MAY, IN AND OF ITSELF, CONSTITUTE A COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE DEMONSTRATING THAT CONVICTION OR PROSECUTION OF THE DEFENDANT UPON SUCH CHARGE IN SUCH ACCUSATORY INSTRUMENT OR COUNT WOULD CONSTITUTE OR RESULT IN INJUSTICE. IN CONSIDERING WHETHER TO GRANT A MOTION TO DISMISS UNDER SUCH CIRCUMSTANCES, THE COURT SHALL ALSO, TO THE EXTENT APPLICABLE, EXAMINE AND CONSIDER THE FACTORS SET FORTH IN PARAGRAPHS (A) THROUGH (J) OF SUBDIVISION ONE OF THIS SECTION.

S 16. Subparagraph (i) of paragraph (b) of subdivision 3 of section 220.30 of the criminal procedure law, as amended by chapter 410 of the laws of 1979, is amended to read as follows:

(i) A plea of guilty, whether to the entire indictment or to part of the indictment for any crime other than a class [A] B OR HIGHER 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] A felony, except that an eligible youth, as defined in subdivision two of section 720.10 OF THIS CHAPTER, may plea to a class B felony, upon consent of the district attorney, for purposes of adjudication as a youthful offender.

S 17. The criminal procedure law is amended by adding a new section 255.30 to read as follows:

S 255.30 MOTION FOR ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT.

AT ANY TIME AFTER ARRAIGNMENT, THE COURT, UPON APPLICATION OF A DEFENDANT CHARGED WITH A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, MAY ORDER AN ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT OF THE DEFENDANT, CONDUCTED BY AN APPROPRIATE PROFESSIONAL OR COUNSELOR. AT ANY TIME AFTER ARRAIGNMENT AND BEFORE ANNOUNCEMENT OF A VERDICT OR ACCEPTANCE OF A GUILTY PLEA CONCERNING ALL FELONY CHARGES BEFORE THE COURT, THE COURT, UPON APPLICATION OF THE PEOPLE, MAY ORDER AN ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT, CONDUCTED BY AN INDEPENDENT PROFESSIONAL OR COUNSELOR, OF A DEFENDANT CHARGED WITH A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW WHEN, FOLLOWING A HEARING OR COUNSELED WAIVER THEREOF, THE COURT DETERMINES THAT THERE EXISTS PROBABLE CAUSE TO BELIEVE THE DEFENDANT HAS AN ALCOHOL OR SUBSTANCE ABUSE DEPENDENCY. SUCH ASSESSMENT SHALL BE CONDUCTED BY A LICENSED HEALTH CARE PROFESSIONAL EXPERIENCED IN THE TREATMENT OF ALCOHOL AND SUBSTANCE ABUSE, OR BY AN ADDICTION AND SUBSTANCE ABUSE COUNSELOR CREDENTIALED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, PURSUANT TO SECTION 19.07 OF THE MENTAL HYGIENE LAW.

S 18. Subdivision 4 of section 410.91 of the criminal procedure law is REPEALED, subdivisions 5 and 7, as added by chapter 3 of the laws of 1995, are amended and a new subdivision 4 is added to read as follows:

4. IF A DEFENDANT CONVICTED OF AN OFFENSE IN VIOLATION OF ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW IS SENTENCED TO PAROLE SUPERVISION PURSUANT TO THIS SECTION, THAT SENTENCE MUST INCLUDE ONE YEAR, EXCLUSIVE OF THE NINETY DAYS SPENT AT A DRUG TREATMENT CAMPUS, IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS.

5. For the purposes of this section, a "specified offense" is an offense defined by any of the following provisions of the penal law: criminal mischief in the third degree as defined in section 145.05, criminal mischief in the second degree as defined in section 145.10, grand larceny in the fourth degree as defined in subdivision one, two, three, four, five, six, eight, nine or ten of section 155.30, grand larceny in the third degree as defined in section 155.35 (except where the property consists of one or more firearms, rifles or shotguns), unauthorized use of a vehicle in the second degree as defined in section 165.06, criminal possession of stolen property in the fourth degree as defined in subdivision one, two, three, five or six of section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50 (except where the property consists of one or more

firearms, rifles or shotguns), forgery in the second degree as defined in section 170.10, criminal possession of a forged instrument in the second degree as defined in section 170.25, unlawfully using slugs in the first degree as defined in section 170.60, or an attempt to commit any of the aforementioned offenses if such attempt constitutes a felony offense; or [any] A class B, C, D, or [class] E controlled substance or marihuana felony offense as defined in article two hundred twenty or two hundred twenty-one.

7. Upon completion of the drug treatment program at the drug treatment campus, a parolee will be furnished with money, clothing and transportation in a manner consistent with section one hundred twenty-five of the correction law to [permit] ASSURE the parolee's travel from the drug treatment campus to the county in which the parolee's supervision will continue. SUCH SUPERVISION SHALL INCLUDE PARTICIPATION IN A SUBSTANCE ABUSE TREATMENT PROGRAM, AS SPECIFIED IN SUBDIVISION FOUR OF THIS SECTION, AND PERIODIC URINALYSIS.

S 19. The criminal procedure law is amended by adding a new section 440.46 to read as follows:

S 440.46 MOTION FOR RESENTENCE; CERTAIN CLASS B FELONY CONTROLLED SUBSTANCE AND CONTROLLED SUBSTANCE CONSPIRACY OFFENDERS.

1. ANY PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL SERVICES WHO STANDS CONVICTED OF A CLASS B FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW WHICH WAS COMMITTED PRIOR TO JANUARY THIRTEENTH, TWO THOUSAND FIVE, WHO IS SERVING AN INDETERMINATE SENTENCE WITH A MAXIMUM TERM OF MORE THAN THREE YEARS, MAY, EXCEPT AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, UPON NOTICE TO THE APPROPRIATE DISTRICT ATTORNEY, APPLY TO BE RESENTENCED IN ACCORDANCE WITH SECTIONS 60.04 AND 70.70 OF THE PENAL LAW IN THE COURT WHICH IMPOSED THE SENTENCE.

2. ANY PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL SERVICES WHO STANDS CONVICTED OF A FELONY DEFINED IN SECTION 105.15 OF THE PENAL LAW IN WHICH THE UNDERLYING CONDUCT CONSTITUTES A CLASS A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, WHICH WAS COMMITTED PRIOR TO THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH ADDED THIS SUBDIVISION, MAY, EXCEPT AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION, UPON NOTICE TO THE APPROPRIATE DISTRICT ATTORNEY, MOVE TO BE RESENTENCED IN ACCORDANCE WITH, AS APPROPRIATE, SECTIONS 60.04 AND 70.70 OF THE PENAL LAW IN THE COURT WHICH IMPOSED THE SENTENCE.

3. ANY PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL SERVICES WHO HAS BEEN RESENTENCED, OR IS ELIGIBLE TO BE RESENTENCED, PURSUANT TO THIS SECTION, SECTION TWENTY-THREE OF CHAPTER SEVEN HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR AND/OR SECTION ONE OF CHAPTER SIX HUNDRED FORTY-THREE OF THE LAWS OF TWO THOUSAND FIVE MAY ALSO, UPON NOTICE TO THE APPROPRIATE DISTRICT ATTORNEY, MOVE TO BE RESENTENCED TO A DETERMINATE SENTENCE IN ACCORDANCE WITH SECTION 70.70 OF THE PENAL LAW FOR ANY ONE OR MORE CLASS C, D OR E FELONY OFFENSES DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW FOR WHICH THE PERSON IS SERVING AN INDETERMINATE SENTENCE. IF THE CLASS C, D OR E FELONY SENTENCE WITH RESPECT TO WHICH SUCH MOTION IS MADE WAS IMPOSED BY A COURT IN ANOTHER COUNTY, AND THE COURT BEFORE WHICH THE MOTION IS MADE DOES NOT HAVE JURISDICTION TO RESENTENCE THE PERSON, THEN THE COURT SHALL TRANSFER THE REQUEST FOR RESENTENCING ON SUCH CLASS C, D OR E FELONY CONVICTION TO THE COURT THAT IMPOSED THE SENTENCE FOR SUCH CONVICTION.

4. THE PROVISIONS OF SECTION TWENTY-ONE OF CHAPTER SEVEN HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR SHALL GOVERN THE PROCEEDINGS ON AND DETERMINATION OF A MOTION BROUGHT PURSUANT TO THIS SECTION. SUBDIVISION ONE OF SECTION SEVEN HUNDRED SEVENTEEN AND SUBDIVISION FOUR OF SECTION SEVEN HUNDRED TWENTY-TWO OF THE COUNTY LAW AND THE RELATED PROVISIONS OF ARTICLE EIGHTEEN-A AND EIGHTEEN-B OF SUCH LAW SHALL APPLY TO THE PREPARATION OF AND PROCEEDINGS ON MOTIONS PURSUANT TO THIS SECTION, INCLUDING ANY APPEALS.

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY PERSON WHO IS SERVING A SENTENCE FOR OR HAS A PREDICATE FELONY CONVICTION FOR AN EXCLUSION OFFENSE. FOR PURPOSES OF THIS SUBDIVISION, AN "EXCLUSION OFFENSE" IS:

A. A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW OR OFFENSE FOR WHICH A MERIT TIME ALLOWANCE MAY NOT BE RECEIVED TOWARD THE SENTENCE PURSUANT TO PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION EIGHT HUNDRED THREE OF THE CORRECTION LAW; PROVIDED, HOWEVER, THAT UPON A DETERMINATION BY THE COURT FOLLOWING A HEARING THAT (1) THE DEFENDANT WAS SUBJECTED TO SUBSTANTIAL PHYSICAL, SEXUAL OR PSYCHOLOGICAL ABUSE; (2) THE ABUSE WAS INFLICTED BY A MEMBER OF THE DEFENDANT'S SAME FAMILY OR HOUSEHOLD AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER OR A MEMBER OF THE PERSON'S IMMEDIATE FAMILY AS THAT TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION 120.40 OF THE PENAL LAW; AND (3) THE ABUSE WAS A SUBSTANTIAL FACTOR IN CAUSING THE DEFENDANT TO COMMIT SUCH OFFENSE, THIS SUBDIVISION SHALL NOT APPLY TO SUCH DEFENDANT;

B. A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW IN WHICH THE DEFENDANT, BEING TWENTY-ONE YEARS OF AGE OR MORE, SOLD OR ATTEMPTED TO SELL A CONTROLLED SUBSTANCE TO A PERSON UNDER AGE EIGHTEEN; OR

C. (1) USE OF A CHILD TO COMMIT A CONTROLLED SUBSTANCE OFFENSE AS DEFINED IN SECTION 220.28 OF THE PENAL LAW; (2) CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THE PENAL LAW; (3) CRIMINAL SALE OF A CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVISION SEVEN OR EIGHT OF SECTION 220.34 OF THE PENAL LAW, WHERE SUCH SALE TOOK PLACE, RESPECTIVELY, ON SCHOOL GROUNDS AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL LAW; (4) CRIMINAL SALE OF A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 220.44 OF THE PENAL LAW, WHERE SUCH SALE TOOK PLACE ON THE GROUNDS OF A CHILD DAY CARE OR EDUCATIONAL FACILITY AS DEFINED IN PARAGRAPH (A) OF SUBDIVISION FIVE OF SUCH SECTION 220.44; OR (5) TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION AS DEFINED IN SECTION 220.68 OF THE PENAL LAW.

S 20. Paragraph (c) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 394 of the laws of 2005, is amended to read as follows:

(c) Criminal possession of a controlled substance in the seventh degree as defined in section 220.03 of the penal law, criminal possession of a controlled substance in the fifth degree as defined in section 220.06 of the penal law, criminal possession of a controlled substance in the fourth degree as defined in section 220.09 of the penal law, criminal possession of a controlled substance in the third degree as defined in section 220.16 of the penal law, criminal possession of a controlled substance in the second degree as defined in section 220.18 of the penal law, criminal possession of a controlled substance in the first degree as defined in section 220.21 of the penal law, criminal sale of a controlled substance in the fifth degree as defined in section

220.31 of the penal law, criminal sale of a controlled substance in the fourth degree as defined in section 220.34 of the penal law, criminal sale of a controlled substance in the third degree as defined in section 220.39 of the penal law, criminal sale of a controlled substance in the second degree as defined in section 220.41 of the penal law, criminal sale of a controlled substance in the first degree as defined in section 220.43 of the penal law, criminally possessing a hypodermic instrument as defined in section 220.45 of the penal law, CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THE PENAL LAW, TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION AS DEFINED IN SECTION 220.68 OF THE PENAL LAW, criminal possession of methamphetamine manufacturing material in the second degree as defined in section 220.70 of the penal law, criminal possession of methamphetamine manufacturing material in the first degree as defined in section 220.71 of the penal law, criminal possession of precursors of methamphetamine as defined in section 220.72 of the penal law, unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of the penal law, unlawful manufacture of methamphetamine in the second degree as defined in section 220.74 of the penal law, unlawful manufacture of methamphetamine in the first degree as defined in section 220.75 of the penal law, unlawful disposal of methamphetamine laboratory material as defined in section 220.76 of the penal law, criminal possession of marihuana in the first degree as defined in section 221.30 of the penal law, criminal sale of marihuana in the first degree as defined in section 221.55 of the penal law, promoting gambling in the second degree as defined in section 225.05 of the penal law, promoting gambling in the first degree as defined in section 225.10 of the penal law, possession of gambling records in the second degree as defined in section 225.15 of the penal law, possession of gambling records in the first degree as defined in section 225.20 of the penal law, [and] possession of a gambling device as defined in section 225.30 of the penal law AND CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 265.18 OF THE PENAL LAW;

S 21. The criminal procedure law is amended by adding a new section 160.65 to read as follows:

S 160.65 PETITION TO CONDITIONALLY SEAL A CONVICTION FOR CERTAIN CONTROLLED SUBSTANCE OR MARIJUANA OFFENSES.

1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL MEAN AS FOLLOWS:

(A) "ELIGIBLE FELONY" SHALL BE A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, OTHER THAN A CLASS A FELONY OFFENSE OR AN OFFENSE DEFINED IN PARAGRAPH (B) OR (C) OF SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER; AND

(B) "ELIGIBLE MISDEMEANOR" SHALL BE A MISDEMEANOR OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW.

2. A PERSON HAVING A CONVICTION FOR NO MORE THAN ONE ELIGIBLE FELONY, WHO DOES NOT STAND CONVICTED OF ANY OTHER FELONY OR ANY OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW, MAY PETITION FOR THE RECORD OF SUCH ELIGIBLE FELONY AND/OR NO MORE THAN THREE ELIGIBLE MISDEMEANORS TO BE CONDITIONALLY SEALED:

(A) UPON THE PERSON'S COMPLETION OF THE SENTENCE, AND ANY PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON AN ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS COMPLETED A SUBSTANCE ABUSE TREATMENT PROGRAM;

(B) UPON COMPLETION OF A SENTENCE ON AN ELIGIBLE MISDEMEANOR;

(C) TWO YEARS OR MORE AFTER THE COMPLETION OF A SENTENCE, AND ANY PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON A CLASS D OR E ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS NOT BEEN CONVICTED OF ANY CRIME FOR THE LAST TWO YEARS; OR

(D) FOUR YEARS OR MORE AFTER THE COMPLETION OF A SENTENCE, AND ANY PERIOD OF POST-RELEASE SUPERVISION WHERE APPLICABLE, ON A CLASS B OR C ELIGIBLE FELONY, PROVIDED THAT SUCH PERSON HAS NOT BEEN CONVICTED OF ANY CRIME FOR THE LAST FOUR YEARS.

3. A PETITION AUTHORIZED BY THIS SECTION SHALL INCLUDE:

(A) IDENTIFICATION OF THE CONVICTION OR CONVICTIONS FOR WHICH THE PETITIONER IS SEEKING RELIEF;

(B) DOCUMENTATION THAT THE SENTENCE IMPOSED ON THE CONVICTION OR CONVICTIONS HAS BEEN COMPLETED AND DATE OF COMPLETION, OR IF SUCH DOCUMENTATION IS NOT REASONABLY AVAILABLE, A SWORN AFFIDAVIT THAT THE SENTENCE IMPOSED ON THE CONVICTION OR CONVICTIONS HAS BEEN COMPLETED AND DATE OF COMPLETION;

(C) FOR PETITIONS FILED UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION, EVIDENCE THAT THE PETITIONER COMPLETED A SUBSTANCE ABUSE TREATMENT PROGRAM AND THAT THE PETITIONER IS NOT DEPENDENT ON ALCOHOL OR A CONTROLLED SUBSTANCE EXCEPT AS PRESCRIBED BY A MEDICAL PRACTITIONER;

(D) A SWORN AFFIDAVIT THAT NO CRIMINAL CHARGES ARE PENDING AGAINST THE PETITIONER, THAT THE PETITIONER HAS BEEN CONVICTED OF NO FELONY, OR NO MORE THAN ONE ELIGIBLE FELONY, AND DOES NOT STAND CONVICTED OF ANY OTHER FELONY OR ANY OFFENSE FOR WHICH REGISTRATION AS A SEX OFFENDER IS REQUIRED PURSUANT TO SUBDIVISION TWO OR THREE OF SECTION ONE HUNDRED SIXTY-EIGHT-A OF THE CORRECTION LAW; AND

(E) ANY OTHER SUPPORTING MATERIALS THAT WOULD ASSIST THE COURT IN DETERMINING WHETHER IT WOULD BE IN THE INTEREST OF JUSTICE TO GRANT THE PETITION.

4. THE PETITION AUTHORIZED BY THIS SECTION SHALL BE FILED AS FOLLOWS:

(A) WHERE THE RECORDS SOUGHT TO BE CONDITIONALLY SEALED INCLUDE AN ELIGIBLE FELONY, THE PETITION SHALL BE FILED IN THE COURT OF RECORD THAT IMPOSED SENTENCE UPON THE PETITIONER FOR SUCH ELIGIBLE FELONY;

(B) WHERE THE RECORDS SOUGHT TO BE CONDITIONALLY SEALED INCLUDE ONLY AN ELIGIBLE MISDEMEANOR OR ELIGIBLE MISDEMEANORS, THE PETITION SHALL BE FILED IN THE COURT THAT LAST IMPOSED A SENTENCE UPON PETITIONER FOR AN ELIGIBLE MISDEMEANOR.

(C) THE PETITIONER SHALL NOTIFY AND SERVE A COPY OF THE PETITION ON THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER WAS CONVICTED OF A CRIME WITHIN TEN DAYS OF THE DATE THE PETITION WAS FILED. THE DISTRICT ATTORNEY, WITHIN THIRTY DAYS OF RECEIVING NOTICE OF THE PETITION, MAY SERVE AND SUBMIT MATERIALS IN SUPPORT OF THE PETITION OR TO DEMONSTRATE THAT THE INTEREST OF JUSTICE WOULD NOT BE SERVED BY GRANTING THE PETITION.

(D) UPON THE FILING OF A PETITION, THE SENTENCING COURT SHALL REQUEST FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES A COPY OF THE PETITIONER'S CURRENT CRIMINAL HISTORY RECORD, INCLUDING ANY SEALED CONVICTION INFORMATION. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL ALSO INCLUDE A CRIMINAL HISTORY REPORT, IF ANY, FROM THE FEDERAL BUREAU OF INVESTIGATION REGARDING CONVICTIONS THAT OCCURRED IN OTHER JURISDICTIONS. THE DIVISION IS HEREBY AUTHORIZED TO RECEIVE SUCH INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION FOR THIS PURPOSE. THE PARTIES SHALL BE PERMITTED TO EXAMINE THESE RECORDS.

5. UPON REQUEST OF THE PETITIONER OR A DISTRICT ATTORNEY OF A JURISDICTION WHERE THE PETITIONER WAS CONVICTED OF A CRIME, THE COURT SHALL CONDUCT A HEARING ON THE PETITION. SUCH HEARING SHALL BE CONDUCTED WITH-

IN NINETY DAYS OF THE DATE THE PETITION WAS FILED UNLESS THE PARTIES CONSENT TO A LONGER PERIOD.

6. (A) THE SENTENCING COURT SHALL DETERMINE WHETHER THE PETITIONER IS ELIGIBLE AND HAS DEMONSTRATED, BY A PREPONDERANCE OF THE EVIDENCE, THAT IT WOULD BE IN THE INTEREST OF JUSTICE TO GRANT THE PETITION. IN MAKING ITS DETERMINATION, THE COURT SHALL CONSIDER THE FOLLOWING FACTORS:

(I) THE CIRCUMSTANCES AND SERIOUSNESS OF THE OFFENSE OR OFFENSES THAT RESULTED IN THE CONVICTION OR CONVICTIONS;

(II) THE CHARACTER OF THE PETITIONER, INCLUDING EVIDENCE THAT THE PETITIONER PARTICIPATED IN AND SUCCESSFULLY COMPLETED ALCOHOL OR SUBSTANCE ABUSE TREATMENT OR OTHERWISE ADDRESSED A HISTORY OF ALCOHOL OR SUBSTANCE ABUSE OR CHEMICAL DEPENDENCE;

(III) THE CRIMINAL HISTORY OF THE PETITIONER;

(IV) THE IMPACT OF GRANTING THE PETITION UPON THE REHABILITATION OF THE PETITIONER AND HIS OR HER SUCCESSFUL AND PRODUCTIVE REENTRY AND REINTEGRATION INTO SOCIETY, AND ON PUBLIC SAFETY; AND

(V) ANY OTHER RELEVANT FACTORS.

(B) THE SENTENCING COURT SHALL MAKE A DETERMINATION ON THE PETITION FOLLOWING THE CONCLUSION OF THE HEARING CONDUCTED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, OR, WHERE NO HEARING IS CONDUCTED, WITHIN NINETY DAYS OF THE DATE THE PETITION WAS FILED AND SHALL STATE IN WRITING THE REASONS FOR ITS DETERMINATION.

(C) UPON THE GRANTING OF A PETITION, THE SENTENCING COURT SHALL ISSUE A CONDITIONAL SEALING ORDER AND PROMPTLY NOTIFY IN WRITING THE PETITIONER, THE DISTRICT ATTORNEY OF EACH JURISDICTION IN WHICH THE PETITIONER WAS CONVICTED OF A CRIME, AND THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL NOTIFY THE CLERK OF THE COURT WHERE SUCH ACTIONS OR PROCEEDINGS SHALL BE SEALED, THE HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES OF THE CONDITIONAL SEALING ORDER. UPON SUCH NOTIFICATION, RECORDS SHALL BE SEALED IN A MANNER CONSISTENT WITH SECTION 160.50 OF THIS ARTICLE. THE SENTENCING COURT SHALL ALSO NOTIFY THE PETITIONER THAT ANY SUBSEQUENT CHARGE FOR ANY MISDEMEANOR OR FELONY SHALL CONDITIONALLY UNSEAL THE RECORD OF THE CONVICTION OR CONVICTIONS AND THAT IF SUCH CHARGE RESULTS IN A CONVICTION FOR A CRIME, THE CONDITIONAL SEALING ORDER WILL BE AUTOMATICALLY VACATED.

(D) IF THE PETITION IS DENIED, THE SENTENCING COURT SHALL PROMPTLY NOTIFY IN WRITING THE PETITIONER AND ANY DISTRICT ATTORNEY WHO SUBMITTED MATERIALS PURSUANT TO THIS SUBDIVISION. THE PETITIONER MAY FILE A NEW PETITION PURSUANT TO THIS SECTION NO LESS THAN TWO YEARS AFTER SUCH DENIAL.

7. IN THE EVENT THAT A PERSON WHO HAS HAD A RECORD CONDITIONALLY SEALED UNDER THIS SECTION IS SUBSEQUENTLY CHARGED WITH A CRIME, THE RECORDS RELATING TO THE CONVICTION OR CONVICTIONS SHALL BE CONDITIONALLY UNSEALED PENDING THE FINAL DISPOSITION OF THE CHARGE. IF SUCH CHARGE RESULTS IN A CONVICTION OF A CRIME, THE CONDITIONAL SEALING ORDER SHALL BE DEEMED AUTOMATICALLY VACATED. THE DIVISION OF CRIMINAL JUSTICE SERVICES AND ANY OTHER ENTITY SUBJECT TO SUCH ORDER SHALL UNSEAL ANY RECORDS THAT HAD BEEN SEALED BY VIRTUE OF THIS SECTION. ALL RECORDS UNSEALED PURSUANT TO THIS SUBDIVISION SHALL BE RESTORED TO THEIR ORIGINAL STATUS AND TREATED AS THOUGH THE CONDITIONAL SEALING ORDER HAD NOT BEEN ENTERED. IF SUCH SUBSEQUENT CHARGE RESULTS IN PROCEEDINGS THAT ARE TERMINATED IN FAVOR OF THE ACCUSED AS DESCRIBED IN SUBDIVISION THREE OF SECTION 160.50 OF THIS ARTICLE OR BY CONVICTION FOR A NONCRIMINAL OFFENSE AS DESCRIBED IN SECTION 160.55 OF THIS ARTICLE, THE ORIGINAL CONDITIONAL SEALING ORDER SHALL BE RESTORED TO FULL EFFECT. THE COURT

HEARING SUCH SUBSEQUENT CHARGE SHALL THEN ISSUE AN ORDER CONSISTENT WITH PARAGRAPH (C) OF SUBDIVISION SIX OF THIS SECTION.

8. FOR PURPOSES OF THIS SECTION, CONDITIONAL SEALING SHALL MEAN THAT THE RECORDS OF THE SUBJECT CONVICTION OR CONVICTIONS ARE SEALED IN THE MANNER PROVIDED IN SECTION 160.50 OF THIS ARTICLE, AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON OR PUBLIC OR PRIVATE AGENCY, EXCEPT SUCH RECORDS SHALL BE MADE AVAILABLE TO: (A) THE PETITIONER OR TO SUCH PETITIONER'S DESIGNATED AGENT; (B) A PROSECUTOR, A LAW ENFORCEMENT AGENCY, OR A COURT WHICH HAS RESPONSIBILITY FOR CRIMINALLY INVESTIGATING, PROSECUTING, OR ADJUDICATING THE PETITIONER; (C) ANY STATE OR LOCAL OFFICE OR AGENCY WITH RESPONSIBILITY FOR THE ISSUANCE OF LICENSES TO POSSESS GUNS, WHEN THE PETITIONER HAS MADE APPLICATION FOR SUCH A LICENSE; (D) ANY PROSPECTIVE EMPLOYER OF A POLICE OFFICER OR PEACE OFFICER AS THOSE TERMS ARE DEFINED IN SUBDIVISIONS THIRTY-THREE AND THIRTY-FOUR OF SECTION 1.20 OF THIS CHAPTER, IN RELATION TO AN APPLICATION FOR EMPLOYMENT AS A POLICE OFFICER OR PEACE OFFICER; PROVIDED, HOWEVER, THAT EVERY PERSON WHO IS AN APPLICANT FOR THE POSITION OF POLICE OFFICER OR PEACE OFFICER SHALL BE FURNISHED WITH A COPY OF ALL RECORDS OBTAINED UNDER THIS PARAGRAPH AND AFFORDED AN OPPORTUNITY TO MAKE AN EXPLANATION THERETO; (E) PERSONS OR PUBLIC OR PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGERPRINT INDIVIDUALS AS PART OF A BACKGROUND CHECK; (F) PROSPECTIVE EMPLOYERS OF CAREGIVERS WHO SUBMIT FINGERPRINTS TO THE DIVISION OF CRIMINAL JUSTICE SERVICES UNDER SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE EXECUTIVE LAW; (G) THE NEW YORK STATE DIVISION OF PAROLE WHEN THE PETITIONER IS UNDER PAROLE SUPERVISION; AND (H) THE LOCAL PROBATION DEPARTMENT RESPONSIBLE FOR SUPERVISION OF THE PETITIONER. RECORDS CONDITIONALLY SEALED PURSUANT TO THIS SECTION SHALL ALSO BE MADE AVAILABLE, IF OTHERWISE ADMISSIBLE, FOR USE BEFORE THE JURY, OR THE JUDGE AS TRIER OF FACT, IF THE PERSON WHO IS THE SUBJECT OF THE RECORD IS A WITNESS AS DEFINED IN PARAGRAPH (B) OR (C) OF SUBDIVISION ONE OR PARAGRAPH (B) OR (C) OF SUBDIVISION TWO OF SECTION 240.45 OF THIS CHAPTER.

9. ANY PERSON OR AGENCY THAT KNOWINGLY RELEASES OR PERMITS THE RELEASE OF ANY RECORD OR INFORMATION THAT IS SEALED PURSUANT TO THIS SECTION TO ANY PERSON OR AGENCY NOT AUTHORIZED TO RECEIVE IT SHALL BE SUBJECT TO A CIVIL PENALTY FOR EACH SUCH VIOLATION OF UP TO ONE THOUSAND DOLLARS. SUCH PENALTIES MAY BE RECOVERED IN A CIVIL ACTION BROUGHT BY THE ATTORNEY GENERAL OR BY THE PERSON WHO IS THE SUBJECT OF SUCH RECORD OR INFORMATION. WHEN THE PREVAILING PLAINTIFF IN SUCH CIVIL ACTION IS THE PERSON WHO IS THE SUBJECT OF SUCH RECORD OR INFORMATION, THE COURT SHALL INCLUDE IN THE JUDGMENT AN AWARD OF COSTS AND ATTORNEYS FEES.

S 22. Section 160.60 of the criminal procedure law, as amended by chapter 877 of the laws of 1976, is amended to read as follows:

S 160.60 Effect of termination of criminal actions in favor of the accused.

Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision two of section 160.50 of this [chapter] ARTICLE, OR UPON THE CONDITIONAL SEALING OF A CONVICTION OR CONVICTIONS, AS DESCRIBED IN SECTION 160.65 OF THIS ARTICLE, the arrest [and], prosecution AND CONVICTION OR CONVICTIONS CONDITIONALLY SEALED shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status he occupied before the arrest [and], prosecution AND CONVICTION OR CONVICTIONS. The arrest [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED shall not operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession, or calling PROVIDED, HOWEVER, A PERSON WHO HAS HAD A CONVICTION OR CONVICTIONS

CONDITIONALLY SEALED PURSUANT TO SECTION 160.65 OF THIS ARTICLE SHALL CONTINUE TO BE DISQUALIFIED FROM WORKING IN AN OCCUPATION OR PROFESSION WHERE THE LAW MANDATES THAT SUCH PERSON IS SO DISQUALIFIED BASED ON THE NATURE OF THE OFFENSE. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED. IN THE CASE OF A CONVICTION CONDITIONALLY SEALED, AN EMPLOYER, EXCEPT THOSE PERSONS OR PUBLIC OR PRIVATE AGENCIES WHO ARE MANDATED BY LAW TO FINGERPRINT INDIVIDUALS AS PART OF A BACKGROUND CHECK AND PROSPECTIVE EMPLOYERS OF CAREGIVERS UNDER SECTION EIGHT HUNDRED THIRTY-SEVEN-N OF THE EXECUTIVE LAW, MAY ONLY ASK WHETHER A PERSON HAS BEEN CONVICTED OF A CRIME THAT HAS NOT BEEN CONDITIONALLY SEALED. IN THE EVENT THAT AN EMPLOYER ASKS AN UNLAWFUL QUESTION, THE PERSON SHALL ONLY HAVE TO REVEAL THOSE CRIMINAL CONVICTIONS THAT HAVE NOT BEEN CONDITIONALLY SEALED.

S 23. Section 450.10 of the criminal procedure law is amended by adding two new subdivisions 6 and 7 to read as follows:

6. AN ORDER, ENTERED PURSUANT TO SECTION 160.65 OF THIS TITLE, DENYING A PETITION TO CONDITIONALLY SEAL THE RECORD OF AN ELIGIBLE FELONY OR MISDEMEANOR AS SUCH TERMS ARE DEFINED IN SUCH SECTION.

7. AN ORDER, ENTERED PURSUANT TO SECTION 440.46 OF THIS TITLE, DENYING A MOTION FOR RESENTENCING MADE PURSUANT TO SUCH SECTION.

S 24. Subdivision 16 of section 296 of the executive law, as amended by chapter 639 of the laws of 2007, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law in connection with the licensing, employment or providing of credit or insurance to such individual, OR ANY CONVICTION OR CONVICTIONS THAT HAVE BEEN CONDITIONALLY SEALED, AS DESCRIBED IN SECTION 160.65 OF THE CRIMINAL PROCEDURE LAW; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law.

S 25. Subdivision 2 of section 259-i of the executive law is amended by adding a new paragraph (b-l) to read as follows:

(B-1) (I) AN INMATE CONVICTED AND SERVING A SENTENCE FOR AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE

PENAL LAW, WHO WAS ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY BY THE DEPARTMENT, AND WHO IS RELEASED ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION SHALL, AS A CONDITION THEREOF, BE REQUIRED TO PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A MINIMUM OF ONE YEAR OR UNTIL TERMINATION OF SUCH PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION, WHICHEVER OCCURS FIRST. SUCH SUPERVISION SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED BY THIS SUBPARAGRAPH SHALL NOT BE REQUIRED IF THE BOARD OR THE DIVISION FIND THAT SUCH CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. THE DIVISION SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH RELEASEE SUBJECT TO THE CONDITION MANDATED BY THIS SUBPARAGRAPH.

(II) AN INMATE SERVING AN INDETERMINATE OR DETERMINATE SENTENCE, OTHER THAN A SENTENCE FOR A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL LAW, WHO WAS ASSESSED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY BY THE DEPARTMENT, AND WHO IS RELEASED ON PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION SHALL, AS A CONDITION OF SUCH PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION, BE REQUIRED TO PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM CERTIFIED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A MINIMUM OF ONE YEAR OR UNTIL TERMINATION OF SUCH PAROLE, CONDITIONAL RELEASE OR POST-RELEASE SUPERVISION, WHICHEVER FIRST OCCURS. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED BY THIS SUBPARAGRAPH SHALL NOT BE REQUIRED IF THE BOARD OR THE DIVISION FIND THAT SUCH CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. THE DIVISION SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH RELEASEE SUBJECT TO THE CONDITION MANDATED BY THIS SUBPARAGRAPH.

S 26. The executive law is amended by adding a new section 837-s to read as follows:

S 837-S. COMBINED LAW ENFORCEMENT AND COMMUNITY STRATEGY TARGETING STREET-LEVEL DRUG CRIME PROGRAM. THE DIVISION SHALL CONTRACT WITH AN OUTSIDE ACADEMIC INSTITUTION TO COORDINATE THREE PILOT PROGRAMS IN DISCRETE, TARGETED NEIGHBORHOODS LOCATED IN THREE DIFFERENT GEOGRAPHIC AREAS OF THE STATE TO SIGNIFICANTLY REDUCE STREET-LEVEL UNLAWFUL DRUG ACTIVITY, ESPECIALLY AS IT RELATES TO VIOLENT CRIME AND CRIMINAL ACTIVITY IN SUCH AREAS, THROUGH A "COMBINED LAW ENFORCEMENT AND COMMUNITY STRATEGY TO ELIMINATE STREET-LEVEL DRUG CRIME". FOR PURPOSES OF THIS SECTION, A "COMBINED LAW ENFORCEMENT AND COMMUNITY STRATEGY TO ELIMINATE STREET-LEVEL DRUG CRIME" SHALL MEAN A PROGRAM WHICH:

1. USES CRIME MAPPING INFORMATION TO TARGET GEOGRAPHIC DRUG MARKETS, DRUG-DEALERS, DRUG SUPPLIERS AND STREET LEVEL DRUG SALES THAT IMPACT COMMUNITY SAFETY;

2. BUILDING ON A STATISTICAL AND MAPPING FOUNDATION, GATHERS EXTENSIVE INTELLIGENCE ON NETWORKS OF INDIVIDUALS INVOLVED IN THE LOCAL DRUG SCENE AND INDIVIDUAL PATTERNS OF CRIMINAL BEHAVIOR;

3. USES A JOINT POLICE-COMMUNITY PARTNERSHIP TO IDENTIFY INDIVIDUAL OFFENDERS, NOTIFY THEM OF THE CONSEQUENCES OF CONTINUED ILLEGAL ACTIVITY, AND UNDERTAKE MEASURES DESIGNED TO ELIMINATE SUCH CRIMINAL BEHAVIOR THROUGH A COMMUNITY-BASED COORDINATOR WHO IDENTIFIES ALTERNATIVES TO CONTINUED UNLAWFUL DRUG ACTIVITY AND ACTS TO REDUCE RECIDIVISM AND VIOLENT CRIME AND ENHANCE PUBLIC SAFETY; AND

4. PROVIDES FOR THE BRINGING OF CRIMINAL CHARGES AGAINST OFFENDERS WHO DO NOT CEASE ILLEGAL ACTIVITY.

S 27. Subdivision 1 of section 211 of the judiciary law is amended by adding a new paragraph (m) to read as follows:

(M) THE ESTABLISHMENT AND OPERATION OF DRUG COURTS AND THEIR EFFECTIVE AND EFFICIENT UTILIZATION OF FUNDS, SERVICES AND JUDICIAL AND NON-JUDICIAL PERSONNEL.

S 28. Subdivision 1 of section 212 of the judiciary law is amended by adding a new paragraph (w) to read as follows:

(W) SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS TO FUND THE COSTS THEREOF: (I) DESIGNATE AT LEAST ONE COURT IN EACH COUNTY OF THE STATE AS A DRUG COURT, AND (II) IN CONSULTATION WITH SUCH PUBLIC AND PRIVATE AGENCIES AS MAY BE NECESSARY, ESTABLISH AN APPROPRIATE TRAINING PROGRAM PARTICIPATION IN WHICH SHALL BE REQUIRED FOR JUDICIAL AND NON-JUDICIAL PERSONNEL WHO SERVE IN A DRUG COURT. SUCH TRAINING PROGRAM SHALL INCLUDE BUT NOT BE LIMITED TO A SUBSTANCE ABUSE TREATMENT CURRICULA APPROVED BY THE OFFICE OF ALCOHOL AND SUBSTANCE ABUSE SERVICES, A TRAINING SESSION TO BE PRESENTED BY A PROSECUTION REPRESENTATIVE DESIGNATED BY THE NEW YORK STATE DISTRICT ATTORNEY'S ASSOCIATION AND A TRAINING SESSION TO BE PRESENTED BY THE NEW YORK STATE DEFENDERS ASSOCIATION.

S 29. Subdivisions 3, 5 and 6 of section 60.04 of the penal law, as added by chapter 738 of the laws of 2004, are amended to read as follows:

3. Class B felonies. Every person convicted of a class B felony must be sentenced to imprisonment in accordance with the applicable provisions of section 70.70 of this title, [unless such person is convicted of a class B felony and is sentenced to] A DEFINITE SENTENCE OF IMPRISONMENT WITH A TERM OF ONE YEAR OR LESS OR probation in accordance with section 65.00 of this title PROVIDED, HOWEVER, A PERSON CONVICTED OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THIS CHAPTER MUST BE SENTENCED TO A DETERMINATE SENTENCE OF IMPRISONMENT ACCORDING TO THE APPLICABLE PROVISIONS OF SECTION 70.70 OF THIS TITLE.

5. Multiple felony offender. Where the court imposes a sentence upon a second felony drug offender, as defined in paragraph (b) of subdivision one of section 70.70 of this title, it must sentence such offender to imprisonment in accordance with the applicable provisions of section 70.70 of this title, A DEFINITE SENTENCE OF IMPRISONMENT WITH A TERM OF ONE YEAR OR LESS, OR PROBATION IN ACCORDANCE WITH SECTION 65.00 OF THIS TITLE, PROVIDED, HOWEVER, THAT SUCH A PERSON TO BE SENTENCED FOR OR WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW MUST BE SENTENCED TO A DETERMINATE SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF SECTION 70.70 OF THIS TITLE.

6. Substance abuse treatment. When the court imposes a sentence of imprisonment which requires a commitment to the state department of correctional services upon a person who stands convicted of a controlled substance or marihuana offense, the court may, upon motion of the defendant in its discretion, issue an order directing that the department of correctional services enroll the defendant in the comprehensive alcohol and substance abuse treatment program in an alcohol and substance abuse correctional annex as defined in subdivision eighteen of section two of the correction law, provided that the defendant will satisfy the statutory eligibility criteria for participation in such program. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of correctional services, including without limitation

those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date. AFTER THE DEFENDANT'S ARRIVAL IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL SERVICES, THE COMMISSIONER OF SUCH DEPARTMENT SHALL NOTIFY THE SENTENCING COURT AND THE DEFENDANT IN WRITING CONCERNING THE DEFENDANT'S ENROLLMENT IN SUCH COMPREHENSIVE ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM.

S 30. Section 60.05 of the penal law is amended by adding a new subdivision 8 to read as follows:

8. JUDICIALLY SENTENCED SHOCK INCARCERATION. WHERE THE COURT IMPOSES A SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THIS SECTION AND THE DEFENDANT IS ELIGIBLE FOR SENTENCING PURSUANT TO SUBDIVISION THREE OF SECTION EIGHT HUNDRED SIXTY-FIVE OF THE CORRECTION LAW, THEN THE COURT MAY SENTENCE THE DEFENDANT AS A JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE. AFTER THE DEFENDANT'S ARRIVAL IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONAL SERVICES, THE COMMISSIONER OF SUCH DEPARTMENT SHALL NOTIFY THE SENTENCING COURT AND THE DEFENDANT IN WRITING CONCERNING THE DEFENDANT'S ENROLLMENT IN SUCH SHOCK INCARCERATION PROGRAM.

S 31. The opening paragraph of paragraph (b) of subdivision 1 of section 65.00 of the penal law, as amended by chapter 410 of the laws of 1979, is amended to read as follows:

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, OR THE CLASS B FELONY DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY DEFINED IN SECTION 220.44 OF THIS CHAPTER, AS A SECOND FELONY DRUG OFFENDER, COMMITTED IN THE MANNER SPECIFIED IN SUBPARAGRAPH FOUR OF PARAGRAPH C OF SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW, 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:

S 32. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 3 of section 65.00 of the penal law, subparagraph (i) as amended by chapter 264 of the laws of 2003, subparagraph (ii) as amended by chapter 738 of the laws of 2004, are amended to read as follows:

(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 THE CLASS B FELONY DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY, COMMITTED BY A SECOND FELONY DRUG OFFENDER, DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION 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, OR THE CLASS B FELONY DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY,

COMMITTED BY A SECOND FELONY DRUG OFFENDER, DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION 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];

S 33. Paragraph (e) of subdivision 2 of section 65.10 of the penal law, as amended by chapter 742 of the laws of 1981, is amended to read as follows:

(e) Participate in an alcohol or substance abuse program LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES or an intervention program approved by the court after consultation with the local probation department having jurisdiction, or such other public or private agency as the court determines to be appropriate;

S 34. Section 65.10 of the penal law is amended by adding two new subdivisions 4-b and 4-c to read as follows:

4-B. MANDATORY CONDITION FOR CERTAIN PERSONS CONVICTED OF A FELONY OFFENSE IN VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER. WHEN IMPOSING A SENTENCE OF PROBATION UPON A PERSON CONVICTED OF A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER AND ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY, THE COURT SHALL REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A PERIOD OF ONE YEAR OR UNTIL TERMINATION OF SUCH PROBATION, WHICHEVER OCCURS FIRST. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED BY THIS SUBDIVISION SHALL NOT BE REQUIRED IF THE COURT FINDS THAT SUCH CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. LOCAL PROBATION DEPARTMENTS SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH PERSON SUBJECT TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION.

4-C. MANDATORY CONDITION FOR CERTAIN PERSONS CONVICTED OF A FELONY OFFENSE OTHER THAN A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER. WHEN IMPOSING A SENTENCE OF PROBATION UPON A PERSON CONVICTED OF A FELONY OFFENSE OTHER THAN AN OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER AND SUCH PERSON HAS BEEN ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY, THE COURT SHALL REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A PERIOD OF ONE YEAR OR UNTIL TERMINATION OF SUCH PROBATION, WHICHEVER OCCURS FIRST. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED BY THIS SUBDIVISION SHALL NOT BE REQUIRED IF THE COURT FINDS THAT SUCH CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. LOCAL PROBATION DEPARTMENTS SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH PERSON SUBJECT TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION.

S 35. Section 70.00 of the penal law is amended by adding a new subdivision 7 to read as follows:

7. TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION. THE SENTENCE FOR THE CLASS A-I FELONY OFFENSE SPECIFIED IN SECTION 220.68 OF THIS CHAPTER ("TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION") SHALL BE AN INDETERMINATE SENTENCE, THE MAXIMUM TERM OF WHICH SHALL BE LIFE IMPRISONMENT IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, AND THE MINIMUM PERIOD OF WHICH SHALL BE NOT LESS THAN

FIFTEEN YEARS NOR MORE THAN THIRTY YEARS IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION.

S 36. Paragraph (b) of subdivision 1 of section 70.02 of the penal law, as separately amended by chapters 764 and 765 of the laws of 2005, is amended to read as follows:

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section 490.30, CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 265.18 and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

S 37. Subdivision 3 of section 70.02 of the penal law is amended by adding a new paragraph (b-1) to read as follows:

(B-1) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION, FOR THE CLASS C FELONY OF CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 265.18, THE TERM MUST BE AT LEAST FIVE YEARS AND MUST NOT EXCEED FIFTEEN YEARS.

S 38. Paragraphs (a) and (b) of subdivision 1 of section 70.70 of the penal law, as added by chapter 738 of the laws of 2004, are amended to read as follows:

(a) "Felony drug offender" means a defendant who stands convicted of any felony[,] defined in article two hundred twenty or two hundred twenty-one of this chapter other than a class A felony, OR WHO STANDS CONVICTED OF A FELONY DEFINED IN SECTION 105.15 OF THIS CHAPTER IN WHICH THE UNDERLYING CONDUCT CONSTITUTES A CLASS A FELONY DEFINED IN SECTION 220.18, 220.21, 220.41 OR 220.43 OF THIS CHAPTER.

(b) "Second felony drug offender" means a second felony offender as that term is defined in subdivision one of section 70.06 of this article, who stands convicted of any felony[,] defined in article two hundred twenty or two hundred twenty-one of this chapter other than a class A felony, OR WHO STANDS CONVICTED OF A FELONY DEFINED IN SECTION 105.15 OF THIS CHAPTER IN WHICH THE UNDERLYING CONDUCT CONSTITUTES A CLASS A FELONY DEFINED IN SECTION 220.18, 220.21, 220.41 OR 220.43 OF THIS CHAPTER.

S 39. Paragraphs (b) and (c) of subdivision 2 of section 70.70 of the penal law, as added by chapter 738 of the laws of 2004, are amended to read as follows:

(b) Probation. Notwithstanding any other provision of law, the court may sentence a defendant convicted of a class B, OTHER THAN THE CRIME OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THIS CHAPTER, class C, class D or class E felony offense

defined in article two hundred twenty or two hundred twenty-one of this chapter to probation in accordance with the provisions of section 65.00 of this chapter.

(c) Alternative definite sentence for CLASS B, class C, class D, and class E felonies. If 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 a determinate sentence upon a person convicted of a CLASS B, class C, class D or class E felony offense defined in article two hundred twenty or two hundred twenty-one of this chapter, OTHER THAN THE CRIME OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THIS CHAPTER, the court may impose a definite sentence of imprisonment and fix a term of one year or less.

S 40. Paragraph (b) of subdivision 3 of section 70.70 of the penal law, as added by chapter 738 of the laws of 2004, is amended to read as follows:

(b) Authorized sentence. Except as provided in paragraph [(c) or] (d) of this subdivision, when the court has found pursuant to the provisions of section 400.21 of the criminal procedure law that a defendant is a second felony drug offender who stands convicted of a class B, class C, class D or class E felony offense defined in article two hundred twenty or two hundred twenty-one of this chapter the court shall impose a determinate sentence of imprisonment[. Such], A DEFINITE SENTENCE OF IMPRISONMENT WITH A TERM OF ONE YEAR OR LESS, OR PROBATION IN ACCORDANCE WITH SECTION 65.00 OF THIS TITLE, PROVIDED, HOWEVER, THAT A PERSON TO BE SENTENCED FOR OR WITH A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW MUST BE SENTENCED TO A DETERMINATE PERIOD OF IMPRISONMENT IN ACCORDANCE WITH THIS PARAGRAPH. WHERE THE COURT IMPOSES A DETERMINATE SENTENCE OF IMPRISONMENT, SUCH determinate sentence shall include as a part thereof a period of post-release supervision in accordance with section 70.45 of this article. The terms of such determinate sentence shall be imposed by the court in whole or half years as follows:

S 41. Paragraph (c) of subdivision 3 of section 70.70 of the penal law, as added by chapter 738 of the laws of 2004, is amended to read as follows:

(c) Lifetime probation. Notwithstanding any other provision of law, the court may sentence a defendant convicted of a class B felony [defined in article two hundred twenty of this chapter] DEFINED IN SECTION 220.44 OF THIS CHAPTER, AS A SECOND FELONY DRUG OFFENDER, WHERE SUCH OFFENSE WAS COMMITTED IN THE MANNER SPECIFIED IN SUBPARAGRAPH C OF SUBDIVISION FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW, to lifetime probation in accordance with the provisions of section 65.00 of this chapter.

S 42. Paragraphs (a) and (b) of subdivision 1 of section 70.71 of the penal law, as added by chapter 738 of the laws of 2004, are amended to read as follows:

(a) "Felony drug offender" means a defendant who stands convicted of any class A felony as defined in article two hundred twenty of this chapter; PROVIDED, HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE A DEFENDANT WHO STANDS CONVICTED OF AND IS TO BE SENTENCED FOR THE CLASS A-I FELONY OFFENSE SPECIFIED IN SECTION 220.68 OF THIS CHAPTER ("TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION"), WHO SHALL BE SENTENCED IN ACCORDANCE WITH SUBDIVISION SEVEN OF SECTION 70.00 OF THIS ARTICLE.

(b) "Second felony drug offender" means a second felony offender as that term is defined in subdivision one of section 70.06 of this article, who stands convicted of and is to be sentenced for any class A felony as defined in article two hundred twenty of this chapter; PROVIDED HOWEVER, THAT SUCH TERM SHALL NOT INCLUDE SUCH A SECOND FELONY OFFENDER WHO STANDS CONVICTED OF AND IS TO BE SENTENCED FOR THE CLASS A-I FELONY OFFENSE SPECIFIED IN SECTION 220.68 OF THIS CHAPTER ("TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION"), WHO SHALL BE SENTENCED IN ACCORDANCE WITH SUBDIVISION SEVEN OF SECTION 70.00 OF THIS ARTICLE.

S 43. Subdivision 1 of section 110.05 of the penal law, as amended by chapter 93 of the laws of 2006, is amended to read as follows:

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, TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION, 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;

S 44. Section 220.18 of the penal law, as amended by chapter 75 of the laws of 1995, the opening paragraph and subdivision 1 as amended by chapter 738 of the laws of 2004, is amended to read as follows:

S 220.18 Criminal possession of a controlled substance in the second degree.

A person is guilty of criminal possession of a controlled substance in the second degree when he or she knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of four ounces or more; or

2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of [two] FOUR ounces or more; or

3. a stimulant and said stimulant weighs [ten] TWENTY grams or more; or

4. lysergic acid diethylamide and said lysergic acid diethylamide weighs [twenty-five] FIFTY milligrams or more; or

5. a hallucinogen and said hallucinogen weighs [six hundred twenty-five] ONE THOUSAND TWO HUNDRED FIFTY milligrams or more; or

6. a hallucinogenic substance and said hallucinogenic substance weighs [twenty-five] FIFTY grams or more; or

7. methadone and said methadone weighs [two thousand eight hundred eighty] FIVE THOUSAND SEVEN HUNDRED SIXTY milligrams or more.

Criminal possession of a controlled substance in the second degree is a class A-II felony.

S 45. Section 220.21 of the penal law, as amended by chapter 75 of the laws of 1995, the opening paragraph and subdivision 1 as amended by chapter 738 of the laws of 2004, is amended to read as follows:

S 220.21 Criminal possession of a controlled substance in the first degree.

A person is guilty of criminal possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of eight ounces or more; or

2. methadone and said methadone weighs [five thousand seven hundred sixty] ELEVEN THOUSAND FIVE HUNDRED TWENTY milligrams or more.

Criminal possession of a controlled substance in the first degree is a class A-I felony.

S 46. Section 220.25 of the penal law, as amended by chapter 276 of the laws of 1973, subdivision 1 as amended by chapter 278 of the laws of 1973 and subdivision 2 as amended by chapter 341 of the laws of 1985, is amended to read as follows:

S 220.25 Criminal possession of a controlled substance; presumption.

1. The presence of a controlled substance in an automobile, other than a public omnibus, [is presumptive evidence] CREATES A PERMISSIBLE INFERENCE of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such [presumption] PERMISSIBLE INFERENCE does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (c) when the controlled substance is concealed upon the person of one of the occupants, OR (D) WHEN THE CONTROLLED SUBSTANCE IS CONCEALED BEYOND THE IMMEDIATE GRABBABLE AREA OF THE DEFENDANT AND THE DEFENDANT IS NOT THE OWNER OR OPERATOR OF THE VEHICLE.

2. The presence of a narcotic drug, narcotic preparation, marihuana or phencyclidine in open view in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, package or otherwise prepare for sale such controlled substance [is presumptive evidence] CREATES A PERMISSIBLE INFERENCE of knowing possession thereof by each and every person in close proximity to such controlled substance at the time such controlled substance was found; except that such [presumption] PERMISSIBLE INFERENCE does not apply to any such persons if (a) one of them, having obtained such controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (b) one of them has such controlled substance upon his person.

S 47. Section 220.41 of the penal law, as added by chapter 276 of the laws of 1973 and subdivisions 1, 2, 3, 4, 5, 6 and 7 as amended by chapter 75 of the laws of 1995, is amended to read as follows:

S 220.41 Criminal sale of a controlled substance in the second degree.

A person is guilty of criminal sale of a controlled substance in the second degree when he OR SHE knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and the preparations, compounds, mixtures or substances are of an aggregate weight of [one-half] ONE ounce or more; or

2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of [one-half] ONE ounce or more; or

3. a stimulant and the stimulant weighs [five] TEN grams or more; or

4. lysergic acid diethylamide and the lysergic acid diethylamide weighs [five] TEN milligrams or more; or

5. a hallucinogen and the hallucinogen weighs [one] TWO hundred [twenty-five] FIFTY milligrams or more; or

6. a hallucinogenic substance and the hallucinogenic substance weighs [five] TEN grams or more; or

7. methadone and the methadone weighs [three] SEVEN hundred [sixty] TWENTY milligrams or more.

Criminal sale of a controlled substance in the second degree is a class A-II felony.

S 48. Section 220.43 of the penal law, as amended by chapter 785 of the laws of 1975 and subdivisions 1 and 2 as amended by chapter 75 of the laws of 1995, is amended to read as follows:

S 220.43 Criminal sale of a controlled substance in the first degree.

A person is guilty of criminal sale of a controlled substance in the first degree when he OR SHE knowingly and unlawfully sells:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and the preparations, compounds, mixtures or substances are of an aggregate weight of [two] FOUR ounces or more; or

2. methadone and the methadone weighs [two thousand eight hundred eighty] FIVE THOUSAND SEVEN HUNDRED SIXTY milligrams or more.

Criminal sale of a controlled substance in the first degree is a class A-I felony.

S 49. The penal law is amended by adding a new section 220.48 to read as follows:

S 220.48 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD.

A PERSON IS GUILTY OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD WHEN, BEING OVER TWENTY-ONE YEARS OLD, HE OR SHE KNOWINGLY AND UNLAWFULLY SELLS TO A PERSON LESS THAN SIXTEEN YEARS OF AGE A CONTROLLED SUBSTANCE IN VIOLATION OF ANY ONE OF SUBDIVISIONS ONE THROUGH SIX-A OR SUBDIVISION NINE OF SECTION 220.34 OF THIS ARTICLE.

CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD IS A CLASS B FELONY.

S 50. The penal law is amended by adding a new section 220.68 to read as follows:

S 220.68 TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION.

A PERSON IS GUILTY OF TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION WHEN HE OR SHE ENGAGES IN THREE OR MORE CLASS B OR HIGHER CONTROLLED SUBSTANCE SALE OFFENSES DEFINED IN THIS ARTICLE, IN THE MANNER SPECIFIED IN PARAGRAPHS (B) AND (C) OF SUBDIVISION FOUR OF SECTION 460.10 OF THIS CHAPTER, IN EACH OF WHICH HE OR SHE (A) DIRECTED THE ACTIVITIES OF SUCH ORGANIZATION AND SUPERVISED MORE THAN THREE ACCOMPLICES ENGAGED IN SUCH CONDUCT; AND (B) DERIVED PROFITS EXCEEDING FIFTY THOUSAND DOLLARS.

TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION IS A CLASS A-I FELONY.

S 51. The penal law is amended by adding a new section 265.18 to read as follows:

S 265.18 CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE.

A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE WHEN HE OR SHE PHYSICALLY POSSESSES A LOADED FIREARM, A MACHINE GUN OR A DISGUISED GUN, WITH THE INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE IN VIOLATION OF ARTICLE TWO HUNDRED TWENTY OF THIS CHAPTER.

CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED SUBSTANCE IS A CLASS C FELONY.

S 52. The opening paragraph of subdivision a of section 265.20 of the penal law, as amended by chapter 496 of the laws of 1991, is amended to read as follows:

Sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, 265.18 and 270.05 shall not apply to:

S 53. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as separately amended by chapters 312 and 472 of the laws of 2008, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; section 135.35 relating to labor trafficking; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 165.72 and 165.73 relating to trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage fraud, sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 [and], 220.60 AND 220.68 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13, 265.18 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

S 54. Paragraph (a) of subdivision 7 of section 480.00 of the penal law, as added by chapter 655 of the laws of 1990, is amended to read as follows:

(a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, [or] 220.43, 220.68 OR 265.18 of this chapter, or where the accusatory instrument charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, [or] 220.43, 220.68 OR 265.18 of [the penal law] THIS CHAPTER, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or

S 55. Paragraphs (a) and (c) of subdivision 4-b of section 1310 of the civil practice law and rules, as added by chapter 655 of the laws of 1990, are amended to read as follows:

(a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, [or] 220.43, OR 220.68 of the penal law, or where the accusatory instrument charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, [or] 220.43 OR 220.68 of the penal law, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 [or], 220.39 OR 265.18 of the penal law, or a conviction of a criminal defendant for a violation of section 221.30 of the penal law, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances or where the conviction is for a violation of section 221.30 of the penal law, marijuana, as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance or where the conviction is for a violation of section 221.30 of the penal law, marijuana, that such possession was with the intent to sell it.

S 56. Section 8 of the state finance law is amended by adding a new subdivision 21 to read as follows:

21. COMMENCING WITH THE ENACTMENT OF THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE WHICH ADDED THIS SUBDIVISION, THE COMPTROLLER MAY: (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 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 SUCH CHAPTER; (B) AUTHORIZE AND DIRECT THE TRANSFER OF FUNDS EQUAL TO SEVENTY-FIVE PERCENT OF THE AMOUNT OF SAVINGS CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVISION FROM THE GENERAL FUND TO THE CRIME REDUCTION FUND AUTHORIZED BY SECTION NINETY-SEVEN-J OF THIS CHAPTER; AND (C) AUTHORIZE AND DIRECT THE TRANSFER OF FUNDS EQUAL TO TWENTY-FIVE PERCENT OF THE AMOUNT OF SAVINGS CERTIFIED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION FROM THE GENERAL FUND TO THE SCHOOL DRUG ABUSE PREVENTION FUND AUTHORIZED BY SECTION NINETY-SEVEN-K OF THIS CHAPTER.

S 57. The state finance law is amended by adding two new sections 97-j and 97-k 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.

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 FOR PAYMENT TO LOCAL GOVERNMENTS AND NOT-FOR-PROFIT CORPORATIONS, THE DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES FOR PAYMENT TO LOCAL PROBATION DEPARTMENTS AND NOT-FOR-PROFIT CORPORATIONS, THE DIVISION OF PAROLE, THE OFFICE OF COURT ADMINISTRATION, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DEPARTMENT OF CORRECTIONAL SERVICES. MONEYS FROM THE FUND SHALL BE EXPENDED FOR ALCOHOL AND SUBSTANCE ABUSE TREATMENT INCLUDING TREATMENT FOR PERSONS WHO HAVE A SUBSTANCE ABUSE DEPENDENCY BUT HAVE NOT HAD CONTACT WITH THE CRIMINAL JUSTICE SYSTEM WITH RESPECT TO SUCH DEPENDENCY, OFFENDER SUPERVISION AND RELATED SERVICES WHICH OPERATE PURSUANT TO THE CHAPTER OF THE LAWS WHICH ADDED THIS SUBDIVISION. IN EACH YEAR, AT LEAST TWENTY PERCENT OF THE FUNDS IN THE CRIME REDUCTION FUND ESTABLISHED PURSUANT TO THIS SECTION SHALL BE APPROPRIATED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES OF WHICH AMOUNT HALF SHALL BE APPORTIONED TO DISTRICT ATTORNEYS AND HALF SHALL BE APPORTIONED TO LEGAL AID SOCIETIES, PUBLIC DEFENDERS AND OTHER PUBLIC DEFENSE ENTITIES. ALL SUCH FUNDING SHALL BE USED TO FINANCE SERVICES AND EXPENSES RELATED TO DRUG TREATMENT ALTERNATIVES TO PRISON PROGRAMS, DRUG COURT PROGRAMS AND OTHER ALTERNATIVE TO INCARCERATION PROGRAMS. ALL PROGRAMS FUNDED PURSUANT TO THIS SECTION SHALL BE DESIGNED TO THE MAXIMUM EXTENT POSSIBLE TO REDUCE OFFENDER RECIDIVISM AND CRIME. NOTWITHSTANDING THE FOREGOING, IN ANY STATE FISCAL YEAR, THE LEGISLATURE MAY PROVIDE THAT UP TO FIVE PERCENT OF THE TOTAL AMOUNT OF MONEYS TRANSFERRED TO THE CRIME REDUCTION FUND PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER BE APPROPRIATED TO THE CRIME VICTIMS BOARD TO BE USED FOR CRIME VICTIM SERVICES.

4. MONEYS SHALL BE PAYABLE FROM THE FUND ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE DIRECTOR OF THE BUDGET.

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

S 97-K. SCHOOL DRUG ABUSE PREVENTION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER A SPECIAL FUND TO BE KNOWN AS THE "SCHOOL DRUG ABUSE PREVENTION FUND".

2. SUCH FUND SHALL CONSIST OF ALL MONEYS TRANSFERRED BY THE STATE COMPTROLLER TO SUCH FUND FROM THE GENERAL FUND PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER.

3. MONEYS IN THE SCHOOL DRUG ABUSE PREVENTION FUND SHALL BE AVAILABLE PURSUANT TO APPROPRIATION BY THE LEGISLATURE TO THE STATE EDUCATION DEPARTMENT FOR DRUG PREVENTION AND TREATMENT PROGRAMS SERVING STUDENTS IN PRE-KINDERGARTEN THROUGH GRADE TWELVE INCLUDING, BUT NOT LIMITED TO, DRUG PREVENTION AND EDUCATION PROGRAMS, SCHOOL-BASED COUNSELING AND TREATMENT FOR STUDENTS IDENTIFIED AS ABUSING DRUGS OR ALCOHOL, MENTORING PROGRAMS, LIFE-SKILLS PROGRAMS WHICH INCLUDE DRUG RESISTANCE SKILLS AND PROGRAMS DESIGNED TO EDUCATE AND HELP PARENTS REDUCE THEIR CHILDREN'S RISK OF ABUSING DRUGS AND ALCOHOL, INCLUDING PROGRAMS OFFERING PRAGMATIC, SAFETY-FOCUSED INITIATIVES, OUTREACH AND SUPPORT. NOTWITHSTANDING

THE FOREGOING, IN ANY STATE FISCAL YEAR, THE LEGISLATURE MAY PROVIDE THAT UP TO FIVE PERCENT OF THE TOTAL AMOUNT OF MONEYS TRANSFERRED TO THE SCHOOL DRUG ABUSE PREVENTION FUND PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER BE APPROPRIATED TO THE CRIME VICTIMS BOARD TO BE USED FOR CRIME VICTIM SERVICES.

4. MONEYS SHALL BE PAYABLE FROM THE FUND ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS APPROVED AND CERTIFIED BY THE COMMISSIONER OF THE STATE EDUCATION DEPARTMENT.

5. MONEYS IN THE SCHOOL DRUG ABUSE PREVENTION FUND SHALL BE USED TO SUPPLEMENT, NOT SUPPLANT, OTHER FUNDING SOURCES.

S 58. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that:

(a) the amendments to section 410.91 of the criminal procedure law made by section eighteen of this act shall not affect the repeal of such section and shall be deemed repealed therewith;

(b) effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act on their effective date is authorized and directed to be made and completed within 120 days after the date on which this act becomes a law;

(c) the amendments to subdivision 18 of section 2 of the correction law, made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision (q) of section 427 of chapter 55 of the laws of 1992, as amended, and subdivision (c) of section 46 of chapter 60 of the laws of 1994, as amended, when upon such date the provisions of section three of this act shall take effect;

(d) the amendments to section 851 of the correction law made by section six of this act shall not affect the expiration of such section and shall be deemed repealed therewith;

(e) with respect to subparagraph (ii) of paragraph (b-1) of subdivision 2 of section 259-i of the executive law as added by section twenty-five of this act, the division of parole, in consultation with the office of alcoholism and substance abuse services, shall, on or before such effective date, promulgate a plan to implement the provisions of such subparagraph (ii). Such plan shall provide for the enrollment and participation of one-third of the persons described in such subparagraph in such appropriate substance abuse treatment program services within one year of the promulgation of the plan, an additional one-third of such persons within 2 years of the promulgation of the plan and the final one-third of such persons within 3 years of the promulgation of the plan. A copy of such plan, and any updates thereto, shall be provided to the chairs of the assembly committee on correction, committee on codes, committee on health and committee on alcoholism and drug abuse, as well as the chairs of the senate committee on codes, committee on health, committee on crime victims, crime and correction, and committee on alcoholism and drug abuse;

(f) with respect to subdivision 4-c of section 65.10 of the penal law as added by section thirty-four of this act, the department of probation and correctional alternatives, in consultation with the office of alcoholism and substance abuse services, shall, on or before such effective date, promulgate a plan that will assure full implementation of the provisions of such subdivision 4-c. Such plan shall provide for the enrollment and participation of one-third of the persons described in such subdivision in such appropriate substance abuse treatment program services within one year of the promulgation of the plan, an additional one-third of such persons within 2 years of the promulgation of the plan

and the final one-third of such persons within 3 years of the promulgation of the plan. A copy of such plan, and any updates thereto, shall be provided to the chairs of the assembly committee on correction, committee on codes, committee on health, and committee on alcoholism and drug abuse, as well as the chairs of the senate committee on codes, committee on health, committee on crime victims, crime and correction, and committee on alcoholism and drug abuse;

(g) subdivision 4 of section 440.46 of the criminal procedure law as added by section nineteen of this act shall take effect immediately;

(h) section fifty-six of this act shall take effect April 1, 2009; and

(i) the provisions of sections twenty-one, twenty-two, twenty-three, and twenty-four of this act shall apply to convictions entered before, on or after such date.