

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:

1 Section 1. Subdivision 17 of section 2 of the correction law, as added
2 by chapter 338 of the laws of 1989, is amended to read as follows:
3 17. (A) "Alcohol and substance abuse treatment [facility] SERVICES." A
4 correctional [facility] PROGRAM designed [to house medium security
5 inmates as defined by department rules and regulations and operated] for
6 the purpose of providing intensive alcohol and substance abuse treatment
7 services TO INMATES OF THE DEPARTMENT. Such services shall ensure
8 comprehensive treatment for alcoholism and substance abuse, PURSUANT TO
9 PARAGRAPH (B) OF THIS SUBDIVISION, to ALL inmates UNDER CUSTODY OF THE
10 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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1 designee, OR BY THE SENTENCING COURT, as having had or presently having
2 a history of alcoholism or substance abuse. Such services shall be
3 provided [in the facility] WITHIN THE DEPARTMENT FOR A MINIMUM OF TWELVE
4 MONTHS (PROVIDED, HOWEVER, THAT INMATES WHO SUCCESSFULLY COMPLETE SIX
5 MONTHS OF SUCH ALCOHOL AND SUBSTANCE ABUSE TREATMENT PROGRAM, AND ARE
6 OTHERWISE ELIGIBLE FOR DRUG ABUSE TREATMENT PURSUANT TO SUBDIVISION
7 EIGHTEEN OF THIS SECTION, MAY PARTICIPATE IN SUCH TREATMENT AT A CORREC-
8 TIONAL ANNEX PURSUANT TO SUBDIVISION EIGHTEEN OF THIS SECTION), OR UNTIL
9 RELEASE FROM THE DEPARTMENT, WHICHEVER OCCURS FIRST, TO ALL INMATES WHO
10 WERE ASSESSED AND IDENTIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE
11 DEPENDENCY BY THE DEPARTMENT OR BY THE SENTENCING COURT. SUCH PROGRAM
12 SHALL BE PROVIDED in accordance with minimum standards promulgated by
13 [the department after consultation with the division of alcoholism and
14 alcohol abuse and the division of substance abuse services] THE OFFICE
15 OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, AFTER CONSULTATION WITH THE
16 DEPARTMENT. SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS.

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

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

36 18. "Alcohol and substance abuse treatment correctional annex." A
37 medium security correctional facility consisting of one or more residen-
38 tial dormitories which provide intensive alcohol and substance abuse
39 treatment services to inmates who: (i) are otherwise eligible for tempo-
40 rary release, or (ii) stand convicted of a felony defined in article two
41 hundred twenty or two hundred twenty-one of the penal law, and are with-
42 in [six] EIGHTEEN months of being an eligible inmate as that term is
43 defined in subdivision two of section eight hundred fifty-one of this
44 chapter including such inmates who are participating in such program
45 pursuant to subdivision six of section 60.04 of the penal law. Notwith-
46 standing the foregoing provisions of this subdivision, any inmate to be
47 enrolled in this program pursuant to subdivision six of section 60.04 of
48 the penal law shall be governed by the same rules and regulations
49 promulgated by the department, including without limitation those rules
50 and regulations establishing requirements for completion and those rules
51 and regulations governing discipline and removal from the program. No
52 such period of court ordered corrections based drug abuse treatment
53 pursuant to this subdivision shall be required to extend beyond the
54 defendant's conditional release date. Such treatment services may be
55 provided by one or more outside service providers pursuant to contractu-
56 al agreements with both the department and the division of parole,

1 provided, however, that any such provider shall be required to continue
2 to provide, either directly or through formal or informal agreement with
3 other providers, alcohol and substance abuse treatment services to
4 inmates who have successfully participated in such provider's carcera-
5 tive treatment services and who have been paroled or conditionally
6 released under the supervision of the division of parole and who are, as
7 a condition of their parole or conditional release, required to partic-
8 ipate in alcohol or substance abuse treatment. Such incarcerative
9 services shall be provided in the facility in accordance with minimum
10 standards promulgated by the department after consultation with the
11 office of alcoholism and substance abuse services. Such services to
12 parolees shall be provided in accordance with standards promulgated by
13 the division of parole after consultation with the office of alcoholism
14 and substance abuse services. Notwithstanding any other provision of
15 law, any person who has successfully completed no less than six months
16 of intensive alcohol and substance abuse treatment services in one of
17 the department's eight designated alcohol and substance abuse treatment
18 correctional annexes having a combined total capacity of two thousand
19 five hundred fifty beds may be transferred to a program operated by or
20 at a residential treatment facility[, provided however, that a person
21 under a determinate sentence as a second felony drug offender for a
22 class B felony offense defined in article two hundred twenty of the
23 penal law, who was sentenced pursuant to section 70.70 of such law,
24 shall not be eligible to be transferred to a program operated at a resi-
25 dential treatment facility until the time served under imprisonment for
26 his or her determinate sentence, including any jail time credited pursu-
27 ant to the provisions of article seventy of the penal law, shall be at
28 least eighteen months]. The commissioner shall report annually to the
29 temporary president of the senate and the speaker of the assembly
30 commencing January first, nineteen hundred ninety-two as to the efficacy
31 of such programs including but not limited to a comparative analysis of
32 state-operated and private sector provision of treatment services and
33 recidivism. Such report shall also include the number of inmates
34 received by the department during the reporting period who are subject
35 to a sentence which includes enrollment in substance abuse treatment in
36 accordance with subdivision six of section 60.04 of the penal law, the
37 number of such inmates who are not placed in such treatment program and
38 the reasons for such occurrences.

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

42 18. "Alcohol and substance abuse treatment correctional annex." A
43 medium security correctional facility consisting of one or more residen-
44 tial dormitories which provide intensive alcohol and substance abuse
45 treatment services to inmates who: (i) are otherwise eligible for tempo-
46 rary release, or (ii) stand convicted of a felony defined in article two
47 hundred twenty or two hundred twenty-one of the penal law, and are with-
48 in [six] EIGHTEEN months of being an eligible inmate as that term is
49 defined in subdivision two of section eight hundred fifty-one of this
50 chapter including such inmates who are participating in such program
51 pursuant to subdivision six of section 60.04 of the penal law. Notwith-
52 standing the foregoing provisions of this subdivision, any inmate to be
53 enrolled in this program pursuant to subdivision six of section 60.04 of
54 the penal law shall be governed by the same rules and regulations
55 promulgated by the department, including without limitation those rules
56 and regulations establishing requirements for completion and those rules

1 and regulations governing discipline and removal from the program. No
2 such period of court ordered corrections based drug abuse treatment
3 pursuant to this subdivision shall be required to extend beyond the
4 defendant's conditional release date. Such treatment services may be
5 provided by one or more outside service providers pursuant to contractu-
6 al agreements with both the department and the division of parole,
7 provided, however, that any such provider shall be required to continue
8 to provide, either directly or through formal or informal agreement with
9 other providers, alcohol and substance abuse treatment services to
10 inmates who have successfully participated in such provider's carcera-
11 tive treatment services and who have been paroled or conditionally
12 released under the supervision of the division of parole and who are, as
13 a condition of their parole or conditional release, required to partic-
14 ipate in alcohol or substance abuse treatment. Such incarcerative
15 services shall be provided in the facility in accordance with minimum
16 standards promulgated by the department after consultation with the
17 office of alcoholism and substance abuse services. Such services to
18 parolees shall be provided in accordance with standards promulgated by
19 the division of parole after consultation with the office of alcoholism
20 and substance abuse services. The commissioner shall report annually to
21 the majority leader of the senate and the speaker of the assembly
22 commencing January first, nineteen hundred ninety-two as to the efficacy
23 of such programs including but not limited to a comparative analysis of
24 state-operated and private sector provision of treatment services and
25 recidivism. Such report shall also include the number of inmates
26 received by the department during the reporting period who are subject
27 to a sentence which includes enrollment in substance abuse treatment in
28 accordance with subdivision six of section 60.04 of the penal law, the
29 number of such inmates who are not placed in such treatment program and
30 the reasons for such occurrences.

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

33 2-A. PERSONS WHO ARE COMMITTED, TRANSFERRED, CERTIFIED TO OR CONFINED
34 BY THE DEPARTMENT AND HAVE A HISTORY OF ALCOHOL OR SUBSTANCE ABUSE SHALL
35 BE DELIVERED TO THE GREATEST EXTENT PRACTICABLE TO A CORRECTIONAL FACIL-
36 ITY THAT OFFERS ALCOHOL OR SUBSTANCE ABUSE SERVICES, AS APPLICABLE, AS
37 DEFINED IN SUBDIVISION SEVENTEEN OF SECTION TWO OF THIS CHAPTER.

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

40 S 149-A. RELEASED INMATES; TRANSITIONAL SERVICES PROGRAM. 1. AS USED
41 IN THIS SECTION, "TRANSITIONAL SERVICES PROGRAM" SHALL MEAN A COMPREHEN-
42 SIVE SKILLS-BASED TRAINING PROGRAM OF THE DEPARTMENT DESIGNED TO PREPARE
43 INMATES FOR REINTEGRATION INTO THE COMMUNITY. EACH TRANSITIONAL
44 SERVICES PROGRAM SHALL BE DESIGNED TO REDUCE OFFENDER RECIDIVISM AND
45 CRIME. SUCH PREPARATION FOR REINTEGRATION SHALL INCLUDE REFERRALS TO
46 APPROPRIATE MEDICAL SERVICES, EDUCATIONAL AND VOCATIONAL SERVICES,
47 MENTAL HEALTH SERVICES AND HOUSING SERVICES AND SHALL BE CONSISTENT WITH
48 THE REQUIREMENT THAT ALL OFFENDERS RELEASED FROM PRISON WITH A SUBSTANCE
49 ABUSE DEPENDENCY BE REQUIRED TO UNDERGO A MANDATORY ALCOHOL OR SUBSTANCE
50 ABUSE TREATMENT PROGRAM. THE DEPARTMENT SHALL MAINTAIN A CURRENT LIST OF
51 REFERRAL SOURCES TO EFFECTUATE EACH TRANSITIONAL SERVICES PROGRAM WHICH
52 LIST SHALL BE UPDATED NO LESS THAN ANNUALLY. SUCH PREPARATION FOR REIN-
53 TEGRATION SHALL INCLUDE ASSISTANCE IN OBTAINING NECESSARY PERSONAL IDEN-
54 TIFICATION INFORMATION.

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

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

8 B. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW, UPON RECEIPT OF
9 AN APPLICATION FOR MEDICAL ASSISTANCE FOR AN INMATE PURSUANT TO PARA-
10 GRAPH A OF THIS SUBDIVISION, THE COMMISSIONER OF HEALTH SHALL DETERMINE
11 THE ELIGIBILITY OF SUCH INMATE FOR ENROLLMENT IN THE MEDICAL ASSISTANCE
12 PROGRAM ESTABLISHED UNDER TITLE ELEVEN OF ARTICLE FIVE OF THE SOCIAL
13 SERVICES LAW OR THE FAMILY HEALTH PLUS PROGRAM ESTABLISHED UNDER TITLE
14 ELEVEN-D OF ARTICLE FIVE OF THE SOCIAL SERVICES LAW. SUCH DETERMINATION
15 SHALL BE BASED ON WHETHER THE INMATE, EXCEPT FOR HIS OR HER STATUS AS AN
16 INMATE, WOULD BE ELIGIBLE TO RECEIVE MEDICAL ASSISTANCE. ENROLLMENT IN
17 THE MEDICAL ASSISTANCE PROGRAM SHALL BE EFFECTIVE ON THE DATE AN ELIGI-
18 BLE INMATE IS RELEASED, CONDITIONALLY RELEASED OR DISCHARGED FROM THE
19 DEPARTMENT AND THE MEDICAL ASSISTANCE IDENTIFICATION CARD SHALL BE
20 PROVIDED TO THE INMATE UPON HIS OR HER RELEASE, CONDITIONAL RELEASE OR
21 DISCHARGE FROM THE DEPARTMENT.

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

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

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

30 2-b. When calculating in advance the date on which a person is or will
31 be eligible for release on parole or conditional release, for purposes
32 of determining eligibility for temporary release or for placement at an
33 alcohol and substance abuse treatment correctional annex, the commis-
34 sioner shall consider and include credit for all potential credits and
35 reductions including but not limited to merit time, ADDITIONAL MERIT
36 TIME and good behavior allowances. Nothing in this subdivision shall be
37 interpreted as precluding the consideration and inclusion of credit for
38 all potential credits and reductions including, but not limited to,
39 merit time, ADDITIONAL MERIT TIME and good behavior allowances when
40 calculating in advance for any other purpose the date on which a person
41 is or will be eligible for release on parole or conditional release.

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

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

1 sion three of section 70.70 of the penal law for a conviction of a class
2 B felony offense defined in article two hundred twenty of the penal
3 law]. Notwithstanding the foregoing, no person who is convicted of any
4 of the following crimes shall be deemed eligible to participate in this
5 program: (a) a violent felony offense as defined in article seventy of
6 the penal law, (b) an A-I felony offense, (c) manslaughter in the second
7 degree, vehicular manslaughter in the second degree, vehicular
8 manslaughter in the first degree, and criminally negligent homicide as
9 defined in article one hundred twenty-five of the penal law, (d) rape in
10 the second degree, rape in the third degree, criminal sexual act in the
11 second degree, criminal sexual act in the third degree, attempted sexual
12 abuse in the first degree, attempted rape in the second degree and
13 attempted criminal sexual act in the second degree as defined in arti-
14 cles one hundred ten and one hundred thirty of the penal law and (e) any
15 escape or absconding offense as defined in article two hundred five of
16 the penal law.

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

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

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

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

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

45 2-A. SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL NOT APPLY TO A
46 JUDICIALLY SENTENCED SHOCK INCARCERATION INMATE. NOTWITHSTANDING SUBDI-
47 VISION FIVE OF THIS SECTION, A JUDICIALLY SENTENCED SHOCK INCARCERATION
48 INMATE SHALL PROMPTLY COMMENCE PARTICIPATION IN THE PROGRAM. EACH JUDI-
49 Cially SENTENCED SHOCK INCARCERATION INMATE DETERMINED TO BE IN NEED OF
50 SUBSTANCE ABUSE TREATMENT SHALL BE REQUIRED TO UNDERGO A SUBSTANCE ABUSE
51 TREATMENT PROGRAM WHILE PARTICIPATING IN THE SHOCK INCARCERATION
52 PROGRAM. SUCH PROGRAM SHALL COMPLY WITH THE REQUIREMENTS OF PARAGRAPH
53 (B) OF SUBDIVISION SEVENTEEN OF SECTION TWO OF THIS CHAPTER. EACH JUDI-
54 Cially SENTENCED SHOCK INCARCERATION INMATE DETERMINED TO BE IN NEED OF
55 SUBSTANCE ABUSE TREATMENT SHALL ALSO BE REQUIRED TO UNDERGO AN ADDI-
56 TIONAL YEAR-LONG SUBSTANCE ABUSE TREATMENT PROGRAM FOLLOWING RELEASE

1 FROM SUCH SHOCK INCARCERATION PROGRAM, IN ACCORDANCE WITH THE REQUIRE-
2 MENTS OF THIS CHAPTER.

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

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

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

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

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

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

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

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

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

46 1-A. EXCEPT IN THE CASE OF A PERSON WHO IS CHARGED WITH, SERVING A
47 SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN
48 OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER,
49 THE SUCCESSFUL COMPLETION OF A DIVERSION PROGRAM BY A PERSON WHO STANDS
50 CHARGED IN AN ACCUSATORY INSTRUMENT OR A COUNT THEREOF WITH A VIOLATION
51 OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL
52 LAW, OR WITH A VIOLATION OF PROBATION IMPOSED AS A SENTENCE FOR SUCH
53 OFFENSE, MAY, IN AND OF ITSELF, CONSTITUTE A COMPELLING FACTOR, CONSID-
54 ERATION OR CIRCUMSTANCE DEMONSTRATING THAT CONVICTION OR PROSECUTION OF
55 THE DEFENDANT UPON SUCH CHARGE IN SUCH ACCUSATORY INSTRUMENT OR COUNT
56 WOULD CONSTITUTE OR RESULT IN INJUSTICE. IN CONSIDERING WHETHER TO GRANT

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

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

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

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

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

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

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

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

40 1-A. EXCEPT IN THE CASE OF A PERSON WHO IS CHARGED WITH, SERVING A
41 SENTENCE FOR, OR A PERSON WITH A PREDICATE FELONY CONVICTION FOR AN
42 OFFENSE DESCRIBED IN SUBDIVISION FIVE OF SECTION 440.46 OF THIS CHAPTER,
43 THE SUCCESSFUL COMPLETION OF A DIVERSION PROGRAM BY A PERSON WHO STANDS
44 CHARGED IN AN ACCUSATORY INSTRUMENT OR A COUNT THEREOF WITH A VIOLATION
45 OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE OF THE PENAL
46 LAW, OR WITH A SPECIFIED OFFENSE OR OFFENSES, AS DEFINED IN SUBDIVISION
47 FIVE OF SECTION 410.91 OF THIS CHAPTER, OR WITH A VIOLATION OF PROBATION
48 IMPOSED AS A SENTENCE FOR SUCH OFFENSE, MAY, IN AND OF ITSELF, CONSTI-
49 TUTE A COMPELLING FACTOR, CONSIDERATION OR CIRCUMSTANCE DEMONSTRATING
50 THAT CONVICTION OR PROSECUTION OF THE DEFENDANT UPON SUCH CHARGE IN SUCH
51 ACCUSATORY INSTRUMENT OR COUNT WOULD CONSTITUTE OR RESULT IN INJUSTICE.
52 IN CONSIDERING WHETHER TO GRANT A MOTION TO DISMISS UNDER SUCH CIRCUM-
53 STANCES, THE COURT SHALL ALSO, TO THE EXTENT APPLICABLE, EXAMINE AND
54 CONSIDER THE FACTORS SET FORTH IN PARAGRAPHS (A) THROUGH (J) OF SUBDIVI-
55 SION ONE OF THIS SECTION.

1 S 16. Subparagraph (i) of paragraph (b) of subdivision 3 of section
2 220.30 of the criminal procedure law, as amended by chapter 410 of the
3 laws of 1979, is amended to read as follows:

4 (i) A plea of guilty, whether to the entire indictment or to part of
5 the indictment for any crime other than a class [A] B OR HIGHER felony,
6 may not be accepted on the condition that it constitutes a complete
7 disposition of one or more other indictments against the defendant wher-
8 ein is charged a class [A-I] A felony as defined in article two hundred
9 twenty of the penal law or the attempt to commit any such class [A-I] A
10 felony, except that an eligible youth, as defined in subdivision two of
11 section 720.10 OF THIS CHAPTER, may plea to a class B felony, upon
12 consent of the district attorney, for purposes of adjudication as a
13 youthful offender.

14 S 17. The criminal procedure law is amended by adding a new section
15 255.30 to read as follows:

16 S 255.30 MOTION FOR ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT.

17 AT ANY TIME AFTER ARRAIGNMENT, THE COURT, UPON APPLICATION OF A
18 DEFENDANT CHARGED WITH A FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF
19 THE PENAL LAW, MAY ORDER AN ALCOHOL OR SUBSTANCE ABUSE ASSESSMENT OF THE
20 DEFENDANT, CONDUCTED BY AN APPROPRIATE PROFESSIONAL OR COUNSELOR. AT
21 ANY TIME AFTER ARRAIGNMENT AND BEFORE ANNOUNCEMENT OF A VERDICT OR
22 ACCEPTANCE OF A GUILTY PLEA CONCERNING ALL FELONY CHARGES BEFORE THE
23 COURT, THE COURT, UPON APPLICATION OF THE PEOPLE, MAY ORDER AN ALCOHOL
24 OR SUBSTANCE ABUSE ASSESSMENT, CONDUCTED BY AN INDEPENDENT PROFESSIONAL
25 OR COUNSELOR, OF A DEFENDANT CHARGED WITH A FELONY DEFINED IN ARTICLE
26 TWO HUNDRED TWENTY OF THE PENAL LAW WHEN, FOLLOWING A HEARING OR COUN-
27 SELED WAIVER THEREOF, THE COURT DETERMINES THAT THERE EXISTS PROBABLE
28 CAUSE TO BELIEVE THE DEFENDANT HAS AN ALCOHOL OR SUBSTANCE ABUSE DEPEND-
29 ENCY. SUCH ASSESSMENT SHALL BE CONDUCTED BY A LICENSED HEALTH CARE
30 PROFESSIONAL EXPERIENCED IN THE TREATMENT OF ALCOHOL AND SUBSTANCE
31 ABUSE, OR BY AN ADDICTION AND SUBSTANCE ABUSE COUNSELOR CREDENTIALLED BY
32 THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, PURSUANT TO
33 SECTION 19.07 OF THE MENTAL HYGIENE LAW.

34 S 18. Subdivision 4 of section 410.91 of the criminal procedure law is
35 REPEALED, subdivisions 5 and 7, as added by chapter 3 of the laws of
36 1995, are amended and a new subdivision 4 is added to read as follows:

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

44 5. For the purposes of this section, a "specified offense" is an
45 offense defined by any of the following provisions of the penal law:
46 criminal mischief in the third degree as defined in section 145.05,
47 criminal mischief in the second degree as defined in section 145.10,
48 grand larceny in the fourth degree as defined in subdivision one, two,
49 three, four, five, six, eight, nine or ten of section 155.30, grand
50 larceny in the third degree as defined in section 155.35 (except where
51 the property consists of one or more firearms, rifles or shotguns),
52 unauthorized use of a vehicle in the second degree as defined in section
53 165.06, criminal possession of stolen property in the fourth degree as
54 defined in subdivision one, two, three, five or six of section 165.45,
55 criminal possession of stolen property in the third degree as defined in
56 section 165.50 (except where the property consists of one or more

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

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

17 S 19. The criminal procedure law is amended by adding a new section
18 440.46 to read as follows:

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

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

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

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

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

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

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

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

30 C. (1) USE OF A CHILD TO COMMIT A CONTROLLED SUBSTANCE OFFENSE AS
31 DEFINED IN SECTION 220.28 OF THE PENAL LAW; (2) CRIMINAL SALE OF A
32 CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THE
33 PENAL LAW; (3) CRIMINAL SALE OF A CONTROLLED SUBSTANCE AS DEFINED IN
34 SUBDIVISION SEVEN OR EIGHT OF SECTION 220.34 OF THE PENAL LAW, WHERE
35 SUCH SALE TOOK PLACE, RESPECTIVELY, ON SCHOOL GROUNDS AS DEFINED IN
36 PARAGRAPH (A) OF SUBDIVISION FOURTEEN OF SECTION 220.00 OF THE PENAL
37 LAW; (4) CRIMINAL SALE OF A CONTROLLED SUBSTANCE AS DEFINED IN SECTION
38 220.44 OF THE PENAL LAW, WHERE SUCH SALE TOOK PLACE ON THE GROUNDS OF A
39 CHILD DAY CARE OR EDUCATIONAL FACILITY AS DEFINED IN PARAGRAPH (A) OF
40 SUBDIVISION FIVE OF SUCH SECTION 220.44; OR (5) TRAFFICKING THROUGH A
41 CONTROLLED SUBSTANCE ORGANIZATION AS DEFINED IN SECTION 220.68 OF THE
42 PENAL LAW.

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

46 (c) Criminal possession of a controlled substance in the seventh
47 degree as defined in section 220.03 of the penal law, criminal
48 possession of a controlled substance in the fifth degree as defined in
49 section 220.06 of the penal law, criminal possession of a controlled
50 substance in the fourth degree as defined in section 220.09 of the penal
51 law, criminal possession of a controlled substance in the third degree
52 as defined in section 220.16 of the penal law, criminal possession of a
53 controlled substance in the second degree as defined in section 220.18
54 of the penal law, criminal possession of a controlled substance in the
55 first degree as defined in section 220.21 of the penal law, criminal
56 sale of a controlled substance in the fifth degree as defined in section

1 220.31 of the penal law, criminal sale of a controlled substance in the
2 fourth degree as defined in section 220.34 of the penal law, criminal
3 sale of a controlled substance in the third degree as defined in section
4 220.39 of the penal law, criminal sale of a controlled substance in the
5 second degree as defined in section 220.41 of the penal law, criminal
6 sale of a controlled substance in the first degree as defined in section
7 220.43 of the penal law, criminally possessing a hypodermic instrument
8 as defined in section 220.45 of the penal law, CRIMINAL SALE OF A
9 CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION 220.48 OF THE
10 PENAL LAW, TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION AS
11 DEFINED IN SECTION 220.68 OF THE PENAL LAW, criminal possession of meth-
12 amphetamine manufacturing material in the second degree as defined in
13 section 220.70 of the penal law, criminal possession of methamphetamine
14 manufacturing material in the first degree as defined in section 220.71
15 of the penal law, criminal possession of precursors of methamphetamine
16 as defined in section 220.72 of the penal law, unlawful manufacture of
17 methamphetamine in the third degree as defined in section 220.73 of the
18 penal law, unlawful manufacture of methamphetamine in the second degree
19 as defined in section 220.74 of the penal law, unlawful manufacture of
20 methamphetamine in the first degree as defined in section 220.75 of the
21 penal law, unlawful disposal of methamphetamine laboratory material as
22 defined in section 220.76 of the penal law, criminal possession of mari-
23 huana in the first degree as defined in section 221.30 of the penal law,
24 criminal sale of marijuana in the first degree as defined in section
25 221.55 of the penal law, promoting gambling in the second degree as
26 defined in section 225.05 of the penal law, promoting gambling in the
27 first degree as defined in section 225.10 of the penal law, possession
28 of gambling records in the second degree as defined in section 225.15 of
29 the penal law, possession of gambling records in the first degree as
30 defined in section 225.20 of the penal law, [and] possession of a gamb-
31 ling device as defined in section 225.30 of the penal law AND CRIMINAL
32 POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A CONTROLLED
33 SUBSTANCE AS DEFINED IN SECTION 265.18 OF THE PENAL LAW;

34 S 21. The criminal procedure law is amended by adding a new section
35 160.65 to read as follows:

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

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

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

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

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

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

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

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

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

9 3. A PETITION AUTHORIZED BY THIS SECTION SHALL INCLUDE:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (III) THE CRIMINAL HISTORY OF THE PETITIONER;

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

17 (V) ANY OTHER RELEVANT FACTORS.

18 (B) THE SENTENCING COURT SHALL MAKE A DETERMINATION ON THE PETITION
19 FOLLOWING THE CONCLUSION OF THE HEARING CONDUCTED PURSUANT TO SUBDIVI-
20 SION FIVE OF THIS SECTION, OR, WHERE NO HEARING IS CONDUCTED, WITHIN
21 NINETY DAYS OF THE DATE THE PETITION WAS FILED AND SHALL STATE IN WRIT-
22 ING THE REASONS FOR ITS DETERMINATION.

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

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

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

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

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

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

41 S 22. Section 160.60 of the criminal procedure law, as amended by
42 chapter 877 of the laws of 1976, is amended to read as follows:
43 S 160.60 Effect of termination of criminal actions in favor of the
44 accused.

45 Upon the termination of a criminal action or proceeding against a
46 person in favor of such person, as defined in subdivision two of section
47 160.50 of this [chapter] ARTICLE, OR UPON THE CONDITIONAL SEALING OF A
48 CONVICTION OR CONVICTIONS, AS DESCRIBED IN SECTION 160.65 OF THIS ARTI-
49 CLE, the arrest [and], prosecution AND CONVICTION OR CONVICTIONS CONDI-
50 TIONALLY SEALED shall be deemed a nullity and the accused shall be
51 restored, in contemplation of law, to the status he occupied before the
52 arrest [and], prosecution AND CONVICTION OR CONVICTIONS. The arrest
53 [or], prosecution, CONVICTION OR CONVICTIONS CONDITIONALLY SEALED shall
54 not operate as a disqualification of any person so accused to pursue or
55 engage in any lawful activity, occupation, profession, or calling
56 PROVIDED, HOWEVER, A PERSON WHO HAS HAD A CONVICTION OR CONVICTIONS

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

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

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

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

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

25 16. It shall be an unlawful discriminatory practice, unless specif-
26 ically required or permitted by statute, for any person, agency, bureau,
27 corporation or association, including the state and any political subdivi-
28 sion thereof, to make any inquiry about, whether in any form of appli-
29 cation or otherwise, or to act upon adversely to the individual
30 involved, any arrest or criminal accusation of such individual not then
31 pending against that individual which was followed by a termination of
32 that criminal action or proceeding in favor of such individual, as
33 defined in subdivision two of section 160.50 of the criminal procedure
34 law, or by a youthful offender adjudication, as defined in subdivision
35 one of section 720.35 of the criminal procedure law, or by a conviction
36 for a violation sealed pursuant to section 160.55 of the criminal proce-
37 dure law in connection with the licensing, employment or providing of
38 credit or insurance to such individual, OR ANY CONVICTION OR CONVICTIONS
39 THAT HAVE BEEN CONDITIONALLY SEALED, AS DESCRIBED IN SECTION 160.65 OF
40 THE CRIMINAL PROCEDURE LAW; provided, however, that the provisions here-
41 of shall not apply to the licensing activities of governmental bodies in
42 relation to the regulation of guns, firearms and other deadly weapons or
43 in relation to an application for employment as a police officer or
44 peace officer as those terms are defined in subdivisions thirty-three
45 and thirty-four of section 1.20 of the criminal procedure law; provided
46 further that the provisions of this subdivision shall not apply to an
47 application for employment or membership in any law enforcement agency
48 with respect to any arrest or criminal accusation which was followed by
49 a youthful offender adjudication, as defined in subdivision one of
50 section 720.35 of the criminal procedure law, or by a conviction for a
51 violation sealed pursuant to section 160.55 of the criminal procedure
52 law.

53 S 25. Subdivision 2 of section 259-i of the executive law is amended
54 by adding a new paragraph (b-1) to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 5. Multiple felony offender. Where the court imposes a sentence upon a
33 second felony drug offender, as defined in paragraph (b) of subdivision
34 one of section 70.70 of this title, it must sentence such offender to
35 imprisonment in accordance with the applicable provisions of section
36 70.70 of this title, A DEFINITE SENTENCE OF IMPRISONMENT WITH A TERM OF
37 ONE YEAR OR LESS, OR PROBATION IN ACCORDANCE WITH SECTION 65.00 OF THIS
38 TITLE, PROVIDED, HOWEVER, THAT SUCH A PERSON TO BE SENTENCED FOR OR WITH
39 A PREDICATE FELONY CONVICTION FOR AN OFFENSE DESCRIBED IN SUBDIVISION
40 FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW MUST BE SENTENCED
41 TO A DETERMINATE SENTENCE OF IMPRISONMENT IN ACCORDANCE WITH THE APPLI-
42 CABLE PROVISIONS OF SECTION 70.70 OF THIS TITLE.

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

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

10 S 30. Section 60.05 of the penal law is amended by adding a new subdi-
11 vision 8 to read as follows:

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

21 S 31. The opening paragraph of paragraph (b) of subdivision 1 of
22 section 65.00 of the penal law, as amended by chapter 410 of the laws of
23 1979, is amended to read as follows:

24 The court, with the concurrence of either the administrative judge of
25 the court or of the judicial district within which the court is situated
26 or such administrative judge as the presiding justice of the appropriate
27 appellate division shall designate, may sentence a person to a period of
28 probation upon conviction of a class A-II felony [or a class B felony]
29 defined in article two hundred twenty, OR THE CLASS B FELONY DEFINED IN
30 SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY DEFINED IN SECTION
31 220.44 OF THIS CHAPTER, AS A SECOND FELONY DRUG OFFENDER, COMMITTED IN
32 THE MANNER SPECIFIED IN SUBPARAGRAPH FOUR OF PARAGRAPH C OF SUBDIVISION
33 FIVE OF SECTION 440.46 OF THE CRIMINAL PROCEDURE LAW, if the prosecutor
34 either orally on the record or in a writing filed with the indictment
35 recommends that the court sentence such person to a period of probation
36 upon the ground that such person has or is providing material assistance
37 in the investigation, apprehension or prosecution of any person for a
38 felony defined in article two hundred twenty or the attempt or the
39 conspiracy to commit any such felony, and if the court, having regard to
40 the nature and circumstances of the crime and to the history, character
41 and condition of the defendant is of the opinion that:

42 S 32. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 3 of
43 section 65.00 of the penal law, subparagraph (i) as amended by chapter
44 264 of the laws of 2003, subparagraph (ii) as amended by chapter 738 of
45 the laws of 2004, are amended to read as follows:

46 (i) For a felony, other than a class A-II felony [or a class B felony]
47 defined in article two hundred twenty of this chapter, OR THE CLASS B
48 FELONY DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY,
49 COMMITTED BY A SECOND FELONY DRUG OFFENDER, DESCRIBED IN PARAGRAPH (B)
50 OF SUBDIVISION ONE OF THIS SECTION or a sexual assault, the period of
51 probation shall be five years;

52 (ii) For a class A-II felony controlled substance offender as defined
53 in paragraph (a) of subdivision one of section 70.71 of this [chapter or
54 a class B second felony drug offender as defined in paragraph (b) of
55 subdivision one of section 70.70 of this] chapter, OR THE CLASS B FELONY
56 DEFINED IN SECTION 220.48 OF THIS CHAPTER, OR THE CLASS B FELONY,

1 COMMITTED BY A SECOND FELONY DRUG OFFENDER, DESCRIBED IN PARAGRAPH (B)
2 OF SUBDIVISION ONE OF THIS SECTION the period of probation shall be
3 life[, and for a class B felony drug offender as defined in paragraph
4 (a) of subdivision one of section 70.70 of this chapter, the period of
5 probation shall be twenty-five years];

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

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

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

16 4-B. MANDATORY CONDITION FOR CERTAIN PERSONS CONVICTED OF A FELONY
17 OFFENSE IN VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWEN-
18 TY-ONE OF THIS CHAPTER. WHEN IMPOSING A SENTENCE OF PROBATION UPON A
19 PERSON CONVICTED OF A FELONY OFFENSE DEFINED IN ARTICLE TWO HUNDRED
20 TWENTY OR TWO HUNDRED TWENTY-ONE OF THIS CHAPTER AND ASSESSED AND IDEN-
21 TIFIED AS HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY, THE COURT
22 SHALL REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH
23 PERSON PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY
24 THE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A PERIOD OF
25 ONE YEAR OR UNTIL TERMINATION OF SUCH PROBATION, WHICHEVER OCCURS FIRST.
26 SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED
27 BY THIS SUBDIVISION SHALL NOT BE REQUIRED IF THE COURT FINDS THAT SUCH
28 CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. LOCAL PROBATION
29 DEPARTMENTS SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT
30 IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH PERSON
31 SUBJECT TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION.

32 4-C. MANDATORY CONDITION FOR CERTAIN PERSONS CONVICTED OF A FELONY
33 OFFENSE OTHER THAN A VIOLATION OF ARTICLE TWO HUNDRED TWENTY OR TWO
34 HUNDRED TWENTY-ONE OF THIS CHAPTER. WHEN IMPOSING A SENTENCE OF
35 PROBATION UPON A PERSON CONVICTED OF A FELONY OFFENSE OTHER THAN AN
36 OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OR TWO HUNDRED TWENTY-ONE
37 OF THIS CHAPTER AND SUCH PERSON HAS BEEN ASSESSED AND IDENTIFIED AS
38 HAVING AN ALCOHOL AND/OR SUBSTANCE ABUSE DEPENDENCY, THE COURT SHALL
39 REQUIRE, AS A MANDATORY CONDITION OF SUCH SENTENCE, THAT SUCH PERSON
40 PARTICIPATE IN A SUBSTANCE ABUSE TREATMENT PROGRAM LICENSED BY THE
41 OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES FOR A PERIOD OF ONE
42 YEAR OR UNTIL TERMINATION OF SUCH PROBATION, WHICHEVER OCCURS FIRST.
43 SUCH PROGRAM SHALL INCLUDE PERIODIC URINALYSIS. THE CONDITIONS MANDATED
44 BY THIS SUBDIVISION SHALL NOT BE REQUIRED IF THE COURT FINDS THAT SUCH
45 CONDITIONS ARE INAPPROPRIATE IN ANY INDIVIDUAL CASE. LOCAL PROBATION
46 DEPARTMENTS SHALL PROVIDE ASSISTANCE IN FINDING AND SECURING PLACEMENT
47 IN AN APPROPRIATE SUBSTANCE ABUSE TREATMENT PROGRAM FOR EACH PERSON
48 SUBJECT TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION.

49 S 35. Section 70.00 of the penal law is amended by adding a new subdi-
50 vision 7 to read as follows:

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

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

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

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

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

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

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

36 (a) "Felony drug offender" means a defendant who stands convicted of
37 any felony[,] defined in article two hundred twenty or two hundred twen-
38 ty-one of this chapter other than a class A felony, OR WHO STANDS
39 CONVICTED OF A FELONY DEFINED IN SECTION 105.15 OF THIS CHAPTER IN WHICH
40 THE UNDERLYING CONDUCT CONSTITUTES A CLASS A FELONY DEFINED IN SECTION
41 220.18, 220.21, 220.41 OR 220.43 OF THIS CHAPTER.

42 (b) "Second felony drug offender" means a second felony offender as
43 that term is defined in subdivision one of section 70.06 of this arti-
44 cle, who stands convicted of any felony[,] defined in article two
45 hundred twenty or two hundred twenty-one of this chapter other than a
46 class A felony, OR WHO STANDS CONVICTED OF A FELONY DEFINED IN SECTION
47 105.15 OF THIS CHAPTER IN WHICH THE UNDERLYING CONDUCT CONSTITUTES A
48 CLASS A FELONY DEFINED IN SECTION 220.18, 220.21, 220.41 OR 220.43 OF
49 THIS CHAPTER.

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

53 (b) Probation. Notwithstanding any other provision of law, the court
54 may sentence a defendant convicted of a class B, OTHER THAN THE CRIME OF
55 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD AS DEFINED IN SECTION
56 220.48 OF THIS CHAPTER, class C, class D or class E felony offense

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

4 (c) Alternative definite sentence for CLASS B, class C, class D, and
5 class E felonies. If the court, having regard to the nature and circum-
6 stances of the crime and to the history and character of the defendant,
7 is of the opinion that a sentence of imprisonment is necessary but that
8 it would be unduly harsh to impose a determinate sentence upon a person
9 convicted of a CLASS B, class C, class D or class E felony offense
10 defined in article two hundred twenty or two hundred twenty-one of this
11 chapter, OTHER THAN THE CRIME OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE
12 TO A CHILD AS DEFINED IN SECTION 220.48 OF THIS CHAPTER, the court may
13 impose a definite sentence of imprisonment and fix a term of one year or
14 less.

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

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

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

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

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

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

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

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

13 1. Class A-I felony when the crime attempted is the A-I felony of
14 murder in the first degree, aggravated murder as defined in subdivision
15 one of section 125.26 of this chapter, criminal possession of a
16 controlled substance in the first degree, criminal sale of a controlled
17 substance in the first degree, TRAFFICKING THROUGH A CONTROLLED
18 SUBSTANCE ORGANIZATION, criminal possession of a chemical or biological
19 weapon in the first degree or criminal use of a chemical or biological
20 weapon in the first degree;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 S 46. Section 220.25 of the penal law, as amended by chapter 276 of
6 the laws of 1973, subdivision 1 as amended by chapter 278 of the laws of
7 1973 and subdivision 2 as amended by chapter 341 of the laws of 1985, is
8 amended to read as follows:

9 S 220.25 Criminal possession of a controlled substance; presumption.

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

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

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

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

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

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

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

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

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

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

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

1 7. methadone and the methadone weighs [three] SEVEN hundred [sixty]
2 TWENTY milligrams or more.
3 Criminal sale of a controlled substance in the second degree is a
4 class A-II felony.
5 S 48. Section 220.43 of the penal law, as amended by chapter 785 of
6 the laws of 1975 and subdivisions 1 and 2 as amended by chapter 75 of
7 the laws of 1995, is amended to read as follows:
8 S 220.43 Criminal sale of a controlled substance in the first degree.
9 A person is guilty of criminal sale of a controlled substance in the
10 first degree when he OR SHE knowingly and unlawfully sells:
11 1. one or more preparations, compounds, mixtures or substances
12 containing a narcotic drug and the preparations, compounds, mixtures or
13 substances are of an aggregate weight of [two] FOUR ounces or more; or
14 2. methadone and the methadone weighs [two thousand eight hundred
15 eighty] FIVE THOUSAND SEVEN HUNDRED SIXTY milligrams or more.
16 Criminal sale of a controlled substance in the first degree is a class
17 A-I felony.
18 S 49. The penal law is amended by adding a new section 220.48 to read
19 as follows:
20 S 220.48 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD.
21 A PERSON IS GUILTY OF CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A
22 CHILD WHEN, BEING OVER TWENTY-ONE YEARS OLD, HE OR SHE KNOWINGLY AND
23 UNLAWFULLY SELLS TO A PERSON LESS THAN SIXTEEN YEARS OF AGE A CONTROLLED
24 SUBSTANCE IN VIOLATION OF ANY ONE OF SUBDIVISIONS ONE THROUGH SIX-A OR
25 SUBDIVISION NINE OF SECTION 220.34 OF THIS ARTICLE.
26 CRIMINAL SALE OF A CONTROLLED SUBSTANCE TO A CHILD IS A CLASS B FELO-
27 NY.
28 S 50. The penal law is amended by adding a new section 220.68 to read
29 as follows:
30 S 220.68 TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION.
31 A PERSON IS GUILTY OF TRAFFICKING THROUGH A CONTROLLED SUBSTANCE
32 ORGANIZATION WHEN HE OR SHE ENGAGES IN THREE OR MORE CLASS B OR HIGHER
33 CONTROLLED SUBSTANCE SALE OFFENSES DEFINED IN THIS ARTICLE, IN THE
34 MANNER SPECIFIED IN PARAGRAPHS (B) AND (C) OF SUBDIVISION FOUR OF
35 SECTION 460.10 OF THIS CHAPTER, IN EACH OF WHICH HE OR SHE (A) DIRECTED
36 THE ACTIVITIES OF SUCH ORGANIZATION AND SUPERVISED MORE THAN THREE
37 ACCOMPLICES ENGAGED IN SUCH CONDUCT; AND (B) DERIVED PROFITS EXCEEDING
38 FIFTY THOUSAND DOLLARS.
39 TRAFFICKING THROUGH A CONTROLLED SUBSTANCE ORGANIZATION IS A CLASS A-I
40 FELONY.
41 S 51. The penal law is amended by adding a new section 265.18 to read
42 as follows:
43 S 265.18 CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO
44 SELL A CONTROLLED SUBSTANCE.
45 A PERSON IS GUILTY OF CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR
46 ATTEMPTING TO SELL A CONTROLLED SUBSTANCE WHEN HE OR SHE PHYSICALLY
47 POSSESSES A LOADED FIREARM, A MACHINE GUN OR A DISGUISED GUN, WITH THE
48 INTENT TO USE THE SAME UNLAWFULLY AGAINST ANOTHER WHILE SELLING OR
49 ATTEMPTING TO SELL A CONTROLLED SUBSTANCE IN VIOLATION OF ARTICLE TWO
50 HUNDRED TWENTY OF THIS CHAPTER.
51 CRIMINAL POSSESSION OF A WEAPON WHILE SELLING OR ATTEMPTING TO SELL A
52 CONTROLLED SUBSTANCE IS A CLASS C FELONY.
53 S 52. The opening paragraph of subdivision a of section 265.20 of the
54 penal law, as amended by chapter 496 of the laws of 1991, is amended to
55 read as follows:

1 Sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11,
2 265.12, 265.13, 265.15, 265.18 and 270.05 shall not apply to:

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

6 (a) Any of the felonies set forth in this chapter: sections 120.05,
7 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
8 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
9 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-
10 ing to labor trafficking; section 135.65 relating to coercion; sections
11 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10
12 and 145.12 relating to criminal mischief; article one hundred fifty
13 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating
14 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to
15 health care fraud; article one hundred sixty relating to robbery;
16 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal
17 possession of stolen property; sections 165.72 and 165.73 relating to
18 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,
19 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,
20 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,
21 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20
22 and 178.25 relating to criminal diversion of prescription medications
23 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,
24 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,
25 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections
26 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage
27 fraud, sections 190.40 and 190.42 relating to criminal usury; section
28 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relat-
29 ing to hindering prosecution; sections 210.10, 210.15, and 215.51 relat-
30 ing to perjury and contempt; section 215.40 relating to tampering with
31 physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21,
32 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 [and], 220.60 AND
33 220.68 relating to controlled substances; sections 225.10 and 225.20
34 relating to gambling; sections 230.25, 230.30, and 230.32 relating to
35 promoting prostitution; section 230.34 relating to sex trafficking;
36 sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;
37 sections 263.10 and 263.15 relating to promoting a sexual performance by
38 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13, 265.18
39 and the provisions of section 265.10 which constitute a felony relating
40 to firearms and other dangerous weapons; and sections 265.14 and 265.16
41 relating to criminal sale of a firearm; and section 275.10, 275.20,
42 275.30, or 275.40 relating to unauthorized recordings; and sections
43 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

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

47 (a) a conviction of a person for a violation of section 220.18,
48 220.21, 220.41, [or] 220.43, 220.68 OR 265.18 of this chapter, or where
49 the accusatory instrument charges one or more of such offenses,
50 conviction upon a plea of guilty to any of the felonies for which such
51 plea is otherwise authorized by law or a conviction of a person for
52 conspiracy to commit a violation of section 220.18, 220.21, 220.41, [or]
53 220.43, 220.68 OR 265.18 of [the penal law] THIS CHAPTER, where the
54 controlled substances which are the object of the conspiracy are located
55 in the real property which is the subject of the forfeiture action; or

1 S 55. Paragraphs (a) and (c) of subdivision 4-b of section 1310 of the
2 civil practice law and rules, as added by chapter 655 of the laws of
3 1990, are amended to read as follows:

4 (a) a conviction of a person for a violation of section 220.18,
5 220.21, 220.41, [or] 220.43, OR 220.68 of the penal law, or where the
6 accusatory instrument charges one or more of such offenses, conviction
7 upon a plea of guilty to any of the felonies for which such plea is
8 otherwise authorized by law or a conviction of a person for conspiracy
9 to commit a violation of section 220.18, 220.21, 220.41, [or] 220.43 OR
10 220.68 of the penal law, where the controlled substances which are the
11 object of the conspiracy are located in the real property which is the
12 subject of the forfeiture action; or

13 (c) a conviction of a person for a violation of section 220.09,
14 220.16, 220.34 [or], 220.39 OR 265.18 of the penal law, or a conviction
15 of a criminal defendant for a violation of section 221.30 of the penal
16 law, or where the accusatory instrument charges any such felony,
17 conviction upon a plea of guilty to a felony for which the plea is
18 otherwise authorized by law, together with evidence which: (i) provides
19 substantial indicia that the defendant used the real property to engage
20 in a continual, ongoing course of conduct involving the unlawful mixing,
21 compounding, manufacturing, warehousing, or packaging of controlled
22 substances or where the conviction is for a violation of section 221.30
23 of the penal law, marijuana, as part of an illegal trade or business for
24 gain; and (ii) establishes, where the conviction is for possession of a
25 controlled substance or where the conviction is for a violation of
26 section 221.30 of the penal law, marijuana, that such possession was
27 with the intent to sell it.

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

30 21. COMMENCING WITH THE ENACTMENT OF THE CHAPTER OF THE LAWS OF TWO
31 THOUSAND NINE WHICH ADDED THIS SUBDIVISION, THE COMPTROLLER MAY: (A)
32 EXAMINE, AUDIT AND, PRIOR TO MARCH FIFTEENTH OF EACH YEAR, CERTIFY TO
33 THE GOVERNOR, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE AND THE
34 CHAIRPERSON OF THE ASSEMBLY WAYS AND MEANS COMMITTEE THE ACTUAL ANNUAL
35 SAVINGS BY THE DEPARTMENT OF CORRECTIONAL SERVICES IN THE PREVIOUS
36 CALENDAR YEAR WHICH IS ATTRIBUTABLE TO THE IMPLEMENTATION OF CHAPTER
37 SEVEN HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND FOUR, CHAPTER SIX
38 HUNDRED FORTY-THREE OF THE LAWS TWO THOUSAND FIVE AND THE CHAPTER OF THE
39 LAWS OF TWO THOUSAND NINE WHICH ADDED THIS SUBDIVISION. SUCH CERTIFI-
40 CATION SHALL BE BASED ON THE DECREASE IN THE NUMBER OF INMATE ADMIS-
41 SIONS AND THE REDUCTION IN INMATE LENGTH OF STAY FOR OFFENSES DEFINED IN
42 ARTICLES TWO HUNDRED TWENTY AND TWO HUNDRED TWENTY-ONE OF THE PENAL LAW,
43 AS WELL AS AN ESTIMATE OF THE EXTENT, IF ANY, BY WHICH ANY REDUCTION IN
44 THE CRIME RATE DURING SUCH CALENDAR YEAR AND ANY CORRESPONDING REDUCTION
45 IN THE NUMBER OF INMATE ADMISSIONS OR LENGTH OF STAY DURING SUCH PERIOD
46 WAS ATTRIBUTABLE TO THE PROVISION OF INCREASED DRUG TREATMENT, OFFENDER
47 SUPERVISION AND RELATED INITIATIVES, ENACTED BY SUCH CHAPTER; (B)
48 AUTHORIZE AND DIRECT THE TRANSFER OF FUNDS EQUAL TO SEVENTY-FIVE PERCENT
49 OF THE AMOUNT OF SAVINGS CERTIFIED UNDER PARAGRAPH (A) OF THIS SUBDIVI-
50 SION FROM THE GENERAL FUND TO THE CRIME REDUCTION FUND AUTHORIZED BY
51 SECTION NINETY-SEVEN-J OF THIS CHAPTER; AND (C) AUTHORIZE AND DIRECT THE
52 TRANSFER OF FUNDS EQUAL TO TWENTY-FIVE PERCENT OF THE AMOUNT OF SAVINGS
53 CERTIFIED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION FROM THE GENERAL
54 FUND TO THE SCHOOL DRUG ABUSE PREVENTION FUND AUTHORIZED BY SECTION
55 NINETY-SEVEN-K OF THIS CHAPTER.

1 S 57. The state finance law is amended by adding two new sections
2 97-j and 97-k to read as follows:

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

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

9 3. MONEYS IN THE CRIME REDUCTION FUND SHALL BE AVAILABLE PURSUANT TO
10 APPROPRIATION BY THE LEGISLATURE TO THE OFFICE OF ALCOHOLISM AND
11 SUBSTANCE ABUSE SERVICES FOR PAYMENT TO LOCAL GOVERNMENTS AND
12 NOT-FOR-PROFIT CORPORATIONS, THE DIVISION OF PROBATION AND CORRECTIONAL
13 ALTERNATIVES FOR PAYMENT TO LOCAL PROBATION DEPARTMENTS AND NOT-FOR-PRO-
14 FIT CORPORATIONS, THE DIVISION OF PAROLE, THE OFFICE OF COURT ADMINIS-
15 TRATION, THE OFFICE OF CHILDREN AND FAMILY SERVICES AND THE DEPARTMENT
16 OF CORRECTIONAL SERVICES. MONEYS FROM THE FUND SHALL BE EXPENDED FOR
17 ALCOHOL AND SUBSTANCE ABUSE TREATMENT INCLUDING TREATMENT FOR PERSONS
18 WHO HAVE A SUBSTANCE ABUSE DEPENDENCY BUT HAVE NOT HAD CONTACT WITH THE
19 CRIMINAL JUSTICE SYSTEM WITH RESPECT TO SUCH DEPENDENCY, OFFENDER SUPER-
20 VISION AND RELATED SERVICES WHICH OPERATE PURSUANT TO THE CHAPTER OF THE
21 LAWS WHICH ADDED THIS SUBDIVISION. IN EACH YEAR, AT LEAST TWENTY PERCENT
22 OF THE FUNDS IN THE CRIME REDUCTION FUND ESTABLISHED PURSUANT TO THIS
23 SECTION SHALL BE APPROPRIATED TO THE DIVISION OF CRIMINAL JUSTICE
24 SERVICES OF WHICH AMOUNT HALF SHALL BE APPORTIONED TO DISTRICT ATTORNEYS
25 AND HALF SHALL BE APPORTIONED TO LEGAL AID SOCIETIES, PUBLIC DEFENDERS
26 AND OTHER PUBLIC DEFENSE ENTITIES. ALL SUCH FUNDING SHALL BE USED TO
27 FINANCE SERVICES AND EXPENSES RELATED TO DRUG TREATMENT ALTERNATIVES TO
28 PRISON PROGRAMS, DRUG COURT PROGRAMS AND OTHER ALTERNATIVE TO INCARCERA-
29 TION PROGRAMS. ALL PROGRAMS FUNDED PURSUANT TO THIS SECTION SHALL BE
30 DESIGNED TO THE MAXIMUM EXTENT POSSIBLE TO REDUCE OFFENDER RECIDIVISM
31 AND CRIME. NOTWITHSTANDING THE FOREGOING, IN ANY STATE FISCAL YEAR, THE
32 LEGISLATURE MAY PROVIDE THAT UP TO FIVE PERCENT OF THE TOTAL AMOUNT OF
33 MONEYS TRANSFERRED TO THE CRIME REDUCTION FUND PURSUANT TO PARAGRAPH (B)
34 OF SUBDIVISION TWENTY-ONE OF SECTION EIGHT OF THIS CHAPTER BE APPROPRI-
35 ATED TO THE CRIME VICTIMS BOARD TO BE USED FOR CRIME VICTIM SERVICES.

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

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

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

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

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

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

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

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

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

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

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

21 (c) the amendments to subdivision 18 of section 2 of the correction
22 law, made by section two of this act shall be subject to the expiration
23 and reversion of such subdivision pursuant to subdivision (q) of section
24 427 of chapter 55 of the laws of 1992, as amended, and subdivision (c)
25 of section 46 of chapter 60 of the laws of 1994, as amended, when upon
26 such date the provisions of section three of this act shall take effect;

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

30 (e) with respect to subparagraph (ii) of paragraph (b-1) of subdivi-
31 sion 2 of section 259-i of the executive law as added by section twen-
32 ty-five of this act, the division of parole, in consultation with the
33 office of alcoholism and substance abuse services, shall, on or before
34 such effective date, promulgate a plan to implement the provisions of
35 such subparagraph (ii). Such plan shall provide for the enrollment and
36 participation of one-third of the persons described in such subparagraph
37 in such appropriate substance abuse treatment program services within
38 one year of the promulgation of the plan, an additional one-third of
39 such persons within 2 years of the promulgation of the plan and the
40 final one-third of such persons within 3 years of the promulgation of
41 the plan. A copy of such plan, and any updates thereto, shall be
42 provided to the chairs of the assembly committee on correction, commit-
43 tee on codes, committee on health and committee on alcoholism and drug
44 abuse, as well as the chairs of the senate committee on codes, committee
45 on health, committee on crime victims, crime and correction, and commit-
46 tee on alcoholism and drug abuse;

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

1 and the final one-third of such persons within 3 years of the promulga-
2 tion of the plan. A copy of such plan, and any updates thereto, shall be
3 provided to the chairs of the assembly committee on correction, commit-
4 tee on codes, committee on health, and committee on alcoholism and drug
5 abuse, as well as the chairs of the senate committee on codes, committee
6 on health, committee on crime victims, crime and correction, and commit-
7 tee on alcoholism and drug abuse;

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

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

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