

4058

2009-2010 Regular Sessions

I N   S E N A T E

April 8, 2009

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Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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