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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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

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

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

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

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

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

30 S 3. Subdivision 2 of section 855 of the correction law, as amended by
31 chapter 691 of the laws of 1977, is amended to read as follows:

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

36 S 4. Paragraph hh of subdivision 1 of section 3-0301 of the environ-
37 mental conservation law, as amended by section 42 of part A of chapter
38 56 of the laws of 2010, is amended to read as follows:

39 hh. Cooperate with the office of probation and correctional alterna-
40 tives by identifying appropriate worksites where persons performing
41 [community] COMPENSATORY service as part of a criminal disposition may
42 be assigned to provide cleanup and other maintenance services in order
43 to preserve and enhance the state's natural beauty and human-made scenic
44 qualities. Such sites may include but are not limited to the state's
45 shorelines, beaches, parks, roadways, historic sites and other natural
46 or human-made resources.

47 S 5. Paragraph b of subdivision 1 of section 261 of the executive law,
48 as amended by section 27 of part A of chapter 56 of the laws of 2010, is
49 amended to read as follows:

50 b. "Eligible programs" means existing programs, enhancement of exist-
51 ing programs or initiation of new programs or, if submitting an approved
52 amendment pursuant to section two hundred sixty-six of this article,
53 eligible alcohol and substance abuse programs as defined in paragraph c
54 of this subdivision which serve to assist the court, public officers or
55 others in identifying and avoiding the inappropriate use of incarceration.
56 tion. Such programs may be administered by either the county or private,

1 community-based organizations and may include, but shall not be limited
2 to: new or enhanced specialized probation services which exceed those
3 probation services otherwise required to be performed in accordance with
4 applicable law, rule or regulation of the division of criminal justice
5 services subject to the provisions of this article; a pre-trial alterna-
6 tive to detention program, including a comprehensive pre-arraignment
7 program which screens all defendants and ensures that the court is fully
8 advised of the availability of alternatives based upon the defendant's
9 suitability and needs prior to its determination regarding the issuance
10 of a securing order, or an effective bail review program; alternatives
11 to post-adjudicatory incarceration programs, including [community]
12 COMPENSATORY service, substance abuse or alcohol intervention programs;
13 and management information systems designed to improve the county's
14 ability to identify appropriate persons for alternatives to detention or
15 incarceration, as well as for improved classification of persons within
16 jail. For purposes of this paragraph, [community] COMPENSATORY service
17 programs may place persons performing [community] COMPENSATORY service
18 at worksites identified by the commissioner of the department of envi-
19 ronmental conservation and the commissioner of the office of parks,
20 recreation and historic preservation.

21 S 6. Subdivision 2-f of section 3.09 of the parks, recreation and
22 historic preservation law, as amended by section 44 of part A of chapter
23 56 of the laws of 2010, is amended to read as follows:

24 2-f. Cooperate with the office of probation and correctional alterna-
25 tives by identifying appropriate worksites where persons performing
26 [community] COMPENSATORY service as part of a criminal disposition may
27 be assigned to provide cleanup and other maintenance services in order
28 to preserve and enhance the state's natural beauty and human-made scenic
29 qualities. Such sites may include but are not limited to the state's
30 shorelines, beaches, parks, roadways, historic sites and other natural
31 or human-made resources.

32 S 7. Paragraph (e) of subdivision 3 of section 1198 of the vehicle and
33 traffic law, as amended by chapter 496 of the laws of 2009, is amended
34 to read as follows:

35 (e) Nothing contained [herein] IN THIS SUBDIVISION shall prevent the
36 court from applying any other conditions of probation or conditional
37 discharge allowed by law, including treatment for alcohol or drug abuse,
38 restitution and [community] COMPENSATORY service.

39 S 8. This act shall take effect immediately; provided, that the amend-
40 ments to subdivision 5 of section 851 and the amendments to subdivision
41 2 of section 855 of the correction law made by sections two and three of
42 this act shall not affect the expiration of such sections and shall be
43 deemed to expire therewith; and provided further that the amendments to
44 paragraph b of subdivision 1 of section 261 of the executive law and the
45 amendments to paragraph (e) of subdivision 3 of section 1198 of the
46 vehicle and traffic law made by sections five and seven of this act
47 shall not affect the repeal of such sections and shall be deemed
48 repealed therewith.