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

692

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:

Section 1. Paragraphs (a), (b) and (c) of subdivision 3 and subdivision 4 of section 65-b of the alcoholic beverage control law, as amended by chapter 519 of the laws of 1999, are amended to read as follows:

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

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

(c) For third and subsequent violations, the court shall order payment of a fine of not less than fifty dollars nor more than seven hundred fifty dollars and/or an appropriate amount of [community] COMPENSATORY 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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person submit to an evaluation by an appropriate agency certified or licensed by the office of alcoholism and substance abuse services to determine whether the person suffers from the disease of alcoholism or alcohol abuse, unless the court determines that under the circumstances presented such an evaluation is not necessary, in which case the court shall state on the record the basis for such determination. Payment for such evaluation shall be made by such person. If, based on such evaluation, a need for treatment is indicated, such person may choose to participate in a treatment plan developed by an agency certified or licensed by the office of alcoholism and substance abuse services. If such person elects to participate in recommended treatment, the court shall order that payment of such fine and [community] COMPENSATORY service be suspended pending the completion of such treatment.

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

S 2. Subdivision 5 of section 851 of the correction law, as amended by chapter 691 of the laws of 1977, is amended to read as follows:

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

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

2. Any eligible inmate may make application to the temporary release committee for participation in a furlough program or [community] COMPENSATORY services program, or for an industrial training leave or educational leave.

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

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

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

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

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

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

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

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

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

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