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

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I N S E N A T E

May 23, 2014

Introduced by Sens. NOZZOLIO, BALL, BONACIC, BOYLE, FELDER, GALLIVAN, GOLDEN, GRIFFO, HANNON, LANZA, LITTLE, MARCELLINO, MARCHIONE, MARTINS, MAZIARZ, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SAVINO, SEWARD, VALESKY, YOUNG -- 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 and the criminal procedure law, in relation to eliminating shock treatment for class A-II felony drug offenders

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

Section 1. Subdivision 1 of section 865 of the correction law, as amended by chapter 377 of the laws of 2010, is amended to read as follows:

1. "Eligible inmate" means a person sentenced to an indeterminate term of imprisonment who will become eligible for release on parole within three years or sentenced to a determinate term of imprisonment who will become eligible for conditional release within three years, who has not reached the age of fifty years, who has not previously been convicted of a violent felony as defined in article seventy of the penal law, or a felony in any other jurisdiction which includes all of the essential elements of any such violent felony, upon which an indeterminate or determinate term of imprisonment was imposed and who was between the ages of sixteen and fifty years at the time of commission of the crime upon which his or her present sentence was based. Notwithstanding the foregoing, no person who is convicted of any of the following crimes shall be deemed eligible to participate in this program: (a) a violent felony offense as defined in article seventy of the penal law, (b) an A-I felony offense, (c) any homicide offense as defined in article one hundred twenty-five of the penal law, (d) any felony sex offense as defined in article one hundred thirty of the penal law [and], (e) any escape or absconding offense as defined in article two hundred five of the penal law, AND (F) ANY CLASS A-II FELONY DRUG OFFENSE DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW EXCEPT WHERE THE INMATE TESTED POSITIVE FOR USE OF A CONTROLLED SUBSTANCE AS DEFINED IN SUBDIVI-

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

SION FIVE OF SECTION 220.00 OF THE PENAL LAW UPON ARRAIGNMENT OF THE CHARGES PURSUANT TO VOLUNTARY DRUG TEST PROVISIONS OF SUBDIVISION SEVEN OF SECTION 180.10 OF THE CRIMINAL PROCEDURE LAW OR SUBDIVISION SEVEN OF SECTION 210.15 OF THE CRIMINAL PROCEDURE LAW.

S 2. Section 180.10 of the criminal procedure law is amended by adding a new subdivision 7 to read as follows:

7. UPON THE ARRAIGNMENT OF A DEFENDANT CHARGED WITH EITHER A CLASS A-I OR CLASS A-II FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, THE COURT, UNLESS IT INTENDS IMMEDIATELY THEREAFTER TO DISMISS THE FELONY COMPLAINT AND TERMINATE THE ACTION, SHALL ADVISE THE DEFENDANT THAT UPON DEFENDANT'S REQUEST, THE COURT WILL ORDER THE IMMEDIATE DRUG TESTING OF THE DEFENDANT FOR THE SOLE PURPOSES OF DETERMINING POTENTIAL FUTURE ELIGIBILITY OF THE DEFENDANT FOR THE SHOCK INCARCERATION PROGRAM UNDER ARTICLE TWENTY-SIX-A OF THE CORRECTION LAW. ANY RESULTS OF SAID TESTING SHALL REMAIN IN THE CUSTODY OF THE COURT AND SHALL ONLY BE USED AT SENTENCE FOR THE PURPOSE OF NOTIFYING THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION OF THE DEFENDANT'S POTENTIAL ELIGIBILITY FOR THE SHOCK INCARCERATION PROGRAM.

S 3. Section 210.15 of the criminal procedure law is amended by adding a new subdivision 7 to read as follows:

7. UPON THE ARRAIGNMENT OF A DEFENDANT CHARGED WITH EITHER A CLASS A-I OR CLASS A-II FELONY DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW, THE COURT, UNLESS IT INTENDS IMMEDIATELY THEREAFTER TO DISMISS THE INDICTMENT AND TERMINATE THE ACTION, SHALL ADVISE THE DEFENDANT THAT UPON DEFENDANT'S REQUEST, THE COURT WILL ORDER THE IMMEDIATE DRUG TESTING OF THE DEFENDANT FOR THE SOLE PURPOSES OF DETERMINING POTENTIAL FUTURE ELIGIBILITY OF THE DEFENDANT FOR THE SHOCK INCARCERATION PROGRAM UNDER ARTICLE TWENTY-SIX-A OF THE CORRECTION LAW. ANY RESULTS OF SAID TESTING SHALL REMAIN IN THE CUSTODY OF THE COURT AND SHALL ONLY BE USED AT SENTENCE FOR THE PURPOSE OF NOTIFYING THE STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION OF THE DEFENDANT'S POTENTIAL ELIGIBILITY FOR THE SHOCK INCARCERATION PROGRAM.

S 4. This act shall take effect immediately.