STATE OF NEW YORK

5095

2017-2018 Regular Sessions

IN SENATE

March 7, 2017

Introduced by Sens. CROCI, GALLIVAN, GOLDEN, ORTT, ROBACH, SERINO -- 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, the executive law, the penal law and the criminal procedure law, in relation to the establishment of an alternative to incarceration program for youth facility

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 2 of the correction law is amended by adding a new subdivision 15-a to read as follows:

15-a. "Alternative to incarceration program for youth facility". A correctional facility designated by the commissioner as an institution that may conduct an alternative to incarceration program for youth.

§ 2. Subdivision 3 of section 70 of the correction law is amended by adding a new paragraph (c) to read as follows:

(c) A correctional camp or an alternative to incarceration program for youth facility, may be established by the department (i) upon land controlled and designated by the commissioner, or (ii) on land controlled and designated by the commissioner of parks, recreation and historic preservation or, in the sixth park region, by the commissioner of environmental conservation.

§ 3. Paragraph (b) of subdivision 6 of section 70 of the correction law, as amended by chapter 338 of the laws of 1989, is amended to read as follows:

(b) Each facility shall be classified with respect to the function served in accordance with one or more of the following categories: (i) reception center; (ii) residential treatment facility; (iii) detention center; (iv) correctional camp; (v) diagnostic and treatment center; (vi) general confinement facility; (vii) work release facility; (viii) shock incarceration correctional facility; (ix) **alternative to incarceration program for youth facility; (x)** alcohol and substance abuse treat-

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

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ment facility; [~~(x)~~] (xi) alcohol and substance abuse treatment correctional annex.

§ 4. The correction law is amended by adding a new article 26-B to read as follows:

ARTICLE 26-B

ALTERNATIVE TO INCARCERATION PROGRAM FOR YOUTH

Section 868. Establishment of alternative to incarceration program for youth.

869. Alternative to incarceration program for youth guidelines.

§ 868. Establishment of alternative to incarceration program for youth. 1. The commissioner, guided by consideration for the safety of the community and the welfare of the inmate, shall promulgate rules and regulations for the alternative to incarceration program for youth as defined in section eight hundred sixty-nine of this article. Such rules and regulations shall reflect the purpose of the program and shall include, but not be limited to, participation criteria, inmate discipline, programming and supervision, and program structure and administration.

2. The commissioner shall appoint or cause to be appointed an alternative to incarceration for youth program supervisory committee at one or more designated correctional facilities, which shall meet on a regularly scheduled basis to review all eligible inmates, as defined in section eight hundred sixty-nine of this article, transferred to such facility for screening and all applications for the alternative to incarceration program for youth.

3. Alternative to incarceration programs may be established only at institutions classified by the commissioner as alternative to incarceration facilities.

4. The department may contract with the office of alcoholism and substance abuse services, the office of mental health and the office of children and family services for the provision of such services as may be required to assure the success of the program.

5. The department shall conduct an ongoing evaluation of the program to ensure that the programmatic objectives are met. The department shall undertake some studies and prepare reports annually on the impact of the program. The reports shall be delivered to the governor, the temporary president of the senate, and the speaker of the assembly by December thirty-first in each year.

§ 869. Alternative to incarceration program for youth guidelines.

1. As used in this article, the following terms shall mean:

(a) "Eligible inmate" means a person sentenced to an indeterminate term of imprisonment issued in accordance with sections 70.00, 70.05 or 70.15 of the penal law, or sentenced to a determinate term of imprisonment issued in accordance with paragraph (a) of subdivision two of section 70.70 of the penal law, who is currently serving their term of imprisonment, who has not been previously convicted of a 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 felony, who was at least sixteen years of age, but not over eighteen years of age, 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: (i) a violent felony offense as defined in article seventy of the penal law, (ii) any crime classified as a class A felony offense, (iii) any homicide offense as defined in article one hundred twenty-five of the penal law, (iv) any felony sex offense as

defined in article one hundred thirty of the penal law and (v) any escape or absconding offense as defined in article two hundred five of the penal law. Eligible inmates may be selected from a local correctional facility, any state operated correctional facility or a facility for juvenile offenders designated pursuant to subdivision four of section 70.20 of the penal law.

(b) "Alternative to incarceration for youth program" means a program pursuant to which eligible inmates are selected to participate in the program and serve a reduced sentence in an alternative to incarceration for youth facility, which shall provide rigorous physical activity, intensive regimentation and discipline and rehabilitation therapy and programming. Upon successful completion of an alternative to incarceration for youth program, and all post-supervision requirements otherwise provided by law, the inmate shall be eligible to apply for the sealing of their criminal record, pursuant to this article.

2. (a) An eligible inmate may make an application to the alternative to incarceration for youth program supervisory committee for permission to participate in the alternative to incarceration for youth program. An eligible offender, serving their term of imprisonment in a local correctional facility, must obtain consent from the sheriff in order to apply to the alternative to incarceration for youth program. An eligible offender, serving their term of imprisonment in a facility designated pursuant to subdivision four of section 70.20 of the penal law must obtain consent from the commissioner of the office of children and family services in order to apply to the alternative to incarceration for youth program.

(b) If the alternative to incarceration for youth supervisory committee determines that an inmate's participation in the alternative to incarceration for youth program is consistent with the safety of the community, the welfare of the applicant and the rules and regulations of the department, the committee shall forward the application to the commissioner or his or her designee for approval or disapproval.

(c) Paragraphs (a) and (b) of this subdivision shall apply to a judicially sentenced alternative to incarceration for youth program inmate only to the extent that the screening committee may determine whether the inmate has a medical or mental health condition that will render the inmate unable to successfully complete the alternative to incarceration for youth program. Notwithstanding paragraph (f) of this subdivision, an inmate sentenced to an alternative to incarceration for youth program shall promptly commence participation in the program when such inmate is an eligible inmate pursuant to this section.

(d) Applicants may not participate in the alternative to incarceration for youth program unless they agree to be bound by all the terms and conditions thereof and indicate such agreement by signing the memorandum of the program immediately below a statement reading as follows: "I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand that my participation in the program is a privilege that may be revoked at any time at the sole discretion of the commissioner. I understand that I must successfully complete the entire program to obtain an early release upon the completion of said program, and in the event that I do not successfully complete said program, for any reason, I will be transferred to a non-alternative to incarceration for youth facility to continue service of my sentence." Applicants who are admitted to the program from a local correctional facility, but who do not successfully complete the program, shall be

transferred back to the local correctional facility from which they were admitted to the program.

(e) Notwithstanding any other law to the contrary, an inmate who received: (i) a determinate sentence pursuant to paragraph (a) of subdivision two of section 70.70 of the penal law, who successfully participated in an alternative to incarceration for youth program for a period of time equal to one-half of their determinate sentence, shall be immediately eligible to be conditionally released; and (ii) an indeterminate sentence, who successfully participated in an alternative to incarceration for youth program for a period of time equal to one-half of their minimum sentence issued in accordance with paragraph (b) of subdivision three of section 70.00, paragraph (c) of subdivision three of section 70.05 or section 70.15 of the penal law, shall be immediately eligible to be conditionally released.

(f) Participation in an alternative to incarceration for youth program shall be a privilege. Nothing contained in this article may be construed to confer upon any inmate the right to participate or continue to participate therein.

(g) Inmates who successfully participated in an alternative to incarceration for youth program, who receive early release pursuant to paragraph (e) of this subdivision, shall also be eligible to apply for conditional sealing, as provided for in section 160.65 of the criminal procedure law.

§ 5. Subdivision 7 of section 72 of the correction law, as added by chapter 261 of the laws of 1987, is amended to read as follows:

7. An inmate of a shock incarceration correctional facility or an alternative to incarceration program for youth facility may be permitted to leave the facility to participate in programs in accordance with the provisions of article twenty-six-A of this chapter and article twenty-six-B of this chapter, respectively.

§ 6. Paragraph (e) of subdivision 2 of section 259-i of the executive law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

(e) Notwithstanding the requirements of paragraph (a) of this subdivision, the determination to parole an inmate who has successfully completed the shock incarceration program pursuant to section [~~two~~] eight hundred sixty-seven of the correction law, or an alternative to incarceration program for youth as described in section eight hundred sixty-nine of the correction law, may be made without a personal interview of the inmate and shall be made in accordance with procedures set forth in the rules of the board. If parole is not granted, the time period for reconsideration shall not exceed the court imposed minimum.

§ 7. Subdivision 7 of section 60.04 of the penal law, as amended by section 120 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

7. a. Shock incarceration and alternative to incarceration program for youth program participation. When the court imposes a sentence of imprisonment which requires a commitment to the department of corrections and community supervision upon a person who stands convicted of a controlled substance or marihuana offense, upon motion of the defendant, the court may issue an order directing that the department of corrections and community supervision enroll the defendant in the shock incarceration program as defined in article twenty-six-A of the correction law, or an alternative to incarceration program for youth as defined in article twenty-six-B of the correction law, provided that the defendant is an eligible inmate, as described in subdivision one of section eight

hundred sixty-five of the correction law **or as described in paragraph (a) of subdivision one of section eight hundred sixty-nine of the correction law, respectively**. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and such rules and regulations governing discipline and removal from the program.

b. (i) In the event that an inmate designated by court order for enrollment in the shock incarceration program **or the alternative to incarceration program for youth** requires a degree of medical care or mental health care that cannot be provided at a shock incarceration facility **or an alternative to incarceration program for youth**, the department, in writing, shall notify the inmate, provide a proposal describing a proposed alternative-to-shock-incarceration program, **or an alternative to the alternative to incarceration program for youth,** and notify him or her that he or she may object in writing to placement in such alternative-to-shock-incarceration program **or alternative to the alternative to incarceration program for youth**. If the inmate objects in writing to placement in such alternative-to-shock-incarceration program, **or alternative to the alternative to incarceration program for youth,** the department of corrections and community supervision shall notify the sentencing court, provide such proposal to the court, and arrange for the inmate's prompt appearance before the court. The court shall provide the proposal and notice of a court appearance to the people, the inmate and the appropriate defense attorney. After considering the proposal and any submissions by the parties, and after a reasonable opportunity for the people, the inmate and counsel to be heard, the court may modify its sentencing order accordingly, notwithstanding the provisions of section 430.10 of the criminal procedure law.

(ii) An inmate who successfully completes an alternative-to-shock-incarceration program**, or an alternative to the alternative to incarceration program for youth,** within the department of corrections and community supervision shall be treated in the same manner as a person who has successfully completed the shock incarceration program, **or the alternative to incarceration program for youth,** as set forth in subdivision four of section eight hundred sixty-seven of the correction law**, and paragraphs (e) and (g) of subdivision two of section eight hundred sixty-nine of the correction law**.

§ 8. Subparagraph (i) of paragraph (a) of subdivision 1 of section 70.40 of the penal law, as amended by section 127-d of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(i) A person who is serving one or more than one indeterminate sentence of imprisonment may be paroled from the institution in which he or she is confined at any time after the expiration of the minimum or the aggregate minimum period of imprisonment of the sentence or sentences or after the successful completion of a shock incarceration program, as defined in article twenty-six-A of the correction law, **or after successful completion of an alternative to incarceration program for youth, as defined in article twenty-six-B of the correction law,** whichever is sooner. Release on parole shall be in the discretion of the state board of parole, and such person shall continue service of his or her sentence or sentences while on parole, in accordance with and subject to the provisions of the executive law and the correction law.

§ 9. The criminal procedure law is amended by adding a new section 160.65 to read as follows:

§ 160.65 Conditional sealing of certain offenses committed by persons who successfully participate in an alternative to incarceration for youth program.

1. A person who has been deemed by the commissioner of the department of corrections and community supervision to have successfully participated in an alternative to incarceration program, which enabled the person to be eligible for early release, as provided in paragraph (e) of subdivision two of section eight hundred sixty-nine of the correction law, may petition the court which issued the conviction to conditionally seal the conviction for which they participated in an alternative to incarceration for youth program. Such person shall not be eligible to have their conviction conditionally sealed if they are subsequently convicted of any criminal offense or if they are the subject of an undisposed arrest, at the time of application for conditional sealing or through the pendency of the action. Further, all post-release supervision obligations must be completed prior to filing for a conditional sealing.

2. A person who was at least sixteen years of age, but not eighteen years of age, at the time of commission of a criminal act, who was convicted and sentenced pursuant to section 70.00, 70.05, 70.15 or paragraph (a) of subdivision two of section 70.70 of the penal law, but not sentenced to a term of imprisonment, may also file a petition for conditional sealing of any conviction associated with such sentence, pursuant to this section. Provided however, the petitioner must complete a minimum of two hundred hours of community service at a not-for-profit corporation operating in this state prior to filing for conditional sealing. The application for conditional sealing must contain a notarized statement from the not-for-profit, certifying the dates and times of the individual's community service. This community service requirement for conditional sealing shall be in addition to any community service ordered by the court as a condition of sentencing.

3. The petition authorized by this section shall be filed in the court of record that imposed the sentence upon the petitioner for the given offense. On the petitioner's motion, the court which imposed the sentence may order that the official records and papers relating to the arrest, prosecution and conviction records for the matter which they disposed of, be conditionally sealed. Any sealing ordered pursuant to this section shall also render the associated arrest a nullity. Prior to sealing any arrest records, prosecutions, or convictions:

(a) the sentencing court must request and receive from the division of criminal justice services or the federal bureau of investigation, a fingerprint based criminal history record of the defendant, including any sealed or suppressed information. The division of criminal justice services shall also include a criminal history report, if any, from the federal bureau of investigation regarding any criminal history information that occurred in other jurisdictions. The division is hereby authorized to receive such information from the federal bureau of investigation for this purpose. The parties shall be permitted to examine these records;

(b) the defendant or court must identify the offense or offenses for which relief may be granted;

(c) the court must receive documentation that the sentence imposed for each offense has been completed; and

(d) the defendant must pay a two hundred dollar filing fee. The filing fee may be waived in cases of indigence as determined by the presiding judge.

4. At the request of the defendant or the district attorney, the court may conduct a hearing to consider and review any relevant evidence offered by either party that would aid the court in its decision whether to seal the records of the petitioner's arrest, prosecutions and convictions. In making such a determination, the court shall consider any relevant factors, including but not limited to:

(a) the circumstances and seriousness of the offense or offenses that resulted in the conviction;

(b) the character of the petitioner, including what steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, school, or other personal history that demonstrates rehabilitation;

(c) the petitioner's criminal history;

(d) the petitioner's civic service record;

(e) the impact of sealing the petitioner's records upon his or her rehabilitation and his or her successful and productive reentry and reintegration into society, and on public safety; and

(f) any statements made by any victim of the offense.

5. A decision granting or denying a motion under this section shall be made in writing and shall state the reasons for the court's ruling, unless the court grants the motion without objection or written response by the prosecutor, in which case the court may issue an order without a written decision. If sealing is denied, the applicant may appeal the decision in accordance with subdivision six of this section, or the applicant may reapply after three years.

6. Either party may appeal as of right from the court's order. The appealing party must serve notice of appeal upon the court and the opposing party within thirty days of the issuance of the court order. If the order is appealed by the prosecutor, such notice of appeal shall be deemed a stay of the order to seal the records. The prosecutor shall perfect the appeal within sixty days, or the sealing order shall immediately take effect unless the court grants an extension of time to perfect the appeal upon good cause shown by the prosecutor. The appeal shall be taken to the same court to which the appeal of the original conviction was, or could have been, brought. The standard of review at the intermediary appellate court shall be appealable to the court of appeals upon leave of the court.

7. When a court orders sealing pursuant to this section, all official records and papers relating to the arrest, prosecution and conviction, including all duplicates and copies thereof, on file with the division of criminal justice services or any court shall be sealed and not made available to any person or public or private agency. Provided however, the division of criminal justice services shall retain fingerprints, palm prints, DNA, photographs, or digital images of the same.

8. When a court orders sealing pursuant to this section, the clerk of such court shall immediately notify the commissioner of the division of criminal justice services and the petitioner regarding the records that shall be sealed pursuant to this section.

9. Records sealed pursuant to this subdivision shall be made available to:

(a) the petitioner or the petitioner's designated agent;

(b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state

law enforcement agencies when acting within the scope of their law enforcement duties except that records may not be used solely for litigation purposes;

(c) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained pursuant to this paragraph and afforded an opportunity to make an explanation thereto.

10. The court shall not seal the petitioner's record pursuant to this section while any charged offense is currently pending.

11. If, subsequent to the sealing of records pursuant to this section, a person who is the subject of such records is found guilty of any misdemeanor or felony offense, such records shall be unsealed immediately and remain unsealed.

12. The right to make an application under this section may not be waived at the time a guilty plea is entered on any case in New York state.

§ 10. Subdivision 16 of section 296 of the executive law, as separately amended by section 3 of part N and section 14 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.65 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.65 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the

provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law**, or by a conviction which is sealed pursuant to section 160.65 of the criminal procedure law**.

§ 11. This act shall take effect January 1, 2018; provided, however, that section eight of this act shall take effect on the same date as the reversion of paragraph (a) of subdivision 1 of section 70.40 of the penal law, as provided in paragraph a of subdivision 6 of section 76 of chapter 435 of the laws of 1997, as amended takes effect.