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PART AAA

40 Section 1. Subdivision 18 of section 2 of the correction law, as  
41 amended by chapter 738 of the laws of 2004, is amended to read as  
42 follows:  
43 18. "Alcohol and substance abuse treatment correctional annex." A  
44 medium security correctional facility consisting of one or more residen-  
45 tial dormitories which provide intensive alcohol and substance abuse  
46 treatment services to inmates who: (i) are otherwise eligible for tempo-  
47 rary release, or (ii) stand convicted of a felony defined in article two  
48 hundred twenty or two hundred twenty-one of the penal law, and are with-  
49 in six months of being an eligible inmate as that term is defined in  
50 subdivision two of section eight hundred fifty-one of this chapter  
51 including such inmates who are participating in such program pursuant to

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1 subdivision six of section 60.04 of the penal law. Notwithstanding the  
2 foregoing provisions of this subdivision, any inmate to be enrolled in  
3 this program pursuant to subdivision six of section 60.04 of the penal  
4 law shall be governed by the same rules and regulations promulgated by  
5 the department, including without limitation those rules and regulations  
6 establishing requirements for completion and those rules and regulations  
7 governing discipline and removal from the program. No such period of  
8 court ordered corrections based drug abuse treatment pursuant to this  
9 subdivision shall be required to extend beyond the defendant's condi-  
10 tional release date. Such treatment services may be provided by one or  
11 more outside service providers pursuant to contractual agreements with  
12 both the department and the division of parole, provided, however, that  
13 any such provider shall be required to continue to provide, either  
14 directly or through formal or informal agreement with other providers,  
15 alcohol and substance abuse treatment services to inmates who have

16 successfully participated in such provider's incarcerative treatment  
17 services and who have been paroled or conditionally released under the  
18 supervision of the division of parole and who are, as a condition of  
19 their parole or conditional release, required to participate in alcohol  
20 or substance abuse treatment. Such incarcerative services shall be  
21 provided in the facility in accordance with minimum standards promulgat-  
22 ed by the department after consultation with the office of alcoholism  
23 and substance abuse services. Such services to parolees shall be  
24 provided in accordance with standards promulgated by the division of  
25 parole after consultation with the office of alcoholism and substance  
26 abuse services. Notwithstanding any other provision of law, any person  
27 who has successfully completed no less than six months of intensive  
28 alcohol and substance abuse treatment services in one of the depart-  
29 ment's eight designated alcohol and substance abuse treatment correc-  
30 tional annexes having a combined total capacity of two thousand five  
31 hundred fifty beds may be transferred to a program operated by or at a  
32 residential treatment facility, provided however, that a person under a  
33 determinate sentence as a second felony drug offender for a class B  
34 felony offense defined in article two hundred twenty of the penal law,  
35 who was sentenced pursuant to section 70.70 of such law, shall not be  
36 eligible to be transferred to a program operated at a residential treat-  
37 ment facility until the time served under imprisonment for his or her  
38 determinate sentence, including any jail time credited pursuant to [the  
39 provisions of article seventy] subdivision three of section 70.30 of the  
40 penal law, shall be at least [eighteen] nine months. The commissioner  
41 shall report annually to the temporary president of the senate and the  
42 speaker of the assembly commencing January first, nineteen hundred nine-  
43 ty-two as to the efficacy of such programs including but not limited to  
44 a comparative analysis of state-operated and private sector provision of  
45 treatment services and recidivism. Such report shall also include the  
46 number of inmates received by the department during the reporting period  
47 who are subject to a sentence which includes enrollment in substance  
48 abuse treatment in accordance with subdivision six of section 60.04 of  
49 the penal law, the number of such inmates who are not placed in such  
50 treatment program and the reasons for such occurrences.

51 À

2. Section 867 of the correction law is amended by adding a new

52 subdivision 2-a to read as follows:

53 2-a. Subdivisions one and two of this section shall apply to a judi-  
54 cially sentenced shock incarceration inmate only to the extent that the  
55 screening committee may determine whether the inmate has a medical or  
56 mental health condition that will render the inmate unable to success-

1 fully complete the shock incarceration program, and the facility in

2 which the inmate will participate in such program. Notwithstanding  
3 subdivision five of this section, an inmate sentenced to shock incarcer-  
4 ation shall promptly commence participation in the program when such  
5 inmate is an eligible inmate pursuant to subdivision one of section  
6 eight hundred sixty-five of this article.

7 A

3. The criminal procedure law is amended by adding a new section

8 160.58 to read as follows:

9 A

160.58 Conditional sealing of certain controlled substance, marihuana  
10 or specified offense convictions.

11 1. A defendant convicted of any offense defined in article two hundred  
12 twenty or two hundred twenty-one of the penal law or a specified offense  
13 defined in subdivision five of section 410.91 of this chapter who has  
14 successfully completed a judicial diversion program under article two  
15 hundred sixteen of this chapter, or one of the programs heretofore known  
16 as drug treatment alternative to prison or another judicially sanctioned  
17 drug treatment program of similar duration, requirements and level of  
18 supervision, and has completed the sentence imposed for the offense or  
19 offenses, is eligible to have such offense or offenses sealed pursuant  
20 to this section.

21 2. The court that sentenced the defendant to a judicially sanctioned  
22 drug treatment program may on its own motion, or on the defendant's  
23 motion, order that all official records and papers relating to the  
24 arrest, prosecution and conviction which resulted in the defendant's  
25 participation in the judicially sanctioned drug treatment program be  
26 conditionally sealed. In such case, the court may also conditionally  
27 seal the arrest, prosecution and conviction records for no more than  
28 three of the defendant's prior eligible misdemeanors, which for purposes  
29 of this subdivision shall be limited to misdemeanor offenses defined in  
30 article two hundred twenty or two hundred twenty-one of the penal law.  
31 The court may only seal the records of the defendant's arrests, prose-  
32 cutions and convictions when:

33 (a) the sentencing court has requested and received from the division  
34 of criminal justice services or the Federal Bureau of Investigation a  
35 fingerprint based criminal history record of the defendant, including  
36 any sealed or suppressed information. The division of criminal justice  
37 services shall also include a criminal history report, if any, from the  
38 Federal Bureau of Investigation regarding any criminal history informa-  
39 tion that occurred in other jurisdictions. The division is hereby  
40 authorized to receive such information from the Federal Bureau of Inves-  
41 tigation for this purpose. The parties shall be permitted to examine  
42 these records;

43 (b) the defendant or court has identified the misdemeanor conviction  
44 or convictions for which relief may be granted;

45 (c) the court has received documentation that the sentences imposed on

46 the eligible misdemeanor convictions have been completed, or if no such  
47 documentation is reasonably available, a sworn affidavit that the  
48 sentences imposed on the prior misdemeanors have been completed; and  
49 (d) the court has notified the district attorney of each jurisdiction  
50 in which the defendant has been convicted of an offense with respect to  
51 which sealing is sought, and the court or courts of record for such  
52 offenses, that the court is considering sealing the records of the  
53 defendant's eligible misdemeanor convictions. Both the district attorney  
54 and the court shall be given a reasonable opportunity, which shall not  
55 be less than thirty days, in which to comment and submit materials to  
56 aid the court in making such a determination.

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1 3. At the request of the defendant or the district attorney of a coun-  
2 ty in which the defendant committed a crime that is the subject of the  
3 sealing application, the court may conduct a hearing to consider and  
4 review any relevant evidence offered by either party that would aid the  
5 court in its decision whether to seal the records of the defendant's  
6 arrests, prosecutions and convictions. In making such a determination,  
7 the court shall consider any relevant factors, including but not limited  
8 to: (i) the circumstances and seriousness of the offense or offenses  
9 that resulted in the conviction or convictions; (ii) the character of  
10 the defendant, including his or her completion of the judicially sanc-  
11 tioned treatment program as described in subdivision one of this  
12 section; (iii) the defendant's criminal history; and (iv) the impact of  
13 sealing the defendant's records upon his or her rehabilitation and his  
14 or her successful and productive reentry and reintegration into society,  
15 and on public safety.

16 4. When a court orders sealing pursuant to this section, all official  
17 records and papers relating to the arrests, prosecutions, and  
18 convictions, including all duplicates and copies thereof, on file with  
19 the division of criminal justice services or any court shall be sealed  
20 and not made available to any person or public or private agency;  
21 provided, however, the division shall retain any fingerprints, palm-  
22 prints and photographs, or digital images of the same.

23 5. When the court orders sealing pursuant to this section, the clerk  
24 of such court shall immediately notify the commissioner of the division  
25 of criminal justice services, and any court that sentenced the defendant  
26 for an offense which has been conditionally sealed, regarding the  
27 records that shall be sealed pursuant to this section.

28 6. Records sealed pursuant to this subdivision shall be made available  
29 to:

- 30 (a) the defendant or the defendant's designated agent;
- 31 (b) qualified agencies, as defined in subdivision nine of section  
32 eight hundred thirty-five of the executive law, and federal and state

33 law enforcement agencies, when acting within the scope of their law  
34 enforcement duties; or

35 (c) any state or local officer or agency with responsibility for the  
36 issuance of licenses to possess guns, when the person has made applica-  
37 tion for such a license; or

38 (d) any prospective employer of a police officer or peace officer as  
39 those terms are defined in subdivisions thirty-three and thirty-four of  
40 section 1.20 of this chapter, in relation to an application for employ-  
41 ment as a police officer or peace officer; provided, however, that every  
42 person who is an applicant for the position of police officer or peace  
43 officer shall be furnished with a copy of all records obtained under  
44 this paragraph and afforded an opportunity to make an explanation there-  
45 to.

46 7. The court shall not seal the defendant's record pursuant to this  
47 section while any charged offense is pending.

48 8. If, subsequent to the sealing of records pursuant to this subdivi-  
49 sion, the person who is the subject of such records is arrested for or  
50 formally charged with any misdemeanor or felony offense, such records  
51 shall be unsealed immediately and remain unsealed; provided, however,  
52 that if such new misdemeanor or felony arrest results in a termination  
53 in favor of the accused as defined in subdivision three of section  
54 160.50 of this article or by conviction for a non criminal offense as  
55 described in section 160.55 of this article, such unsealed records shall  
56 be conditionally sealed pursuant to this section.

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4. The criminal procedure law is amended by adding a new article 216  
2 to read as follows:

3

#### ARTICLE 216

4

#### JUDICIAL DIVERSION PROGRAM FOR CERTAIN FELONY

5

#### OFFENDERS

6

Section 216.00 Definitions.

7

216.05 Judicial diversion program; court procedures.

8 À

216.00 Definitions.

9

The following definitions are applicable to this article:

10

1. "Eligible defendant" means any person who stands charged in an  
11 indictment or a superior court information with a class B, C, D or E  
12 felony offense defined in article two hundred twenty or two hundred  
13 twenty-one of the penal law or any other specified offense as defined in  
14 subdivision four of section 410.91 of this chapter, provided, however, a  
15 defendant is not an "eligible defendant" if he or she:

16

(a) within the preceding ten years, excluding any time during which  
17 the offender was incarcerated for any reason between the time of commis-

18 sion of the previous felony and the time of commission of the present  
19 felony, has previously been convicted of: (i) a violent felony offense  
20 as defined in section 70.02 of the penal law or (ii) any other offense  
21 for which a merit time allowance is not available pursuant to subpara-  
22 graph (ii) of paragraph (d) of subdivision one of section eight hundred  
23 three of the correction law, or (iii) a class A felony offense defined  
24 in article two hundred twenty of the penal law; or

25 (b) has previously been adjudicated a second violent felony offender  
26 pursuant to section 70.04 of the penal law or a persistent violent felo-  
27 ny offender pursuant to section 70.08 of the penal law.

28 A defendant who also stands charged with a violent felony offense as  
29 defined in section 70.02 of the penal law or an offense for which merit  
30 time allowance is not available pursuant to subparagraph (ii) of para-  
31 graph (d) of subdivision one of section eight hundred three of the  
32 correction law for which the court must, upon the defendant's conviction  
33 thereof, sentence the defendant to incarceration in state prison is not  
34 an eligible defendant while such charges are pending. A defendant who  
35 is excluded from the judicial diversion program pursuant to this para-  
36 graph or paragraph (a) or (b) of this subdivision may become an eligible  
37 defendant upon the prosecutor's consent.

38 2. "Alcohol and substance abuse evaluation" means a written assessment  
39 and report by a court-approved entity or licensed health care profes-  
40 sional experienced in the treatment of alcohol and substance abuse, or  
41 by an addiction and substance abuse counselor credentialed by the office  
42 of alcoholism and substance abuse services pursuant to section 19.07 of  
43 the mental hygiene law, which shall include:

44 (a) an evaluation as to whether the defendant has a history of alcohol  
45 or substance abuse or alcohol or substance dependence, as such terms are  
46 defined in the diagnostic and statistical manual of mental disorders,  
47 fourth edition, and a co-occurring mental disorder or mental illness and  
48 the relationship between such abuse or dependence and mental disorder or  
49 mental illness, if any;

50 (b) a recommendation as to whether the defendant's alcohol or  
51 substance abuse or dependence, if any, could be effectively addressed by  
52 judicial diversion in accordance with this article;

53 (c) a recommendation as to the treatment modality, level of care and  
54 length of any proposed treatment to effectively address the defendant's  
55 alcohol or substance abuse or dependence and any co-occurring mental  
56 disorder or illness; and

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1 (d) any other information, factor, circumstance, or recommendation  
2 deemed relevant by the assessing entity or specifically requested by the  
3 court.

4 A

216.05 Judicial diversion program; court procedures.

5 1. At any time after the arraignment of an eligible defendant, but  
6 prior to the entry of a plea of guilty or the commencement of trial, the  
7 court at the request of the eligible defendant, may order an alcohol and  
8 substance abuse evaluation. An eligible defendant may decline to partic-  
9 ipate in such an evaluation at any time. The defendant shall provide a  
10 written authorization, in compliance with the requirements of any appli-  
11 cable state or federal laws, rules or regulations authorizing disclosure  
12 of the results of the assessment to the defendant's attorney, the prose-  
13 cutor, the local probation department, the court, authorized court  
14 personnel and other individuals specified in such authorization for the  
15 sole purpose of determining whether the defendant should be offered  
16 judicial diversion for treatment for substance abuse or dependence,  
17 alcohol abuse or dependence and any co-occurring mental disorder or  
18 mental illness.

19 2. Upon receipt of the completed alcohol and substance abuse evalu-  
20 ation report, the court shall provide a copy of the report to the eligi-  
21 ble defendant and the prosecutor.

22 3. (a) Upon receipt of the evaluation report either party may request  
23 a hearing on the issue of whether the eligible defendant should be  
24 offered alcohol or substance abuse treatment pursuant to this article.  
25 At such a proceeding, which shall be held as soon as practicable so as  
26 to facilitate early intervention in the event that the defendant is  
27 found to need alcohol or substance abuse treatment, the court may  
28 consider oral and written arguments, may take testimony from witnesses  
29 offered by either party, and may consider any relevant evidence includ-  
30 ing, but not limited to, evidence that:

31 (i) the defendant had within the preceding ten years (excluding any  
32 time during which the offender was incarcerated for any reason between  
33 the time of the acts that led to the youthful offender adjudication and  
34 the time of commission of the present offense) been adjudicated a youth-  
35 ful offender for: (A) a violent felony offense as defined in section  
36 70.02 of the penal law; or (B) any offense for which a merit time allow-  
37 ance is not available pursuant to subparagraph (ii) of paragraph (d) of  
38 subdivision one of section eight hundred three of the correction law;  
39 and

40 (ii) in the case of a felony offense defined in subdivision four of  
41 section 410.91 of this chapter, any statement of or submitted by the  
42 victim, as defined in paragraph (a) of subdivision two of section 380.50  
43 of this chapter.

44 (b) Upon completion of such a proceeding, the court shall consider and  
45 make findings of fact with respect to whether:

46 (i) the defendant is an eligible defendant as defined in subdivision  
47 one of section 216.00 of this article;

48 (ii) the defendant has a history of alcohol or substance abuse or  
49 dependence;

50 (iii) such alcohol or substance abuse or dependence is a contributing  
51 factor to the defendant's criminal behavior;  
52 (iv) the defendant's participation in judicial diversion could effec-  
53 tively address such abuse or dependence; and  
54 (v) institutional confinement of the defendant is or may not be neces-  
55 sary for the protection of the public.

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1 4. When an authorized court determines, pursuant to paragraph (b) of  
2 subdivision three of this section, that an eligible defendant should be  
3 offered alcohol or substance abuse treatment, or when the parties and  
4 the court agree to an eligible defendant's participation in alcohol or  
5 substance abuse treatment, an eligible defendant may be allowed to  
6 participate in the judicial diversion program offered by this article.  
7 Prior to the court's issuing an order granting judicial diversion, the  
8 eligible defendant shall be required to enter a plea of guilty to the  
9 charge or charges; provided, however, that no such guilty plea shall be  
10 required when:

11 (a) the people and the court consent to the entry of such an order  
12 without a plea of guilty; or

13 (b) based on a finding of exceptional circumstances, the court deter-  
14 mines that a plea of guilty shall not be required. For purposes of this  
15 subdivision, exceptional circumstances exist when, regardless of the  
16 ultimate disposition of the case, the entry of a plea of guilty is like-  
17 ly to result in severe collateral consequences.

18 5. The defendant shall agree on the record or in writing to abide by  
19 the release conditions set by the court, which, shall include: partic-  
20 ipation in a specified period of alcohol or substance abuse treatment at  
21 a specified program or programs identified by the court, which may  
22 include periods of detoxification, residential or outpatient treatment,  
23 or both, as determined after taking into account the views of the health  
24 care professional who conducted the alcohol and substance abuse evalu-  
25 ation and any health care professionals responsible for providing such  
26 treatment or monitoring the defendant's progress in such treatment; and  
27 may include: (i) periodic court appearances, which may include periodic  
28 urinalysis; (ii) a requirement that the defendant refrain from engaging  
29 in criminal behaviors.

30 6. Upon an eligible defendant's agreement to abide by the conditions  
31 set by the court, the court shall issue a securing order providing for  
32 bail or release on the defendant's own recognizance and conditioning any  
33 release upon the agreed upon conditions. The period of alcohol or  
34 substance abuse treatment shall begin as specified by the court and as  
35 soon as practicable after the defendant's release, taking into account  
36 the availability of treatment, so as to facilitate early intervention  
37 with respect to the defendant's abuse or condition and the effectiveness

38 of the treatment program. In the event that a treatment program is not  
39 immediately available or becomes unavailable during the course of the  
40 defendant's participation in the judicial diversion program, the court  
41 may release the defendant pursuant to the securing order.

42 7. When participating in judicial diversion treatment pursuant to this  
43 article, any resident of this state who is covered under a private  
44 health insurance policy or contract issued for delivery in this state  
45 pursuant to article thirty-two, forty-three or forty-seven of the insur-  
46 ance law or article forty-four of the public health law, or who is  
47 covered by a self-funded plan which provides coverage for the diagnosis  
48 and treatment of chemical abuse and chemical dependence however defined  
49 in such policy; shall first seek reimbursement for such treatment in  
50 accordance with the provisions of such policy or contract.

51 8. During the period of a defendant's participation in the judicial  
52 diversion program, the court shall retain jurisdiction of the defendant.  
53 The court may require the defendant to appear in court at any time to  
54 enable the court to monitor the defendant's progress in alcohol or  
55 substance abuse treatment. The court shall provide notice, reasonable  
56 under the circumstances, to the people, the treatment provider, the

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1 defendant and the defendant's counsel whenever it orders or otherwise  
2 requires the appearance of the defendant in court. Failure to appear as  
3 required without reasonable cause therefor shall constitute a violation  
4 of the conditions of the court's agreement with the defendant.

5 9. (a) If at any time during the defendant's participation in the  
6 judicial diversion program, the court has reasonable grounds to believe  
7 that the defendant has violated a release condition or has failed to  
8 appear before the court as requested, the court shall direct the defend-  
9 ant to appear or issue a bench warrant to a police officer or an appro-  
10 priate peace officer directing him or her to take the defendant into  
11 custody and bring the defendant before the court without unnecessary  
12 delay. The provisions of subdivision one of section 530.60 of this chap-  
13 ter relating to revocation of recognizance or bail shall apply to such  
14 proceedings under this subdivision.

15 (b) In determining whether a defendant violated a condition of his or  
16 her release under the judicial diversion program, the court may conduct  
17 a summary hearing consistent with due process and sufficient to satisfy  
18 the court that the defendant has, in fact, violated the condition.

19 (c) If the court determines that the defendant has violated a condi-  
20 tion of his or her release under the judicial diversion program, the  
21 court may modify the conditions thereof, reconsider the order of recog-  
22 nizance or bail pursuant to subdivision two of section 510.30 of this  
23 chapter, or terminate the defendant's participation in the judicial  
24 diversion program; and when applicable proceed with the defendant's

25 sentencing in accordance with the agreement. Notwithstanding any  
26 provision of law to the contrary, the court may impose any sentence  
27 authorized for the crime of conviction in accordance with the plea  
28 agreement, or any lesser sentence authorized to be imposed on a felony  
29 drug offender pursuant to paragraph (b) or (c) of subdivision two of  
30 section 70.70 of the penal law taking into account the length of time  
31 the defendant spent in residential treatment and how best to continue  
32 treatment while the defendant is serving that sentence. In determining  
33 what action to take for a violation of a release condition, the court  
34 shall consider all relevant circumstances, including the views of the  
35 prosecutor, the defense and the alcohol or substance abuse treatment  
36 provider, and the extent to which persons who ultimately successfully  
37 complete a drug treatment regimen sometimes relapse by not abstaining  
38 from alcohol or substance abuse or by failing to comply fully with all  
39 requirements imposed by a treatment program. The court shall also  
40 consider using a system of graduated and appropriate responses or sanc-  
41 tions designed to address such inappropriate behaviors, protect public  
42 safety and facilitate, where possible, successful completion of the  
43 alcohol or substance abuse treatment program.

44 (d) Nothing in this subdivision shall be construed as preventing a  
45 court from terminating a defendant's participation in the judicial  
46 diversion program for violating a release condition when such a termi-  
47 nation is necessary to preserve public safety. Nor shall anything in  
48 this subdivision be construed as precluding the prosecution of a defend-  
49 ant for the commission of a different offense while participating in the  
50 judicial diversion program.

51 (e) A defendant may at any time advise the court that he or she wishes  
52 to terminate participation in the judicial diversion program, at which  
53 time the court shall proceed with the case and, where applicable, shall  
54 impose sentence in accordance with the plea agreement. Notwithstanding  
55 any provision of law to the contrary, the court may impose any sentence  
56 authorized for the crime of conviction in accordance with the plea

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1 agreement, or any lesser sentence authorized to be imposed on a felony  
2 drug offender pursuant to paragraph (b) or (c) of subdivision two of  
3 section 70.70 of the penal law taking into account the length of time  
4 the defendant spent in residential treatment and how best to continue  
5 treatment while the defendant is serving that sentence.

6 10. Upon the court's determination that the defendant has successfully  
7 completed the required period of alcohol or substance abuse treatment  
8 and has otherwise satisfied the conditions required for successful  
9 completion of the judicial diversion program, the court shall comply  
10 with the terms and conditions it set for final disposition when it  
11 accepted the defendant's agreement to participate in the judicial diver-

12 sion program. Such disposition may include, but is not limited to: (a)  
13 requiring the defendant to undergo a period of interim probation super-  
14 vision and, upon the defendant's successful completion of the interim  
15 probation supervision term, notwithstanding the provision of any other  
16 law, permitting the defendant to withdraw his or her guilty plea and  
17 dismissing the indictment; or (b) requiring the defendant to undergo a  
18 period of interim probation supervision and, upon successful completion  
19 of the interim probation supervision term, notwithstanding the provision  
20 of any other law, permitting the defendant to withdraw his or her guilty  
21 plea, enter a guilty plea to a misdemeanor offense and sentencing the  
22 defendant as promised in the plea agreement, which may include a period  
23 of probation supervision pursuant to section 65.00 of the penal law; or  
24 (c) allowing the defendant to withdraw his or her guilty plea and  
25 dismissing the indictment.

26 11. Nothing in this article shall be construed as restricting or  
27 prohibiting courts or district attorneys from using other lawful proce-  
28 dures or models for placing appropriate persons into alcohol or  
29 substance abuse treatment.

30 À

5. Subdivision 6 of section 390.30 of the criminal procedure law, as  
31 amended by chapter 216 of the laws of 1999, is amended to read as  
32 follows:

33 6. Interim probation supervision. In any case where the court deter-  
34 mines that a defendant is eligible for a sentence of probation, the  
35 court, after consultation with the prosecutor and upon the consent of  
36 the defendant, may adjourn the sentencing to a specified date and order  
37 that the defendant be placed on interim probation supervision. In no  
38 event may the sentencing be adjourned for a period exceeding one year  
39 from the date the conviction is entered, except that upon good cause  
40 shown, the court may, upon the defendant's consent, extend the period  
41 for an additional one year where the defendant has agreed to and is  
42 still participating in a substance abuse treatment program in connection  
43 with a court designated a drug court by the chief administrator of the  
44 courts. When ordering that the defendant be placed on interim probation  
45 supervision, the court shall impose all of the conditions relating to  
46 supervision specified in subdivision three of section 65.10 of the penal  
47 law and may impose any or all of the conditions relating to conduct and  
48 rehabilitation specified in subdivisions two, four and five of section  
49 65.10 of such law; provided, however, that the defendant must receive a  
50 written copy of any such conditions at the time he or she is placed on  
51 interim probation supervision. The defendant's record of compliance with  
52 such conditions, as well as any other relevant information, shall be  
53 included in the presentence report, or updated presentence report,  
54 prepared pursuant to this section, and the court must consider such  
55 record and information when pronouncing sentence.

1 À

6. Subdivision 2 of section 410.91 of the criminal procedure law, as  
2 added by chapter 3 of the laws of 1995, is amended to read as follows:  
3 2. A defendant is an "eligible defendant" for purposes of a sentence  
4 of parole supervision when such defendant is a [second] felony offender  
5 convicted of a specified offense or offenses as defined in subdivision  
6 five of this section, who stands convicted of no other felony offense,  
7 who has not previously been convicted of either a violent felony offense  
8 as defined in section 70.02 of the penal law, a class A felony offense  
9 or a class B felony offense other than a class B felony offense defined  
10 in article two hundred twenty of the penal law, and is not subject to an  
11 undischarged term of imprisonment.

12 À

7. Subdivision 4 of section 410.91 of the criminal procedure law is  
13 REPEALED.

14 À

8. Subdivision 5 of section 410.91 of the criminal procedure law, as  
15 added by chapter 3 of the laws of 1995, is amended to read as follows:  
16 5. For the purposes of this section, a "specified offense" is an  
17 offense defined by any of the following provisions of the penal law:  
18 burglary in the third degree as defined in section 140.20, criminal  
19 mischief in the third degree as defined in section 145.05, criminal  
20 mischief in the second degree as defined in section 145.10, grand larceny  
21 in the fourth degree as defined in subdivision one, two, three, four,  
22 five, six, eight, nine or ten of section 155.30, grand larceny in the  
23 third degree as defined in section 155.35 (except where the property  
24 consists of one or more firearms, rifles or shotguns), unauthorized use  
25 of a vehicle in the second degree as defined in section 165.06, criminal  
26 possession of stolen property in the fourth degree as defined in subdivi-  
27 sion one, two, three, five or six of section 165.45, criminal  
28 possession of stolen property in the third degree as defined in section  
29 165.50 (except where the property consists of one or more firearms,  
30 rifles or shotguns), forgery in the second degree as defined in section  
31 170.10, criminal possession of a forged instrument in the second degree  
32 as defined in section 170.25, unlawfully using slugs in the first degree  
33 as defined in section 170.60, or an attempt to commit any of the afore-  
34 mentioned offenses if such attempt constitutes a felony offense; or a  
35 class B felony offense defined in article two hundred twenty where a  
36 sentence is imposed pursuant to paragraph (a) of subdivision two of  
37 section 70.70 of the penal law; or any class C, class D or class E  
38 controlled substance or marijuana felony offense as defined in article  
39 two hundred twenty or two hundred twenty-one.

40 À

9. The criminal procedure law is amended by adding a new section

41 440.46 to read as follows:

42 À

440.46 Motion for resentencing; certain controlled substance offenders.

43 1. Any person in the custody of the department of correctional  
44 services convicted of a class B felony offense defined in article two  
45 hundred twenty of the penal law which was committed prior to January  
46 thirteenth, two thousand five, who is serving an indeterminate sentence  
47 with a maximum term of more than three years, may, except as provided in  
48 subdivision five of this section, upon notice to the appropriate  
49 district attorney, apply to be resentenced to a determinate sentence in  
50 accordance with sections 60.04 and 70.70 of the penal law in the court  
51 which imposed the sentence.

52 2. As part of any such application, the defendant may also move to be  
53 resentenced to a determinate sentence in accordance with section 70.70  
54 of the penal law for any one or more class C, D, or E felony offenses  
55 defined in article two hundred twenty or two hundred twenty-one of the  
56 penal law, the sentence or sentences for which were imposed by the

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1 sentencing court at the same time or were included in the same order of  
2 commitment as such class B felony.

3 3. The provisions of section twenty-three of chapter seven hundred  
4 thirty-eight of the laws of two thousand four shall govern the  
5 proceedings on and determination of a motion brought pursuant to this  
6 section; provided, however that the court's consideration of the insti-  
7 tutional record of confinement of such person shall include but not be  
8 limited to such person's participation in or willingness to participate  
9 in treatment or other programming while incarcerated and such person's  
10 disciplinary history. The fact that a person may have been unable to  
11 participate in treatment or other programming while incarcerated despite  
12 such person's willingness to do so shall not be considered a negative  
13 factor in determining a motion pursuant to this section.

14 4. Subdivision one of section seven hundred seventeen and subdivision  
15 four of section seven hundred twenty-two of the county law, and the  
16 related provisions of article eighteen-A of such law, shall apply to the  
17 preparation of and proceedings on motions pursuant to this section,  
18 including any appeals.

19 5. The provisions of this section shall not apply to any person who is  
20 serving a sentence on a conviction for or has a predicate felony  
21 conviction for an exclusion offense. For purposes of this subdivision,  
22 an "exclusion offense" is:

23 (a) a crime for which the person was previously convicted within the  
24 preceding ten years, excluding any time during which the offender was  
25 incarcerated for any reason between the time of commission of the previ-  
26 ous felony and the time of commission of the present felony, which was:

27 (i) a violent felony offense as defined in section 70.02 of the penal  
28 law; or (ii) any other offense for which a merit time allowance is not  
29 available pursuant to subparagraph (ii) of paragraph (d) of subdivision  
30 one of section eight hundred three of the correction law; or  
31 (b) a second violent felony offense pursuant to section 70.04 of the  
32 penal law or a persistent violent felony offense pursuant to section  
33 70.08 of the penal law for which the person has previously been adjudi-  
34 cated.  
35 À

10. Subdivision 1 of section 450.90 of the criminal procedure law,  
36 as amended by chapter 498 of the laws of 2002, is amended to read as  
37 follows:

38 1. Provided that a certificate granting leave to appeal is issued  
39 pursuant to section 460.20, an appeal may, except as provided in subdi-  
40 vision two, be taken to the court of appeals by either the defendant or  
41 the people from any adverse or partially adverse order of an intermedi-  
42 ate appellate court entered upon an appeal taken to such intermediate  
43 appellate court pursuant to section 450.10, 450.15, or 450.20, or from  
44 an order granting or denying a motion to set aside an order of an inter-  
45 mediate appellate court on the ground of ineffective assistance or  
46 wrongful deprivation of appellate counsel, or by either the defendant or  
47 the people from any adverse or partially adverse order of an intermedi-  
48 ate appellate court entered upon an appeal taken to such intermediate  
49 appellate court from an order entered pursuant to section 440.46 of this  
50 chapter. An order of an intermediate appellate court is adverse to the  
51 party who was the appellant in such court when it affirms the judgment,  
52 sentence or order appealed from, and is adverse to the party who was the  
53 respondent in such court when it reverses the judgment, sentence or  
54 order appealed from. An appellate court order which modifies a judgment  
55 or order appealed from is partially adverse to each party.

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1 À

11. Paragraph (c) of subdivision 8 of section 700.05 of the criminal  
2 procedure law, as amended by chapter 394 of the laws of 2005, is amended  
3 to read as follows:

4 (c) Criminal possession of a controlled substance in the seventh  
5 degree as defined in section 220.03 of the penal law, criminal  
6 possession of a controlled substance in the fifth degree as defined in  
7 section 220.06 of the penal law, criminal possession of a controlled  
8 substance in the fourth degree as defined in section 220.09 of the penal  
9 law, criminal possession of a controlled substance in the third degree  
10 as defined in section 220.16 of the penal law, criminal possession of a  
11 controlled substance in the second degree as defined in section 220.18  
12 of the penal law, criminal possession of a controlled substance in the

13 first degree as defined in section 220.21 of the penal law, criminal  
14 sale of a controlled substance in the fifth degree as defined in section  
15 220.31 of the penal law, criminal sale of a controlled substance in the  
16 fourth degree as defined in section 220.34 of the penal law, criminal  
17 sale of a controlled substance in the third degree as defined in section  
18 220.39 of the penal law, criminal sale of a controlled substance in the  
19 second degree as defined in section 220.41 of the penal law, criminal  
20 sale of a controlled substance in the first degree as defined in section  
21 220.43 of the penal law, criminally possessing a hypodermic instrument  
22 as defined in section 220.45 of the penal law, criminal possession of  
23 methamphetamine manufacturing material in the second degree as defined  
24 in section 220.70 of the penal law, criminal possession of methampheta-  
25 mine manufacturing material in the first degree as defined in section  
26 220.71 of the penal law, criminal possession of precursors of methamphete-  
27 tamine as defined in section 220.72 of the penal law, unlawful manufac-  
28 ture of methamphetamine in the third degree as defined in section 220.73  
29 of the penal law, unlawful manufacture of methamphetamine in the second  
30 degree as defined in section 220.74 of the penal law, unlawful manufac-  
31 ture of methamphetamine in the first degree as defined in section 220.75  
32 of the penal law, unlawful disposal of methamphetamine laboratory mate-  
33 rial as defined in section 220.76 of the penal law, operating as a major  
34 trafficker as defined in section 220.77 of the penal law, criminal  
35 possession of marihuana in the first degree as defined in section 221.30  
36 of the penal law, criminal sale of marihuana in the first degree as  
37 defined in section 221.55 of the penal law, promoting gambling in the  
38 second degree as defined in section 225.05 of the penal law, promoting  
39 gambling in the first degree as defined in section 225.10 of the penal  
40 law, possession of gambling records in the second degree as defined in  
41 section 225.15 of the penal law, possession of gambling records in the  
42 first degree as defined in section 225.20 of the penal law, and  
43 possession of a gambling device as defined in section 225.30 of the  
44 penal law;

45 À

12. Subparagraph (A) of paragraph (c) of subdivision 2 of section  
46 259-i of the executive law, as separately amended by chapters 40 and 126  
47 of the laws of 1999, is amended to read as follows:

48 (A) Discretionary release on parole shall not be granted merely as a  
49 reward for good conduct or efficient performance of duties while  
50 confined but after considering if there is a reasonable probability  
51 that, if such inmate is released, he will live and remain at liberty  
52 without violating the law, and that his release is not incompatible with  
53 the welfare of society and will not so deprecate the seriousness of his  
54 crime as to undermine respect for law. In making the parole release  
55 decision, the guidelines adopted pursuant to subdivision four of section  
56 two hundred fifty-nine-c of this article shall require that the follow-

1 ing be considered: (i) the institutional record including program goals  
2 and accomplishments, academic achievements, vocational education, train-  
3 ing or work assignments, therapy and interpersonal relationships with  
4 staff and inmates; (ii) performance, if any, as a participant in a  
5 temporary release program; (iii) release plans including community  
6 resources, employment, education and training and support services  
7 available to the inmate; (iv) any deportation order issued by the feder-  
8 al government against the inmate while in the custody of the department  
9 of correctional services and any recommendation regarding deportation  
10 made by the commissioner of the department of correctional services  
11 pursuant to section one hundred forty-seven of the correction law; [and]  
12 (v) any statement made to the board by the crime victim or the victim's  
13 representative, where the crime victim is deceased or is mentally or  
14 physically incapacitated; and (vi) the length of the determinate  
15 sentence to which the inmate would be subject had he or she received a  
16 sentence pursuant to section 70.70 or section 70.71 of the penal law for  
17 a felony defined in article two hundred twenty or article two hundred  
18 twenty-one of the penal law. The board shall provide toll free tele-  
19 phone access for crime victims. In the case of an oral statement made in  
20 accordance with subdivision one of section 440.50 of the criminal proce-  
21 dure law, the parole board member shall present a written report of the  
22 statement to the parole board. A crime victim's representative shall  
23 mean the crime victim's closest surviving relative, the committee or  
24 guardian of such person, or the legal representative of any such person.  
25 Such statement submitted by the victim or victim's representative may  
26 include information concerning threatening or intimidating conduct  
27 toward the victim, the victim's representative, or the victim's family,  
28 made by the person sentenced and occurring after the sentencing. Such  
29 information may include, but need not be limited to, the threatening or  
30 intimidating conduct of any other person who or which is directed by the  
31 person sentenced. Notwithstanding the provisions of this section, in  
32 making the parole release decision for persons whose minimum period of  
33 imprisonment was not fixed pursuant to the provisions of subdivision one  
34 of this section, in addition to the factors listed in this paragraph the  
35 board shall consider the factors listed in paragraph (a) of subdivision  
36 one of this section.

37 À

13. The section heading and subdivisions 1, 3 and 4 of section 259-j  
38 of the executive law, the section heading and subdivisions 1 and 3 as  
39 separately amended by section 10 of part F and section 1 of part N of  
40 chapter 62 of the laws of 2003, subdivision 4 as amended by chapter 310  
41 of the laws of 2008, are amended to read as follows:  
42 Merit termination of sentence and discharge from presumptive release,  
43 parole [and], conditional release and release to post-release super-

44 vision. 1. The division of parole may grant to any person a merit  
45 termination of sentence from presumptive release, parole [or from],  
46 conditional release or release to post-release supervision prior to the  
47 expiration of the full term or maximum term, provided it is determined  
48 by the division of parole that such merit termination is in the best  
49 interests of society, such person is not required to register as a sex  
50 offender pursuant to article [six-c] six-C of the correction law, and  
51 such person is not on presumptive release, parole [or], conditional  
52 release or release to post-release supervision from a term of imprison-  
53 ment imposed for any of the following offenses, or for an attempt to  
54 commit any of the following offenses:

55 (a) a violent felony offense as defined in section 70.02 of the penal  
56 law;

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- 1 (b) murder in the first degree or murder in the second degree;
- 2 (c) an offense defined in article one hundred thirty of the penal law;
- 3 (d) unlawful imprisonment in the first degree, kidnapping in the first  
4 degree, or kidnapping in the second degree, in which the victim is less  
5 than seventeen years old and the offender is not the parent of the  
6 victim;
- 7 (e) an offense defined in article two hundred thirty of the penal law  
8 involving the prostitution of a person less than nineteen years old;
- 9 (f) disseminating indecent material to minors in the first degree or  
10 disseminating indecent material to minors in the second degree;
- 11 (g) incest;
- 12 (h) an offense defined in article two hundred sixty-three of the penal  
13 law;
- 14 (i) a hate crime as defined in section 485.05 of the penal law; or
- 15 (j) an offense defined in article four hundred ninety of the penal  
16 law.

17 3. A merit termination of sentence may be granted after two years of  
18 presumptive release [or], parole, conditional release or release to  
19 post-release supervision to a person serving a sentence for a class A  
20 felony offense as defined in article two hundred twenty of the penal  
21 law. A merit termination of sentence may be granted to all other eligi-  
22 ble persons after one year of presumptive release, parole [or], condi-  
23 tional release or release to post-release supervision.

24 4. Except where a determinate sentence was imposed for a felony[,]  
25 other than a felony defined in article two hundred twenty or article two  
26 hundred twenty-one of the penal law, if the board of parole is satisfied  
27 that an absolute discharge from presumptive release, parole [or], condi-  
28 tional release or release to a period of post-release supervision is in  
29 the best interests of society, the board may grant such a discharge  
30 prior to the expiration of the full term or maximum term to any person

31 who has been on unrevoked presumptive release, parole [or], conditional  
32 release or release to post-release supervision for at least three  
33 consecutive years. A discharge granted under this section shall consti-  
34 tute a termination of the sentence with respect to which it was granted.  
35 No such discharge shall be granted unless the board of parole is satis-  
36 fied that the parolee or releasee, otherwise financially able to comply  
37 with an order of restitution and the payment of any mandatory surcharge,  
38 sex offender registration fee or DNA databank fee previously imposed by  
39 a court of competent jurisdiction, has made a good faith effort to  
40 comply therewith.

41 À

14. Subdivision 16 of section 296 of the executive law, as amended

42 by chapter 639 of the laws of 2007, is amended to read as follows:

43 16. It shall be an unlawful discriminatory practice, unless specif-  
44 ically required or permitted by statute, for any person, agency, bureau,  
45 corporation or association, including the state and any political subdi-  
46 vision thereof, to make any inquiry about, whether in any form of appli-  
47 cation or otherwise, or to act upon adversely to the individual  
48 involved, any arrest or criminal accusation of such individual not then  
49 pending against that individual which was followed by a termination of  
50 that criminal action or proceeding in favor of such individual, as  
51 defined in subdivision two of section 160.50 of the criminal procedure  
52 law, or by a youthful offender adjudication, as defined in subdivision  
53 one of section 720.35 of the criminal procedure law, or by a conviction  
54 for a violation sealed pursuant to section 160.55 of the criminal proce-  
55 dure law or by a conviction which is sealed pursuant to section 160.58  
56 of the criminal procedure law, in connection with the licensing, employ-

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1 ment or providing of credit or insurance to such individual; provided,  
2 [however, that the] further, that no person shall be required to divulge  
3 information pertaining to any arrest or criminal accusation of such  
4 individual not then pending against that individual which was followed  
5 by a termination of that criminal action or proceeding in favor of such  
6 individual, as defined in subdivision two of section 160.50 of the crim-  
7 inal procedure law, or by a youthful offender adjudication, as defined  
8 in subdivision one of section 720.35 of the criminal procedure law, or  
9 by a conviction for a violation sealed pursuant to section 160.55 of the  
10 criminal procedure law, or by a conviction which is sealed pursuant to  
11 section 160.58 of the criminal procedure law. The provisions [hereof]  
12 of this subdivision shall not apply to the licensing activities of  
13 governmental bodies in relation to the regulation of guns, firearms and  
14 other deadly weapons or in relation to an application for employment as  
15 a police officer or peace officer as those terms are defined in subdivi-  
16 sions thirty-three and thirty-four of section 1.20 of the criminal

17 procedure law; provided further that the provisions of this subdivision  
18 shall not apply to an application for employment or membership in any  
19 law enforcement agency with respect to any arrest or criminal accusation  
20 which was followed by a youthful offender adjudication, as defined in  
21 subdivision one of section 720.35 of the criminal procedure law, or by a  
22 conviction for a violation sealed pursuant to section 160.55 of the  
23 criminal procedure law, or by a conviction which is sealed pursuant to  
24 section 160.58 of the criminal procedure law.

25    À

14-a. Subdivision 4 of section 837 of the executive law is amended

26 by adding a new paragraph (b-1) to read as follows:

27 (b-1) collect data and undertake research, studies and analyses of  
28 judicial diversion programs including but not limited to the judicial  
29 diversion program described in article two hundred sixteen of the crimi-  
30 nal procedure law; and

31    À

15. Subdivision 2 of section 212 of the judiciary law is amended by

32 adding a new paragraph (r) to read as follows:

33 (r) Ensure that cases eligible for judicial diversion pursuant to  
34 article two hundred sixteen of the criminal procedure law shall be  
35 assigned to court parts in the manner provided by the chief administra-  
36 tor and that, to the extent practicable, such cases are presided over by  
37 judges who, by virtue of the structure, caseload and resources of the  
38 parts and the judges' training, are in the best position to provide  
39 effective supervision over such cases, such as the drug treatment  
40 courts. In compliance with these provisions, the chief administrator  
41 shall give due weight to the need for diverted defendants to make regu-  
42 lar court appearances, and be closely supervised by the court, for the  
43 duration of drug treatment and the pendency of the criminal charge.

44    À

16. Section 19.07 of the mental hygiene law is amended by adding a

45 new subdivision (h) to read as follows:

46 (h) The office of alcoholism and substance abuse services shall moni-  
47 tor programs providing care and treatment to inmates in correctional  
48 facilities operated by the department of correctional services who have  
49 a history of alcohol or substance abuse or dependence. The office shall  
50 also develop guidelines for the operation of alcohol and substance abuse  
51 treatment programs in such correctional facilities in order to ensure  
52 that such programs sufficiently meet the needs of inmates with a history  
53 of alcohol or substance abuse or dependence and promote the successful  
54 transition to treatment in the community upon release. No later than the  
55 first day of December of each year, the office shall submit a report  
56 regarding the adequacy and effectiveness of alcohol and substance abuse

1 treatment programs operated by the department of correctional services  
2 to the governor, the temporary president of the senate, the speaker of  
3 the assembly, the chairman of the senate committee on crime victims,  
4 crime and correction, and the chairman of the assembly committee on  
5 correction.

6 À

17. Subdivisions 3 and 5 of section 60.04 of the penal law, as added

7 by chapter 738 of the laws of 2004, are amended to read as follows:

8 3. Class B felonies. Every person convicted of a class B felony must  
9 be sentenced to imprisonment in accordance with the applicable  
10 provisions of section 70.70 of this [title] chapter, [unless such person  
11 is convicted of a class B felony and is sentenced to] a definite  
12 sentence of imprisonment with a term of one year or less or probation in  
13 accordance with section 65.00 of this [title] chapter provided, however,  
14 a person convicted of criminal sale of a controlled substance to a child  
15 as defined in section 220.48 of this chapter must be sentenced to a  
16 determinate sentence of imprisonment in accordance with the applicable  
17 provisions of section 70.70 of this chapter or to a sentence of  
18 probation in accordance with the opening paragraph of paragraph (b) of  
19 subdivision one of section 65.00 of this chapter.

20 5. Multiple felony offender. Where the court imposes a sentence pursu-  
21 ant to subdivision three of section 70.70 of this chapter upon a second  
22 felony drug offender, as defined in paragraph (b) of subdivision one of  
23 section 70.70 of this [title] chapter, it must sentence such offender to  
24 imprisonment in accordance with the applicable provisions of section  
25 70.70 of this [title] chapter, a definite sentence of imprisonment with  
26 a term of one year or less, or probation in accordance with section  
27 65.00 of this chapter, provided, however, that where the court imposes a  
28 sentence upon a class B second felony drug offender, it must sentence  
29 such offender to a determinate sentence of imprisonment in accordance  
30 with the applicable provisions of section 70.70 of this chapter or to a  
31 sentence of probation in accordance with the opening paragraph of para-  
32 graph (b) of subdivision one of section 65.00 of this chapter. When the  
33 court imposes sentence on a second felony drug offender pursuant to  
34 subdivision four of section 70.70 of this chapter, it must impose a  
35 determinate sentence of imprisonment in accordance with such  
36 subdivision.

37 À

18. Section 60.04 of the penal law is amended by adding a new subdi-

38 vision 7 to read as follows:

39 7. a. Shock incarceration participation. When the court imposes a  
40 sentence of imprisonment which requires a commitment to the department  
41 of correctional services upon a person who stands convicted of a  
42 controlled substance or marijuana offense, upon motion of the defendant,  
43 the court may issue an order directing that the department of correc-  
44 tional services enroll the defendant in the shock incarceration program

45 as defined in article twenty-six-A of the correction law, provided that  
46 the defendant is an eligible inmate, as described in subdivision one of  
47 section eight hundred sixty-five of the correction law. Notwithstanding  
48 the foregoing provisions of this subdivision, any defendant to be  
49 enrolled in such program pursuant to this subdivision shall be governed  
50 by the same rules and regulations promulgated by the department of  
51 correctional services, including without limitation those rules and  
52 regulations establishing requirements for completion and such rules and  
53 regulations governing discipline and removal from the program.

54 b. (i) In the event that an inmate designated by court order for  
55 enrollment in the shock incarceration program requires a degree of  
56 medical care or mental health care that cannot be provided at a shock

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1 incarceration facility, the department, in writing, shall notify the  
2 inmate, provide a proposal describing a proposed alternative-to-shock-  
3 incarceration program, and notify him or her that he or she may object  
4 in writing to placement in such alternative-to-shock-incarceration  
5 program. If the inmate objects in writing to placement in such alterna-  
6 tive-to-shock-incarceration program, the department of correctional  
7 services shall notify the sentencing court, provide such proposal to the  
8 court, and arrange for the inmate's prompt appearance before the court.  
9 The court shall provide the proposal and notice of a court appearance to  
10 the people, the inmate and the appropriate defense attorney. After  
11 considering the proposal and any submissions by the parties, and after a  
12 reasonable opportunity for the people, the inmate and counsel to be  
13 heard, the court may modify its sentencing order accordingly, notwith-  
14 standing the provisions of section 430.10 of the criminal procedure law.  
15 (ii) An inmate who successfully completes an alternative-to-shock-  
16 incarceration program within the department of correctional services  
17 shall be treated in the same manner as a person who has successfully  
18 completed the shock incarceration program, as set forth in subdivision  
19 four of section eight hundred sixty-seven of the correction law.

20 A

19. The opening paragraph of paragraph (b) of subdivision 1 of  
21 section 65.00 of the penal law, as amended by chapter 410 of the laws of  
22 1979, is amended to read as follows:

23 The court, with the concurrence of either the administrative judge of  
24 the court or of the judicial district within which the court is situated  
25 or such administrative judge as the presiding justice of the appropriate  
26 appellate division shall designate, may sentence a person to a period of  
27 probation upon conviction of a class A-II felony [or a class B felony]  
28 defined in article two hundred twenty, the class B felony defined in  
29 section 220.48 of this chapter or any other class B felony defined in  
30 article two hundred twenty of this chapter where the person is a second

31 felony drug offender as defined in paragraph (b) of subdivision one of  
32 section 70.70 of this chapter, if the prosecutor either orally on the  
33 record or in a writing filed with the indictment recommends that the  
34 court sentence such person to a period of probation upon the ground that  
35 such person has or is providing material assistance in the investi-  
36 gation, apprehension or prosecution of any person for a felony defined  
37 in article two hundred twenty or the attempt or the conspiracy to commit  
38 any such felony, and if the court, having regard to the nature and  
39 circumstances of the crime and to the history, character and condition  
40 of the defendant is of the opinion that:

41 À

20. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 3 of  
42 section 65.00 of the penal law, subparagraph (i) as amended by chapter  
43 264 of the laws of 2003, subparagraph (ii) as amended by chapter 738 of  
44 the laws of 2004, are amended to read as follows:

45 (i) For a felony, other than a class A-II felony [or a class B felony]  
46 defined in article two hundred twenty of this chapter or the class B  
47 felony defined in section 220.48 of this chapter, or any other class B  
48 felony defined in article two hundred twenty of this chapter committed  
49 by a second felony drug offender, or a sexual assault, the period of  
50 probation shall be five years;

51 (ii) For a class A-II felony [controlled substance] drug offender as  
52 defined in paragraph (a) of subdivision one of section 70.71 of this  
53 [chapter or a class B second felony drug offender as defined in para-  
54 graph (b) of subdivision one of section 70.70 of this] chapter as  
55 described in paragraph (b) of subdivision one of this section, or a  
56 class B felony committed by a second felony drug offender described in

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1 paragraph (b) of subdivision one of this section, the period of  
2 probation shall be life[, and for a class B felony drug offender as  
3 defined in paragraph (a) of subdivision one of section 70.70 of this  
4 chapter, the period of probation shall be twenty-five years] and for a  
5 class B felony defined in section 220.48 of this chapter, the period of  
6 probation shall be twenty-five years;

7 À

21. Subparagraph (i) of paragraph (a) of subdivision 2 of section  
8 70.70 of the penal law, as amended by chapter 436 of the laws of 2006,  
9 is amended to read as follows:

10 (i) for a class B felony, the term shall be at least one year and  
11 shall not exceed nine years, except that for the class B felony of crim-  
12 inal sale of a controlled substance in or near school grounds as defined  
13 in subdivision two of section 220.44 of this chapter or on a school bus  
14 as defined in subdivision seventeen of section 220.00 of this chapter or  
15 criminal sale of a controlled substance to a child as defined in section

16 220.48 of this chapter, the term shall be at least two years and shall  
17 not exceed nine years;

18 À

22. Paragraph (b) of subdivision 2 of section 70.70 of the penal  
19 law, as added by chapter 738 of the laws of 2004, is amended to read as  
20 follows:

21 (b) Probation. Notwithstanding any other provision of law, the court  
22 may sentence a defendant convicted of a class B, class C, class D or  
23 class E felony offense defined in article two hundred twenty or two  
24 hundred twenty-one of this chapter to probation in accordance with the  
25 provisions of [section] sections 60.04 and 65.00 of this chapter.

26 À

23. Paragraph (c) of subdivision 2 and paragraphs (a) and (b) of  
27 subdivision 3 of section 70.70 of the penal law, as added by chapter 738  
28 of the laws of 2004, are amended and subdivision 2 is amended by adding  
29 a new paragraph (d) to read as follows:

30 (c) Alternative definite sentence for class B, class C, class D, and  
31 class E felonies. If the court, having regard to the nature and circum-  
32 stances of the crime and to the history and character of the defendant,  
33 is of the opinion that a sentence of imprisonment is necessary but that  
34 it would be unduly harsh to impose a determinate sentence upon a person  
35 convicted of a class C, class D or class E felony offense defined in  
36 article two hundred twenty or two hundred twenty-one of this chapter, or  
37 a class B felony defined in article two hundred twenty of this chapter,  
38 other than the class B felony defined in section 220.48 of this chapter,  
39 as added by a chapter of the laws of two thousand nine the court may  
40 impose a definite sentence of imprisonment and fix a term of one year or  
41 less.

42 (d) The court may direct that a determinate sentence imposed on a  
43 defendant convicted of a class B felony, other than the class B felony  
44 defined in section 220.48 of this chapter, pursuant to this subdivision  
45 be executed as a sentence of parole supervision in accordance with  
46 section 410.91 of the criminal procedure law.

47 (a) Applicability. This subdivision shall apply to a second felony  
48 drug offender whose prior felony conviction was not a violent felony.

49 (b) Authorized sentence. Except as provided in [paragraph] paragraphs

50 (c) [or], (d) and (e) of this subdivision, when the court has found  
51 pursuant to the provisions of section 400.21 of the criminal procedure  
52 law that a defendant is a second felony drug offender who stands  
53 convicted of a class B, class C, class D or class E felony offense  
54 defined in article two hundred twenty or two hundred twenty-one of this  
55 chapter the court shall impose a determinate sentence of imprisonment.

56 Such determinate sentence shall include as a part thereof a period of

1 post-release supervision in accordance with section 70.45 of this arti-  
2 cle. The terms of such determinate sentence shall be imposed by the  
3 court in whole or half years as follows:

4 (i) for a class B felony, the term shall be at least [three and one-  
5 half] two years and shall not exceed twelve years;

6 (ii) for a class C felony, the term shall be at least [two] one and  
7 one-half years and shall not exceed eight years;

8 (iii) for a class D felony, the term shall be at least one and one-  
9 half years and shall not exceed four years; and

10 (iv) for a class E felony, the term shall be at least one and one-half  
11 years and shall not exceed two years.

12 À

24. Paragraph (c) of subdivision 3 of section 70.70 of the penal  
13 law, as added by chapter 738 of the laws of 2004, is amended to read as  
14 follows:

15 (c) [Lifetime probation] Probation. Notwithstanding any other  
16 provision of law, the court may sentence a [defendant] second felony  
17 drug offender convicted of a class B felony [defined in article two  
18 hundred twenty of this chapter] to lifetime probation in accordance with  
19 the provisions of section 65.00 of this chapter and may sentence a  
20 second felony drug offender convicted of a class C, class D or class E  
21 felony to probation in accordance with the provisions of section 65.00  
22 of this chapter.

23 À

25. Subdivision 3 of section 70.70 of the penal law is amended by  
24 adding a new paragraph (e) to read as follows:

25 (e) Alternate definite sentence for class C, class D and class E felo-  
26 nies. If the court, having regard to the nature and circumstances of the  
27 crime and to the history and character of the defendant, is of the opin-  
28 ion that a sentence of imprisonment is necessary but that it would be  
29 unduly harsh to impose a determinate sentence upon a person convicted of  
30 a class C, class D or class E felony offense defined in article two  
31 hundred twenty or two hundred twenty-one of this chapter, the court may  
32 impose a definite sentence of imprisonment and fix a term of one year or  
33 less.

34 À

26. Paragraph (a) of subdivision 2 of section 70.71 of the penal  
35 law, as added by chapter 738 of the laws of 2004, is amended and a new  
36 subdivision 5 is added to read as follows:

37 (a) Applicability. Except as provided in subdivision three [or], four  
38 or five of this section, this subdivision shall apply to a person  
39 convicted of a class A felony as defined in article two hundred twenty  
40 of this chapter.

41 5. Sentence of imprisonment for operating as a major trafficker.

42 (a) Applicability. This subdivision shall apply to a person convicted  
43 of the class A-I felony of operating as a major trafficker as defined in

44 section 220.77 of this chapter.

45 (b) Authorized sentence. Except as provided in paragraph (c) of this  
46 subdivision, the court shall impose an indeterminate term of imprison-  
47 ment for an A-I felony, in accordance with the provisions of section  
48 70.00 of this article.

49 (c) Alternative determinate sentence. If a defendant stands convicted  
50 of violating section 220.77 of this chapter, and if the court, having  
51 regard to the nature and circumstances of the crime and the history and  
52 character of the defendant, is of the opinion that a sentence of impri-  
53 sonment is necessary but that it would be unduly harsh to impose the  
54 indeterminate sentence for a class A-I felony specified under section  
55 70.00 of this article, the court may instead impose the determinate  
56 sentence of imprisonment authorized by clause (i) of subparagraph (b) of

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1 subdivision two of this section for a class A-I drug felony; in such  
2 case, the reasons for the court's opinion shall be set forth on the  
3 record.

4 À

27. Section 220.00 of the penal law is amended by adding three new  
5 subdivisions 18, 19 and 20 to read as follows:

6 18. "Controlled substance organization" means four or more persons  
7 sharing a common purpose to engage in conduct that constitutes or  
8 advances the commission of a felony under this article.

9 19. "Director" means a person who is the principal administrator,  
10 organizer, or leader of a controlled substance organization or one of  
11 several principal administrators, organizers, or leaders of a controlled  
12 substance organization.

13 20. "Profiteer" means a person who: (a) is a director of a controlled  
14 substance organization; (b) is a member of a controlled substance organ-  
15 ization and has managerial responsibility over one or more other members  
16 of that organization; or (c) arranges, devises or plans one or more  
17 transactions constituting a felony under this article so as to obtain  
18 profits or expected profits. A person is not a profiteer if he or she is  
19 acting only as an employee; or if he or she is acting as an accommo-  
20 dation to a friend or relative; or if he or she is acting only under the  
21 direction and control of others and exercises no substantial, independ-  
22 ent role in arranging or directing the transactions in question.

23 À

28. The penal law is amended by adding a new section 220.48 to read  
24 as follows:

25 À

220.48 Criminal sale of a controlled substance to a child.

26 A person is guilty of criminal sale of a controlled substance to a  
27 child when, being over twenty-one years old, he or she knowingly and

28 unlawfully sells a controlled substance in violation of section 220.34  
29 or 220.39 of this article to a person less than seventeen years old.

30 Criminal sale of a controlled substance to a child is a class B felo-  
31 ny.

32 À

29. The penal law is amended by adding a new section 220.77 to read  
33 as follows:

34 À

220.77 Operating as a major trafficker.

35 A person is guilty of operating as a major trafficker when:

36 1. Such person acts as a director of a controlled substance organiza-  
37 tion during any period of twelve months or less, during which period  
38 such controlled substance organization sells one or more controlled  
39 substances, and the proceeds collected or due from such sale or sales  
40 have a total aggregate value of seventy-five thousand dollars or more;  
41 or

42 2. As a profiteer, such person knowingly and unlawfully sells, on one  
43 or more occasions within six months or less, a narcotic drug, and the  
44 proceeds collected or due from such sale or sales have a total aggregate  
45 value of seventy-five thousand dollars or more.

46 3. As a profiteer, such person knowingly and unlawfully possesses, on  
47 one or more occasions within six months or less, a narcotic drug with  
48 intent to sell the same, and such narcotic drugs have a total aggregate  
49 value of seventy-five thousand dollars or more.

50 Operating as a major trafficker is a class A-I felony.

51 À

30. Paragraph (a) of subdivision 1 of section 460.10 of the penal  
52 law, as separately amended by chapters 312 and 472 of the laws of 2008,  
53 is amended to read as follows:

54 (a) Any of the felonies set forth in this chapter: sections 120.05,  
55 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-  
56 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;

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1 sections 135.20 and 135.25 relating to kidnapping; section 135.35 relat-  
2 ing to labor trafficking; section 135.65 relating to coercion; sections  
3 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10  
4 and 145.12 relating to criminal mischief; article one hundred fifty  
5 relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating  
6 to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to  
7 health care fraud; article one hundred sixty relating to robbery;  
8 sections 165.45, 165.50, 165.52 and 165.54 relating to criminal  
9 possession of stolen property; sections 165.72 and 165.73 relating to  
10 trademark counterfeiting; sections 170.10, 170.15, 170.25, 170.30,  
11 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25,

12 175.35, 175.40 and 210.40 relating to false statements; sections 176.15,  
13 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20  
14 and 178.25 relating to criminal diversion of prescription medications  
15 and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40,  
16 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22,  
17 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections  
18 187.10, 187.15, 187.20 and 187.25 relating to residential mortgage  
19 fraud, sections 190.40 and 190.42 relating to criminal usury; section  
20 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relat-  
21 ing to hindering prosecution; sections 210.10, 210.15, and 215.51 relat-  
22 ing to perjury and contempt; section 215.40 relating to tampering with  
23 physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21,  
24 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 [and], 220.60 and  
25 220.77 relating to controlled substances; sections 225.10 and 225.20  
26 relating to gambling; sections 230.25, 230.30, and 230.32 relating to  
27 promoting prostitution; section 230.34 relating to sex trafficking;  
28 sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity;  
29 sections 263.10 and 263.15 relating to promoting a sexual performance by  
30 a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the  
31 provisions of section 265.10 which constitute a felony relating to  
32 firearms and other dangerous weapons; and sections 265.14 and 265.16  
33 relating to criminal sale of a firearm; and section 275.10, 275.20,  
34 275.30, or 275.40 relating to unauthorized recordings; and sections  
35 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or  
36 À

31. Paragraphs (a) and (b) of subdivision 7 of section 480.00 of the  
37 penal law, as added by chapter 655 of the laws of 1990, are amended to  
38 read as follows:

39 (a) a conviction of a person for a violation of section 220.18,  
40 220.21, 220.41, [or] 220.43, or 220.77 of this chapter, or where the  
41 accusatory instrument charges one or more of such offenses, conviction  
42 upon a plea of guilty to any of the felonies for which such plea is  
43 otherwise authorized by law or a conviction of a person for conspiracy  
44 to commit a violation of section 220.18, 220.21, 220.41, [or] 220.43, or  
45 220.77 of [the penal law] this chapter, where the controlled substances  
46 which are the object of the conspiracy are located in the real property  
47 which is the subject of the forfeiture action; or

48 (b) three or more violations of any of the felonies defined in section  
49 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43,  
50 220.77, or 221.55 of this chapter, which violations do not constitute a  
51 single criminal offense as defined in subdivision one of section 40.10  
52 of the criminal procedure law, or a single criminal transaction, as  
53 defined in paragraph (a) of subdivision two of section 40.10 of the  
54 criminal procedure law, and at least one of which resulted in a  
55 conviction of such offense, or where the accusatory instrument charges

1 one or more of such felonies, conviction upon a plea of guilty to a  
2 felony for which such plea is otherwise authorized by law; or

3 À

32. Severability. If any clause, sentence, paragraph, section or  
4 part of this act shall be adjudged by any court of competent jurisdic-  
5 tion to be invalid and after exhaustion of all further judicial review,  
6 the judgment shall not affect, impair or invalidate the remainder there-  
7 of, but shall be confined in its operation to the clause, sentence,  
8 paragraph, section or part of this act directly involved in the contro-  
9 versy in which the judgment shall have been rendered.

10 À

33. This act shall take effect immediately; provided however that:

11 (a) section three of this act shall take effect on the sixtieth day  
12 after it shall have become a law;

13 (b) sections four and ten of this act shall take effect six months  
14 after this act shall have become a law;

15 (c) sections eleven, twenty-six, twenty-seven, twenty-eight, twenty-  
16 nine, thirty and thirty-one of this act shall take effect on the first  
17 of November next succeeding the date on which it shall have become a  
18 law;

19 (d) section sixteen of this act shall take effect on the one hundred  
20 twentieth day after it shall have become a law;

21 (e) section nine of this act shall take effect six months after it  
22 shall have become a law, except that the amendments to subdivision 4 of  
23 section 440.46 of the criminal procedure law made by section nine of  
24 this act shall take effect immediately;

25 (f) sections four, five, six, seven, eight, seventeen, nineteen, twen-  
26 ty, twenty-two, twenty-three, twenty-four, and twenty-five of this act  
27 shall apply to offenses committed on or after the date this act shall  
28 have become a law, and shall also apply to offenses committed before  
29 such date provided that sentence upon conviction for such offense has  
30 not been imposed on or before such date; and

31 (g) provided further that the amendments to section 410.91 of the  
32 criminal procedure law made by sections six and eight of this act shall  
33 not affect the repeal of such section and shall be deemed to be repealed  
34 therewith.

35 À

2. Severability clause. If any clause, sentence, paragraph, subdivi-  
36 sion, section or part of this act shall be adjudged by any court of  
37 competent jurisdiction to be invalid, such judgment shall not affect,  
38 impair, or invalidate the remainder thereof, but shall be confined in  
39 its operation to the clause, sentence, paragraph, subdivision, section  
40 or part thereof directly involved in the controversy in which such judg-  
41 ment shall have been rendered. It is hereby declared to be the intent of

42 the legislature that this act would have been enacted even if such  
43 invalid provisions had not been included herein.

44 À

3. This act shall take effect immediately provided, however, that  
45 the applicable effective date of Parts A through AAA of this act shall  
46 be as specifically set forth in the last section of such Parts.

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