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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.

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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.

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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.

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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.

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

41 440.46 to read as follows:

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440.46 Motion for resentence; 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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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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