

CRIMINAL JUSTICE MEETING

PROBATION AGENDA

1/27/2014

- I. COMMITTEE MEETING- Called to Order by Chairman
- II. MOTION - to approve minutes of prior committee meetings
- III. ACTION AGENDA  
REQUEST: Resolution Request to fill Probation Officer position as a result of a termination.  
RATIONAL: To keep our department adequately staffed at the Probation Officer position we will need to file the vacancy created by the above termination.  
  
OLD BUSINESS – NONE
- IV. TOPICS TO BE REPORTED ON/DISCUSSIONS/UPDATED
  - Governor Cuomo signed S.4664-A/A.4582-B on January 10, 2014, that establishes flexible terms of probation.
  - Governor Cuomo created the Commission on Youth, Public Safety and Justice to help New York State “Raise the Age” of criminality to 17 years old.

# RESOLUTION REQUEST FORM NO. 12

Schedule "A"

## NOTICE OF INTENT TO FILL VACANT POSITION

This notice of intent is filed whenever a department head plans to fill an *existing* funded position in their budget that is vacated due to a retirement, resignation, termination or promotion. This notice may not be used for requests to create a *new* position. For complete instructions on the procedure to be followed, see the reverse of this form.

### DEPARTMENT HEAD COMPLETES THIS SECTION

Department Probation Payroll Dept. No. 29.00  
Title of Position Probation Officer Annual Salary \$41,881 Grade 19  
Budget code and title: A. 3140 Probation Union  Non-Union   
This position is vacated due to:  Retirement  Resignation  Termination  Promotion  Other  
Employee No. \_\_\_\_\_  
Is this position mandated?  Yes  No Is the position reimbursable?  Yes  No  
Source of reimbursement:  Federal %  State 12 %  Other %  
Impact to Budget: None. Budgeted for 2014

Human Resources Director has approved this form when initialed. JB

### COUNTY ADMINISTRATOR COMPLETES THIS SECTION

Name of Committee Criminal Justice Date 1/27/2014  
 The Administrator has no objection to the filling of the vacancy.  
 The Administrator objects to the filling of the vacancy.

Administrator Signature [Signature]

### SUPERVISORY COMMITTEE COMPLETES THIS SECTION

Name of Committee Criminal Justice Date 1/27/2014  
 The committee has no objection to the filling of the vacancy.  
 The committee objects to the filling of the vacancy.

Ranking Committee Member Signature [Signature]

### PERSONNEL/HUMAN RESOURCES COMMITTEE COMPLETES THIS SECTION

Date \_\_\_\_\_  
 The Personnel/Human Resources Committee has no objection to the filling of the vacancy.  
 The Personnel/Human Resources Committee objects to the filling of the vacancy.

Ranking Committee Member Signature \_\_\_\_\_

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S4664A

**SPONSOR:** GOLDEN

**TITLE OF BILL:** An act to amend the penal law and the criminal procedure law, in relation to establishing terms of probation sentences and revocations thereof under certain circumstances; and to amend the criminal procedure law, in relation to pre-sentence investigations and written reports thereon in any city having a population of one million or more

**SUMMARY OF PROVISIONS:**

Section 1 of the bill would amend Penal Law ("PL") § 65.00(3)(a)(1) to provide the court with the discretion to impose a probation term of three, four or five years for a felony. This would only apply to felonies other than (1) Class A-II felonies defined in PL Article 220; (2) the Class P felony defined in PL § 220.48; (3) any other Class B felony defined in PL Article 220 committed by a second felony drug offender; or (4) any felony involving a sexual assault.

Section 2 of the bill would amend PL § 65.00(3)(b)(1) to provide the court with the discretion to impose a probation term of two or three years for a class A misdemeanor other than a sexual assault.

Section 3 of the bill would amend PL § 65.00(3)(d) to give the court the discretion to impose a probation term of two or three years for an unclassified misdemeanor, for which the authorized sentence of imprisonment is greater than three months.

Section 4 of the bill would amend PL § 65.00 by adding a new subdivision 4, which would clarify that when a person is found to have violated terms of probation and the court continues or modifies the sentence, the court may extend remaining period of probation up to the maximum term authorized by § 65.00.

Section 5 of the bill would amend Criminal Procedure Law ('CPL') § 410.70(5) to make corresponding changes that reflect the amendments proposed by section 4 of the bill.

Section 6 of the bill would add a new subdivision 5 to CPL § 390.20, which would provide that notwithstanding the provisions of subdivision 1 or 2 of the section, in any city having a population of one million or more a pre-sentence investigation and report thereon ("PSI") would not be required where a negotiated sentence of imprisonment for a term of three hundred sixty-five days or less has been mutually agreed upon by the parties, with the consent of the judge, as a result of a conviction or revocation of a sentence of probation, and no sentence of probation will be imposed.

**REASONS FOR SUPPORT:** This proposal reflects "evidence-based practices" - that is, practices based on studies of what has been proven to be effective in the Probation field - and reflects the idea that appropriate judicial discretion is critical to imposing correct probation term lengths in order to advance public safety and that eliminating the costly requirement of Pre Sentence Investigation's (PSI) for negotiated sentences in cities of one million or more, will allow the New York City Department of Probation to more appropriately reassign probation officers to provide supervision and services to probation clients.

Currently, sentences involving probation are oriented to the conviction, rather than to the offender. Penal Law 05.00 stipulates that, with very few exceptions, a period of probation for a felony offense must be five years, and a period of probation for a class A misdemeanor must be three years. However, research into community supervision and community corrections has shown that: (1) most re-offending and technical violations occur within the first eighteen months of one's Probation term; and (2) supervision has its greatest impact in the first twelve months. Unlike sentences of incarceration, about which judges maintain broad discretion in determining the length of the sentence, judges in New York have no such discretion determining the lengths of probation sentences.

This lack of judicial discretion prevents judges from distinguishing among convicted individuals on the basis of their prior criminal history; degree of culpability (major/minor actors); the risk level they pose to public safety; and their actuarially determined risk of re-offense. Moreover, all felony convictions, except those for certain drug-related and sexual assault offenses, receive five-year probation terms with no discretion for the court to distinguish between the levels of such felonies (e.g., Vehicular manslaughter in the First Degree, a class C felony; Assault in the Second Degree, a class D felony, and Auto stripping in the Second Degree, a class E felony). Therefore, probation sentences do not appropriately correlate to the severity of the conviction, nor to the risk factors posed by the offender. Additionally, this proposal provides the court directly, and probation departments indirectly, with a new tool to impose graduated sanctions when the terms of probation are violated.

Currently, the court has limited options when a probationer violates the terms of his/her probation. The court can revoke the probation sentence and sentence the individual to incarceration, or a period of incarceration and probation; or, the court can release the individual and place him/her back on probation, This proposal provides the court with an intermediate option, which is to impose a longer period of Probation. In instances where an individual does not receive the maximum amount of probation time at sentencing, that sentence can be increased when a violation of probation is sustained, to the maximum probation sentence that could have originally been imposed by the court.

This intermediate option would be consistent with evidence-based practices, which suggest that graduated and appropriate responses to behavior increase a probationer's likelihood of success and decrease future criminal behavior. This proposal would also eliminate the costly requirement of Pre Sentence Investigation's (PSI) for cities of one million or more, and allow The New York City Department of Probation to

more appropriately reassign probation officers to provide supervision and services to probation clients sentenced to a negotiated sentence of one year or less in jail, who also pose a higher risk of recidivism.

Currently, probation departments throughout the State are required to conduct PSI's and prepare written reports on all defendants convicted in felony cases, and on all defendants convicted in misdemeanor cases who receive a sentence of imprisonment for a term in excess of 180 days.

This bill would amend § 390.20 to maintain these requirements except where a negotiated sentence of imprisonment for a term of 365 days or less has been reached as a result of a conviction or revocation of a probation sentence, and where probation will not be imposed under either scenario. In the interest of public safety, probation departments would continue to prepare PSI's in all other felony cases, including those where a plea bargain is reached and the defendant is returning to the community (i.e., probation, fine, conditional discharge).

The current PSI requirements necessitate additional court hearings, delay sentencing, and expend public resources for a pre-sentence investigation and report that rarely impact the final sentencing outcome. It is important to note that subdivision 3 of CPL § 390.20 (proposed to be renumbered subdivision 5) allows judges to order a PSI in any case when they believe it is appropriate. This proposal would not affect the discretion of the Court to order a PSI even if the statute would no longer automatically require one. In instances where a PSI is not required, and the judge does not order one, a defendant and the prosecutor can always submit their own PSI if they deem it appropriate (CPL 390.40).

Finally, the bill contains a technical amendment that would eliminate the closing paragraph of § 390.20(4)(a) in order to implement and conform to the amendments proposed in the bill, whether they pertain to indeterminate or determinate sentences. That provision (in effect until September 1, 2013) now prohibits the waiver of a PSI if an indeterminate or determinate sentence of imprisonment is imposed -- essentially all cases with a sentence of imprisonment. The same rationale applies to the amendment proposed by section 3 of the bill, which would repeal the provisions of the statute that go back into effect on September 1, 2013. The removal of the PSI requirement would include cases where a plea deal has been reached and the defendant will be sentenced to an indeterminate term of imprisonment.

**FISCAL IMPACT:** None to NYS

**EFFECTIVE DATE:** Immediately

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# Probation

