

3349--A

2011-2012 Regular Sessions

I N S E N A T E

February 17, 2011

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Alcoholism and Drug Abuse in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the judicial diversion program for alcohol and substance abuse offenders and to amend the penal law, in relation to the crime of unauthorized departure from a rehabilitation facility

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

1 Section 1. Subdivisions 4, 5, 8 and paragraph (a) of subdivision 9 of
2 section 216.05 of the criminal procedure law, as added by section 4 of
3 part AAA of chapter 56 of the laws of 2009, are amended to read as
4 follows:
5 4. When an authorized court, AFTER CONSIDERING THE UNDERLYING CHARGES
6 AND THE PROPENSITY OR LACK THEREOF FOR VIOLENT CONDUCT OF THE DEFENDANT,
7 AND AFTER REVIEWING OR HEARING ONE OR MORE WRITTEN OR ORAL OPINIONS FROM
8 A LICENSED PSYCHOLOGIST OR PSYCHIATRIST AS TO THE PROPENSITY OF THE
9 DEFENDANT FOR FUTURE VIOLENT CONDUCT, AND AFTER MAKING AN ON-THE-RECORD
10 DETERMINATION AS TO THE REASONS WHY, BASED ON ALL EVIDENCE, determines,
11 pursuant to paragraph (b) of subdivision three of this section, that an
12 eligible defendant should be offered alcohol or substance abuse treat-
13 ment, or when the parties and the court agree to an eligible defendant's
14 participation in alcohol or substance abuse treatment, an eligible
15 defendant may be allowed to participate in the judicial diversion
16 program offered by this article. Prior to the court's issuing an order
17 granting judicial diversion, the eligible defendant shall be required to
18 enter a plea of guilty to the charge or charges; provided, however, that
19 no such guilty plea shall be required when:

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

LBD03024-02-2

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

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

8 5. The defendant shall agree on the record or in writing to abide by
9 the release conditions set by the court, which, shall include: partic-
10 ipation in a specified period of alcohol or substance abuse treatment at
11 a specified program or programs identified by the court, which may
12 include periods of detoxification, residential or outpatient treatment,
13 or both, as determined after taking into account the views of the health
14 care professional who conducted the alcohol and substance abuse evalu-
15 ation and any health care professionals responsible for providing such
16 treatment or monitoring the defendant's progress in such treatment; and
17 may include: (i) periodic court appearances, which may include periodic
18 urinalysis, PROVIDED, HOWEVER, THAT DEFENDANTS MAY MAKE SUCH COURT
19 APPEARANCES BY VIDEO CONFERENCE, AT THE SOLE DISCRETION OF THE COURT;
20 (ii) a requirement that the defendant refrain from engaging in criminal
21 behaviors.

22 8. During the period of a defendant's participation in the judicial
23 diversion program, the court shall retain jurisdiction of the defendant.
24 The court may require the defendant to appear in court at any time to
25 enable the court to monitor the defendant's progress in alcohol or
26 substance abuse treatment. The court shall provide notice, reasonable
27 under the circumstances, to the people, the treatment provider, the
28 defendant and the defendant's counsel whenever it orders or otherwise
29 requires the appearance of the defendant in court. Failure to appear as
30 required without reasonable cause therefor shall constitute a violation
31 of the conditions of the court's agreement with the defendant. AT THE
32 SOLE DISCRETION OF THE COURT, ANY COURT APPEARANCE REQUIRED PURSUANT TO
33 THIS SUBDIVISION MAY BE MADE BY VIDEO CONFERENCE.

34 (a) If at any time during the defendant's participation in the judi-
35 cial diversion program, the court has reasonable grounds to believe that
36 the defendant has violated a release condition or has failed to appear
37 before the court as requested, the court shall direct the defendant to
38 appear or issue a bench warrant to a police officer or an appropriate
39 peace officer directing him or her to take the defendant into custody
40 and bring the defendant before the court without unnecessary delay. AT
41 THE SOLE DISCRETION OF THE COURT, ANY COURT APPEARANCE REQUIRED PURSUANT
42 TO THIS SUBDIVISION MAY BE MADE BY VIDEO CONFERENCE. The provisions of
43 subdivision one of section 530.60 of this chapter relating to revocation
44 of recognizance or bail shall apply to such proceedings under this
45 subdivision.

46 S 2. Section 216.05 of the criminal procedure law is amended by adding
47 two new subdivisions 5-a and 12 to read as follows:

48 5-A. WHEN AN AUTHORIZED COURT DETERMINES, PURSUANT TO PARAGRAPH (B) OF
49 SUBDIVISION THREE OF THIS SECTION, THAT AN ELIGIBLE DEFENDANT SHOULD BE
50 OFFERED ALCOHOL OR SUBSTANCE ABUSE TREATMENT, OR WHEN THE PARTIES AND
51 THE COURT AGREE TO AN ELIGIBLE DEFENDANT'S PARTICIPATION IN ALCOHOL OR
52 SUBSTANCE ABUSE TREATMENT, THE COURT SHALL TRANSMIT THE ELIGIBLE DEFEND-
53 ANT'S ARREST RECORD AND CONVICTION STATEMENT TO THE FACILITY WHERE THE
54 DEFENDANT IS TO RECEIVE TREATMENT.

55 12. A FACILITY WHICH IS TREATING A DEFENDANT UNDER THE PROVISIONS OF
56 THIS SECTION SHALL NOTIFY THE LOCAL POLICE DEPARTMENT WHICH HAS JURIS-

1 DICTION OVER THE MUNICIPALITY WHERE THE FACILITY IS LOCATED, OF THE
2 DEFENDANT'S PLACEMENT AND ARREST RECORD (OR IF THERE BE NO MUNICIPAL
3 POLICE DEPARTMENT, THEN THE SHERIFF OF THE COUNTY IN WHICH THE FACILITY
4 IS LOCATED), WHICH SHALL BE PROVIDED TO FACILITY STAFF AT THE FACILITY
5 IN A MANNER ORDERED BY THE COURT. THE FACILITY SHALL ALSO SUBMIT TO THE
6 DIVISION OF CRIMINAL JUSTICE SERVICES A SECURITY PLAN DESIGNED TO
7 PROVIDE FOR THE SAFETY OF STAFF, RESIDENTS AND THE COMMUNITY FROM
8 VIOLENT BEHAVIOR BY RESIDENT. SUCH PLAN SHALL BE UPDATED AT LEAST EVERY
9 FIVE YEARS OR AS OTHERWISE DIRECTED BY THE COMMISSIONER OF THE DIVISION
10 OF CRIMINAL JUSTICE SERVICES.

11 S 3. The penal law is amended by adding a new section 205.70 to read
12 as follows:

13 S 205.70 UNAUTHORIZED DEPARTURE FROM A REHABILITATION FACILITY.

14 A PERSON IS GUILTY OF UNAUTHORIZED DEPARTURE FROM A REHABILITATION
15 FACILITY WHEN A COURT DETERMINES THAT AN ELIGIBLE DEFENDANT, AS DEFINED
16 BY SUBDIVISION ONE OF SECTION 216.00 OF THE CRIMINAL PROCEDURE LAW,
17 LEAVES, DEPARTS OR ESCAPES FROM THE TREATMENT FACILITY TO WHICH SUCH
18 PERSON WAS ASSIGNED FOR A PERIOD OF ALCOHOL OR SUBSTANCE ABUSE TREATMENT
19 AS PART OF THE JUDICIAL DIVERSION PROGRAM PURSUANT TO SECTION 216.05 OF
20 THE CRIMINAL PROCEDURE LAW WITHOUT THE CONSENT OF THE COURT OR WRITTEN
21 CONSENT OF THE FACILITY MANAGEMENT.

22 UNAUTHORIZED DEPARTURE FROM A REHABILITATION FACILITY IS A CLASS D
23 FELONY.

24 S 4. This act shall take effect immediately.