

3349

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

AN ACT to amend the criminal procedure law, in relation to the judicial diversion program for alcohol and substance abuse offenders

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

1 Section 1. Subdivision 4 of section 216.05 of the criminal procedure
2 law, as added by section 4 of part AAA of chapter 56 of the laws of
3 2009, is amended and a new subdivision 12 is added to read as follows:
4 4. When an authorized court, AFTER CONSIDERING THE UNDERLYING CHARGES
5 AND THE PROPENSITY OR LACK THEREOF FOR VIOLENT CONDUCT OF THE DEFENDANT,
6 AND AFTER REVIEWING OR HEARING ONE OR MORE WRITTEN OR ORAL OPINIONS FROM
7 A LICENSED PSYCHOLOGIST OR PSYCHIATRIST AS TO THE PROPENSITY OF THE
8 DEFENDANT FOR FUTURE VIOLENT CONDUCT, AND AFTER MAKING AN ON-THE-RECORD
9 DETERMINATION AS TO THE REASONS WHY, BASED ON ALL EVIDENCE, determines,
10 pursuant to paragraph (b) of subdivision three of this section, that an
11 eligible defendant should be offered alcohol or substance abuse treat-
12 ment, or when the parties and the court agree to an eligible defendant's
13 participation in alcohol or substance abuse treatment, an eligible
14 defendant may be allowed to participate in the judicial diversion
15 program offered by this article. Prior to the court's issuing an order
16 granting judicial diversion, the eligible defendant shall be required to
17 enter a plea of guilty to the charge or charges; provided, however, that
18 no such guilty plea shall be required when:
19 (a) the people and the court consent to the entry of such an order
20 without a plea of guilty; or
21 (b) based on a finding of exceptional circumstances, the court deter-
22 mines that a plea of guilty shall not be required. For purposes of this
23 subdivision, exceptional circumstances exist when, regardless of the
24 ultimate disposition of the case, the entry of a plea of guilty is like-
25 ly to result in severe collateral consequences.

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

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

13 S 2. This act shall take effect immediately.