S T A T E O F N E W Y O R K

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:

Section 1. Subdivisions 4, 5, 8 and paragraph (a) of subdivision 9 of section 216.05 of the criminal procedure law, as added by section 4 of part AAA of chapter 56 of the laws of 2009, are amended to read as follows:

4. When an authorized court, AFTER CONSIDERING THE UNDERLYING CHARGES AND THE PROPENSITY OR LACK THEREOF FOR VIOLENT CONDUCT OF THE DEFENDANT, AND AFTER REVIEWING OR HEARING ONE OR MORE WRITTEN OR ORAL OPINIONS FROM A LICENSED PSYCHOLOGIST OR PSYCHIATRIST AS TO THE PROPENSITY OF THE DEFENDANT FOR FUTURE VIOLENT CONDUCT, AND AFTER MAKING AN ON-THE-RECORD DETERMINATION AS TO THE REASONS WHY, BASED ON ALL EVIDENCE, determines, pursuant to paragraph (b) of subdivision three of this section, that an eligible defendant should be offered alcohol or substance abuse treatment, or when the parties and the court agree to an eligible defendant's participation in alcohol or substance abuse treatment, an eligible defendant may be allowed to participate in the judicial diversion program offered by this article. Prior to the court's issuing an order granting judicial diversion, the eligible defendant shall be required to enter a plea of guilty to the charge or charges; provided, however, that no such guilty plea shall be required when:

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

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

(b) based on a finding of exceptional circumstances, the court determines that a plea of guilty shall not be required. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences.

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

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

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

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

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

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

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

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

S 205.70 UNAUTHORIZED DEPARTURE FROM A REHABILITATION FACILITY.

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

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

S 4. This act shall take effect immediately.