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

7529

2013-2014 Regular Sessions

I N A S S E M B L Y

May 23, 2013

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing an alternative resolution program for veterans accused of certain felonies

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

Section 1. Title I of the criminal procedure law is amended by adding a new article 217 to read as follows:

ARTICLE 217

ALTERNATIVE RESOLUTION OF CRIMINAL PROCEEDINGS INVOLVING VETERANS

SECTION 217.00 DEFINITIONS.

217.05 ALTERNATIVE RESOLUTION PROGRAM; COURT PROCEDURES.

S 217.00 DEFINITIONS.

THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

1. "VETERAN" MEANS A CURRENT OR FORMER MEMBER OF THE UNITED STATES MILITARY, INCLUDING THE MILITARY RESERVES OR A STATE'S NATIONAL GUARD, WHO:

(A) SERVED IN A COMBAT THEATRE OR COMBAT ZONE; OR

(B) EXPERIENCED A TRAUMATIC EVENT DURING MILITARY SERVICE; OR

(C) WAS PHYSICALLY OR MENTALLY INJURED DURING MILITARY SERVICE.

2. "ELIGIBLE VETERAN" MEANS:

(A) A VETERAN WHO IS ACCUSED OF ONE OR MORE OFFENSES, AS DEFINED IN SUBDIVISION ONE OF SECTION 10.00 OF THE PENAL LAW;

(B) A VETERAN WHO SUFFERS FROM POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR COMBINATION THEREOF, THAT WAS, AT LEAST IN PART, CAUSED BY, EXACERBATED BY OR RESULTED FROM THE VETERAN'S SERVICE IN A COMBAT THEATRE OR ZONE, OR A

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

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TRAUMATIC EVENT OR A PHYSICAL OR MENTAL INJURY DURING MILITARY SERVICE; AND

(C) A VETERAN WHOSE SPECIFIED ILLNESS, INJURY OR OTHER CONDITION MAY HAVE PLAYED A ROLE IN THE COMMISSION OF ONE OR MORE OF THE CHARGED OFFENSES.

3. "ELIGIBLE VETERAN EVALUATION" MEANS A WRITTEN ASSESSMENT AND REPORT BY A COURT-APPROVED ENTITY OR LICENSED HEALTH CARE PROFESSIONAL EXPERIENCED IN THE TREATMENT OF INDIVIDUALS SUFFERING FROM POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESSES OR CONDITIONS, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURIES, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION, OR A COMBINATION THEREOF, OR BY AN ENTITY CERTIFIED BY THE STATE DEPARTMENT OF HEALTH, THE STATE OFFICE OF MENTAL HEALTH, THE STATE OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OR THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS EXPERIENCED IN THE TREATMENT OF SUCH ILLNESSES, INJURIES, OR CONDITIONS, WHICH SHALL INCLUDE:

(A) AN EVALUATION AS TO WHETHER THE DEFENDANT IS SUFFERING FROM POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESSES OR CONDITIONS, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURIES, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR A COMBINATION THEREOF;

(B) WHETHER THE DEFENDANT'S POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR A COMBINATION THEREOF WAS, AT LEAST IN PART, CAUSED BY, EXACERBATED BY OR RESULTED FROM THE VETERAN'S SERVICE IN A COMBAT THEATRE OR ZONE OR A TRAUMATIC EVENT OR A PHYSICAL INJURY DURING MILITARY SERVICE;

(C) AN ASSESSMENT OF WHETHER THE DEFENDANT'S ILLNESS, INJURY OR OTHER CONDITION, IF ANY, MAY HAVE PLAYED A ROLE IN THE COMMISSION OF ONE OR MORE OF THE CHARGED OFFENSES;

(D) A RECOMMENDATION AS TO WHETHER THE DEFENDANT'S ILLNESS, INJURY OR OTHER CONDITION, IF ANY, COULD BE EFFECTIVELY ADDRESSED BY THE ALTERNATIVE RESOLUTION PROGRAM IN ACCORDANCE WITH THIS ARTICLE; AND

(E) ANY OTHER INFORMATION, FACTOR, CIRCUMSTANCE, OR RECOMMENDATION DEEMED RELEVANT BY THE ASSESSING ENTITY OR SPECIFICALLY REQUESTED BY THE COURT.

S 217.05 ALTERNATIVE RESOLUTION PROGRAM; COURT PROCEDURES.

1. DETERMINATION OF VETERAN STATUS. NOTWITHSTANDING ANY LAW TO THE CONTRARY, AT ANY TIME AFTER THE ARRAIGNMENT OF A DEFENDANT, BUT PRIOR TO THE ENTRY OF A PLEA OF GUILTY OR THE COMMENCEMENT OF TRIAL, THE DEFENDANT CLAIMS TO BE A VETERAN, AS DEFINED IN SUBDIVISION ONE OF SECTION 217.00 OF THIS ARTICLE, THE COURT SHALL ORDER THE DEFENDANT TO PROVIDE WRITTEN EVIDENCE THAT THE DEFENDANT IS A VETERAN. SUCH EVIDENCE MAY INCLUDE, BUT IS NOT LIMITED TO, RECORDS OF THE UNITED STATES DEPARTMENT OF DEFENSE, THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS OR A STATE VETERANS AGENCY.

2. THE COURT, UPON REVIEW OF THE EVIDENCE PRESENTED AND ANY TESTIMONY OFFERED BY THE DEFENDANT, SHALL DETERMINE BY A PREPONDERANCE OF THE EVIDENCE WHETHER THE DEFENDANT IS A VETERAN, AS DEFINED IN SUBDIVISION ONE OF SECTION 217.00 OF THIS ARTICLE.

3. DETERMINATION OF ELIGIBLE VETERAN STATUS.

(A) IF THE COURT DETERMINES THAT THE DEFENDANT IS A VETERAN, THE COURT SHALL ORDER AN EXAMINATION OF THE DEFENDANT BY AN ELIGIBLE VETERAN EXAMINER, AS DEFINED IN SUBDIVISION THREE OF SECTION 217.00 OF THIS ARTICLE, TO EVALUATE WHETHER THE DEFENDANT IS AN ELIGIBLE VETERAN, AS DEFINED IN SUBDIVISION TWO OF SECTION 217.00 OF THIS ARTICLE. THE DEFENDANT SHALL PROVIDE A WRITTEN AUTHORIZATION, IN COMPLIANCE WITH THE REQUIREMENTS OF ANY APPLICABLE STATE OR FEDERAL LAWS, RULES OR REGULATIONS AUTHORIZING

DISCLOSURE OF THE RESULTS OF THE ASSESSMENT TO THE DEFENDANT'S ATTORNEY, THE PROSECUTOR, THE COURT, AUTHORIZED COURT PERSONNEL AND OTHER INDIVIDUALS SPECIFIED IN SUCH AUTHORIZATION FOR THE SOLE PURPOSE OF DETERMINING WHETHER THE DEFENDANT IS AN ELIGIBLE VETERAN.

(B) UPON RECEIPT OF THE ELIGIBLE VETERAN EVALUATION REPORT, THE COURT SHALL PROVIDE A COPY TO THE DEFENDANT AND THE PROSECUTOR.

(C) THE COURT SHALL, UPON THE REQUEST OF EITHER PARTY OR WHERE THE ELIGIBLE VETERAN EVALUATION INDICATES THAT THE DEFENDANT MAY NOT MEET THE DEFINITION OF AN ELIGIBLE VETERAN, ORDER A HEARING ON THE ISSUE OF WHETHER THE DEFENDANT IS AN ELIGIBLE VETERAN. IF THE COURT ORDERS A HEARING, THE HEARING MUST BE HELD AS SOON AS PRACTICABLE SO AS TO FACILITATE EARLY INTERVENTION IN THE EVENT THE DEFENDANT IS FOUND TO BE AN ELIGIBLE VETERAN. AT THE HEARING, THE COURT MAY CONSIDER ORAL OR WRITTEN ARGUMENTS, TAKE TESTIMONY FROM WITNESSES OFFERED BY EITHER PARTY, AND CONSIDER ANY RELEVANT EVIDENCE INCLUDING, BUT NOT LIMITED TO, EVIDENCE THAT:

(I) THE DEFENDANT SUFFERS FROM POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR COMBINATION THEREOF;

(II) SUCH ILLNESS, INJURY OR OTHER CONDITION WAS, AT LEAST IN PART, CAUSED BY, EXACERBATED BY OR RESULTED FROM THE DEFENDANT'S SERVICE IN A COMBAT THEATRE OR ZONE OR A TRAUMATIC EVENT OR A PHYSICAL OR MENTAL INJURY DURING MILITARY SERVICE; AND

(III) SUCH ILLNESS, INJURY OR OTHER CONDITION MAY HAVE PLAYED A ROLE IN THE COMMISSION OF ONE OR MORE OF THE CHARGED OFFENSES.

(D) THE COURT SHALL CONSIDER AND MAKE FINDINGS OF FACT WITH RESPECT TO WHETHER:

(I) THE DEFENDANT SUFFERS FROM POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR COMBINATION THEREOF;

(II) SUCH ILLNESS, INJURY OR OTHER CONDITION WAS, AT LEAST IN PART, CAUSED BY, EXACERBATED BY OR RESULTED FROM THE DEFENDANT'S SERVICE IN A COMBAT THEATRE OR ZONE, OR A TRAUMATIC EVENT OR A PHYSICAL INJURY DURING MILITARY SERVICE;

(III) SUCH ILLNESS, INJURY OR OTHER CONDITION MAY HAVE PLAYED A ROLE IN THE COMMISSION OF ONE OR MORE OF THE CHARGED OFFENSE OR OFFENSES; AND

(IV) IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CLASS A, B, OR C FELONIES, INSTITUTIONAL CONFINEMENT OF THE DEFENDANT IS OR MAY NOT BE NECESSARY FOR THE PROTECTION OF THE PUBLIC.

4. NOTWITHSTANDING ANY LAW TO THE CONTRARY, WHEN THE COURT DETERMINES, PURSUANT TO PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, THAT THE DEFENDANT IS AN ELIGIBLE VETERAN, OR WHEN THE PARTIES AND THE COURT AGREE TO A FINDING THAT THE DEFENDANT IS AN ELIGIBLE VETERAN, THE COURT MUST:

(A) IF THE DEFENDANT IS CHARGED WITH ONE OR MORE OFFENSES, NONE OF WHICH IS A CLASS A, B, OR C FELONY, ALLOW THE DEFENDANT TO PARTICIPATE IN THE ALTERNATIVE RESOLUTION PROGRAM OFFERED BY THIS ARTICLE, WHICH IS DESIGNED TO TREAT THE ELIGIBLE VETERAN'S POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION, OR COMBINATION THEREOF, WITHOUT A PLEA OF GUILTY; OR

(B) IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CLASS A, B, OR C FELONY OFFENSES, ALLOW THE DEFENDANT TO PARTICIPATE IN THE ALTERNATIVE RESOLUTION PROGRAM OFFERED BY THIS ARTICLE, WHICH IS DESIGNED TO TREAT

THE ELIGIBLE VETERAN'S POSTTRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION, OR COMBINATION THEREOF:

(I) WITHOUT A PLEA OF GUILTY; OR

(II) UPON ENTRY OF A PLEA OF GUILTY TO THE CHARGE OR CHARGES; OR

(III) UPON ENTRY OF A PLEA OF GUILTY TO A LESSER CHARGE.

5. ALTERNATIVE RESOLUTION PROGRAM; TREATMENT PLAN.

(A) THE COURT SHALL ISSUE AN ORDER GRANTING PARTICIPATION IN THE ALTERNATIVE RESOLUTION PROGRAM THAT SETS FORTH: (I) THE TERMS, CONDITIONS, AND LENGTH OF THE ELIGIBLE VETERAN'S TREATMENT PLAN; (II) THE FINAL DISPOSITION OF THE PROCEEDING AS SET FORTH IN SUBDIVISION SIX OF THIS SECTION; AND (III) THE DISPOSITION OF THE PROCEEDING IF THE DEFENDANT FAILS TO SATISFY THE TERMS AND CONDITIONS OF THE TREATMENT PLAN.

(B) TERMS AND CONDITIONS. IN DETERMINING THE TERMS AND CONDITIONS OF THE TREATMENT PLAN, THE COURT SHALL CONSIDER THE RECOMMENDATIONS IN THE ELIGIBLE VETERAN EVALUATION REPORT AND THE RECOMMENDATIONS OF THE DEFENDANT'S HEALTH CARE PROVIDERS, IF ANY. THE TREATMENT PLAN MAY REQUIRE THE DEFENDANT, WITH THE ASSISTANCE OF TREATMENT PROVIDERS, TO DEVELOP A PLAN FOR ONGOING RECOVERY AFTER DISPOSITION OF THE CRIMINAL CASE.

(C) LENGTH OF TREATMENT PLAN.

(I) WHERE THE DEFENDANT IS CHARGED WITH ONE OR MORE OFFENSES, NONE OF WHICH IS A CLASS A, B, OR C FELONY, THE TREATMENT PLAN MAY NOT EXTEND BEYOND TWELVE MONTHS. HOWEVER, UPON CONSENT OF THE DEFENDANT, THE COURT MAY EXTEND A TREATMENT PLAN FOR UP TO TWELVE ADDITIONAL MONTHS.

(II) WHERE THE DEFENDANT IS CHARGED WITH ONE OR MORE CLASS A, B, OR C FELONY OFFENSES, THE TREATMENT PLAN MAY NOT EXTEND BEYOND EIGHTEEN MONTHS. HOWEVER, UPON CONSENT OF THE DEFENDANT, THE COURT MAY EXTEND A TREATMENT PLAN FOR UP TO TWELVE ADDITIONAL MONTHS.

(D) THE DEFENDANT SHALL AGREE ON THE RECORD OR IN WRITING TO ABIDE BY THE TERMS AND CONDITIONS OF THE TREATMENT PLAN ORDERED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

6. FINAL DISPOSITION.

(A) ADJOURNMENT IN CONTEMPLATION OF DISMISSAL. NOTWITHSTANDING ANY LAW TO THE CONTRARY, IF THE DEFENDANT IS ALLOWED TO PARTICIPATE IN THE PROGRAM PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION OR SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION, UPON THE DEFENDANT'S WRITTEN AGREEMENT TO ABIDE BY THE TERMS AND CONDITIONS OF THE TREATMENT PLAN, THE COURT SHALL GRANT AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL.

(I) IF THE CASE IS NOT RESTORED TO THE CALENDAR DURING THE TIME PERIOD OF THE TREATMENT PLAN, THE ACCUSATORY INSTRUMENT IS, AT THE EXPIRATION OF SUCH TERM, DEEMED TO HAVE BEEN DISMISSED IN THE FURTHERANCE OF JUSTICE.

(II) UPON DISMISSAL OF THE ACCUSATORY INSTRUMENT, THE COURT SHALL ENTER AN ORDER DIRECTING THAT THE RECORD OF SUCH ACTION OR PROCEEDING BE SEALED AND DIRECTING THE CLERK OF THE COURT WHEREIN SUCH CRIMINAL ACTION OR PROCEEDING WAS TERMINATED TO IMMEDIATELY NOTIFY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE HEADS OF ALL APPROPRIATE POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES THAT THE ACTION HAS BEEN TERMINATED AND THAT THE RECORD OF SUCH ACTION OR PROCEEDING SHALL BE SEALED. UPON RECEIPT OF SUCH NOTIFICATION, THE AGENCY, DIVISION, OR DEPARTMENT SHALL COMPLY WITH THE PROVISIONS OF SUBDIVISION ONE OF SECTION 160.50 OF THIS CHAPTER.

(B) FOR ALL OTHER DEFENDANTS, UPON SATISFACTION OF THE TERMS AND CONDITIONS OF THE TREATMENT PLAN, THE FINAL DISPOSITION MAY INCLUDE, BUT

IS NOT LIMITED TO: (I) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION SUPERVISION AND, UPON THE DEFENDANT'S SUCCESSFUL COMPLETION OF THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA AND DISMISSING THE INDICTMENT; OR (II) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION SUPERVISION AND, UPON SUCCESSFUL COMPLETION OF THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA, ENTER A GUILTY PLEA TO A MISDEMEANOR OFFENSE AND SENTENCING THE DEFENDANT IN ACCORDANCE WITH THE TREATMENT PLAN ORDER, WHICH MAY INCLUDE A PERIOD OF PROBATION SUPERVISION PURSUANT TO SECTION 65.00 OF THE PENAL LAW; OR (III) ALLOWING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA AND DISMISSING THE INDICTMENT.

S 2. This act shall take effect immediately.