

7529--A

2013-2014 Regular Sessions

I N A S S E M B L Y

May 23, 2013

Introduced by M. of A. BRINDISI, HENNESSEY, RUSSELL, COOK, PERRY, JOHNS, TENNEY, McDONOUGH, WEPRIN, ABINANTI, GIGLIO, ZEBROWSKI, MONTESANO, WRIGHT, McDONALD, STIRPE, KEARNS, LUPARDO, GOLDFEDER, ROZIC, LAVINE, BARRETT, ORTIZ, FAHY -- Multi-Sponsored by -- M. of A. BUTLER, McKEVITT, OAKS, O'DONNELL, RA, RAI, SCHIMMINGER, SIMANOWITZ -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

3 ARTICLE 217

4 JUSTICE FOR OUR VETERANS ACT

5 SECTION 217.00 LEGISLATIVE FINDINGS AND DECLARATIONS.

6 217.05 DEFINITIONS.

7 217.10 ALTERNATIVE RESOLUTION PROGRAM; COURT PROCEDURES.

8 S 217.00 LEGISLATIVE FINDINGS AND DECLARATIONS.

9 THE LEGISLATURE FINDS THAT AN INCREASING NUMBER OF NEW YORK STATE
10 VETERANS AND SERVICE MEMBERS SUFFER FROM SERIOUS TRAUMA AS A RESULT OF
11 THEIR MILITARY SERVICE, SUCH AS POST-TRAUMATIC STRESS DISORDER, TRAUMAT-
12 IC BRAIN INJURY AND OTHER MENTAL OR PHYSICAL IMPAIRMENTS OR ILLNESSES.
13 STUDIES HAVE FOUND THAT MANY ARE NOT RECEIVING TREATMENT. THE DEVASTAT-
14 ING CONSEQUENCES OF WAR ARE HARMING THE MENTAL AND PHYSICAL HEALTH OF A
15 GROWING NUMBER OF SERVICE MEMBERS, RETURNING VETERANS AND THEIR FAMI-
16 LIES.

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

LBD10843-02-4

1 A NATIONAL STUDY, INVISIBLE WOUNDS OF WAR, BY RAND CORPORATION IN 2008
2 FOUND ONE IN FIVE VETERANS RETURNING FROM IRAQ AND AFGHANISTAN REPORTED
3 SYMPTOMS OF PTSD OR MAJOR DEPRESSION. RESEARCHERS ALSO FOUND SERIOUS
4 TREATMENT GAPS WITH ONLY 53% OF VETERANS WITH SYMPTOMS OF MENTAL HEALTH
5 CONDITIONS SEEKING HELP, AND OF THOSE WHO SOUGHT CARE, ROUGHLY HALF
6 RECEIVED MINIMALLY ADEQUATE TREATMENT. IN NEW YORK STATE, A NEEDS
7 ASSESSMENT OF NEW YORK STATE VETERANS 2011 STUDY BY RAND CORPORATION AND
8 THE NEW YORK STATE HEALTH FOUNDATION FOUND AN ESTIMATED 85,000 VETERANS
9 RETURNING HOME SINCE 2001 HAVE AN UNUSUALLY HIGH RATE OF MENTAL HEALTH
10 PROBLEMS. THIS STUDY FOUND NEARLY ONE IN FOUR NEW YORK STATE VETERANS
11 HAD A PROBABLE DIAGNOSIS OF PTSD AND/OR MAJOR DEPRESSION. A FOLLOW UP
12 2011 REPORT BY THE IRAQ AND AFGHANISTAN VETERANS OF AMERICA, NEW YORK'S
13 NEWEST VETERANS: KEY FINDINGS AND POLICY IMPLICATIONS OF THE RAND CORPO-
14 RATION'S NEEDS ASSESSMENT OF NEW YORK STATE VETERANS RECOMMENDED A POLI-
15 CY "TO SUCCESSFULLY EXECUTE AN ALTERNATIVE SENTENCING PROGRAM FOR VETER-
16 ANS WHOSE CRIMES STEM FROM SERVICE-RELATED INJURIES."

17 THE MEN AND WOMEN WHO SERVED AND SACRIFICED FOR OUR COUNTRY FREQUENTLY
18 COME HOME TO A NEW FRONTLINE OF INDIFFERENCE WHEN SUFFERING FROM A
19 MENTAL OR PHYSICAL ILLNESS OR INJURY. UNTREATED VETERANS WHO THEN COMMIT
20 A CRIME ARE LOST IN THE CRIMINAL JUSTICE SYSTEM. THERE IS NO STATEWIDE
21 MECHANISM TO IDENTIFY VETERANS, AND MANY ARE SENTENCED BY COURTS UNAWARE
22 OF THEIR STATUS, LET ALONE IF THEY HAVE AN UNTREATED MENTAL OR PHYSICAL
23 HEALTH CONDITION THAT CAUSED OR CONTRIBUTED TO THEIR CRIMINAL ACT. THE
24 MEN AND WOMEN WHO PUT THEIR LIVES ON THE LINE FOR AMERICA'S FREEDOM
25 DESERVE ANY NEEDED SUPPORT UPON RETURNING HOME. ACCORDINGLY, THE LEGIS-
26 LATURE FINDS THAT OUR LAWS MUST BE STRENGTHENED TO ENSURE UNTREATED
27 SERVICE MEMBERS AND VETERANS WITH MENTAL OR PHYSICAL HEALTH AILMENTS,
28 THE MOST VULNERABLE OF OUR RETURNING WARRIORS, RECEIVE TREATMENT AND AN
29 ALTERNATIVE RESOLUTION PROCESS IN THE CRIMINAL JUSTICE SYSTEM. THE
30 LEGISLATURE HEREBY DECLARES THAT A JUST AND HUMANITARIAN CRIMINAL
31 JUSTICE PROCESS IS NEEDED TO PROVIDE VETERANS WITH A MEDICAL EVALUATION
32 AND ANY NEEDED TREATMENT FOR A DIAGNOSED INJURY OR ILLNESS WHICH WILL
33 ASSIST THEM TO SUCCESSFULLY RE-ENTER SOCIETY. IN THE INTERESTS OF
34 JUSTICE, THE LEGISLATURE FURTHER DECLARES THAT COURTS NEED TO CONSIDER
35 IF A VETERAN'S SERVICE-RELATED AILMENT PLAYED A ROLE IN THEIR INFRAC-
36 TION, AND FOR CERTAIN CRIMINAL VIOLATIONS, WHETHER CHARGES SHOULD BE
37 REDUCED OR DISMISSED UPON THE CONCLUSION OF THE VETERAN'S TREATMENT.
38 S 217.05 DEFINITIONS.

39 THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

40 1. "VETERAN" MEANS A FORMER MEMBER OF THE UNITED STATES MILITARY,
41 INCLUDING SERVICE IN THE NATIONAL GUARD OR OTHER RESERVE COMPONENTS OF
42 THE ARMED FORCES OF THE UNITED STATES, WHO:

- 43 (A) SERVED IN A COMBAT THEATRE, ZONE, OR OPERATION; OR
44 (B) EXPERIENCED A TRAUMATIC EVENT DURING MILITARY SERVICE; OR
45 (C) WAS PHYSICALLY OR MENTALLY INJURED DURING MILITARY SERVICE.

46 2. "SERVICE MEMBER" MEANS A CURRENT MEMBER OF THE UNITED STATES MILI-
47 TARY, INCLUDING SERVICE IN THE NATIONAL GUARD OR OTHER RESERVE COMPO-
48 NENTS OF THE ARMED FORCES OF THE UNITED STATES.

49 3. "ELIGIBLE SERVICE MEMBER OR VETERAN" MEANS:

- 50 (A) A SERVICE MEMBER OR VETERAN WHO IS ACCUSED OF ONE OR MORE
51 OFFENSES, AS DEFINED IN SUBDIVISION ONE OF SECTION 10.00 OF THE PENAL
52 LAW, EXCEPT FOR SEX OFFENSES DEFINED IN ARTICLES ONE HUNDRED THIRTY, TWO
53 HUNDRED FIFTY-FIVE AND TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AND
54 OFFENSES DEFINED IN SECTIONS 125.25 (MURDER IN THE SECOND DEGREE),
55 125.26 (AGGRAVATED MURDER), 125.27 (MURDER IN THE FIRST DEGREE), 135.25

(KIDNAPPING IN THE FIRST DEGREE), 150.20 (ARSON IN THE FIRST DEGREE) AND 490.25 (CRIME OF TERRORISM) OF THE PENAL LAW;

(B) A SERVICE MEMBER OR VETERAN WHO SUFFERS FROM POST-TRAUMATIC 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 SERVICE MEMBER'S OR VETERAN'S SERVICE IN A COMBAT THEATRE, ZONE OR OPERATION, OR A TRAUMATIC EVENT OR A PHYSICAL OR MENTAL INJURY DURING MILITARY SERVICE; AND

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

4. "VETERAN EVALUATION" MEANS A WRITTEN ASSESSMENT AND REPORT BY A COURT-APPROVED ENTITY OR LICENSED HEALTH CARE PROFESSIONAL, AS ARTICULATED AND AUTHORIZED BY THEIR SPECIFIC SCOPE OF PRACTICE, EXPERIENCED IN THE TREATMENT OF INDIVIDUALS SUFFERING FROM POST-TRAUMATIC 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 UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS EXPERIENCED IN THE TREATMENT OF SUCH ILLNESSES, INJURIES, OR CONDITIONS, WHICH SHALL INCLUDE:

(A) AN ASSESSMENT AS TO WHETHER THE DEFENDANT IS SUFFERING FROM POST-TRAUMATIC 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 POST-TRAUMATIC 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 THEIR SERVICE IN A COMBAT THEATRE, ZONE OR OPERATION, 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 TREATMENT;

(E) 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

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

S 217.10 ALTERNATIVE RESOLUTION PROGRAM; COURT PROCEDURES.

1. DETERMINATION OF SERVICE MEMBER OR 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 SERVICE MEMBER OR VETERAN, AS DEFINED IN SECTION 217.05 OF THIS ARTICLE, THE COURT SHALL ORDER THE DEFENDANT TO PROVIDE WRITTEN EVIDENCE THAT THE DEFENDANT IS A SERVICE MEMBER OR 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 OR LOCAL VETERANS AGENCY DEVOTED TO VETERANS, GUARD MEMBERS OR OTHER RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.

1 2. THE COURT, UPON REVIEW OF THE EVIDENCE PRESENTED AND ANY TESTIMONY
2 OFFERED BY THE DEFENDANT, SHALL DETERMINE BY A PREPONDERANCE OF THE
3 EVIDENCE WHETHER THE DEFENDANT IS A SERVICE MEMBER OR VETERAN, AS
4 DEFINED IN SECTION 217.05 OF THIS ARTICLE.

5 3. DETERMINATION OF SERVICE MEMBER OR VETERAN STATUS. (A) IF THE COURT
6 DETERMINES THAT THE DEFENDANT IS A SERVICE MEMBER OR VETERAN, THE COURT
7 SHALL ORDER AN EVALUATION OF THE DEFENDANT BY AN ELIGIBLE VETERAN EXAM-
8 INER, AS DEFINED IN SUBDIVISION FOUR OF SECTION 217.05 OF THIS ARTICLE,
9 TO EVALUATE WHETHER THE DEFENDANT IS AN ELIGIBLE SERVICE MEMBER OR
10 VETERAN, AS DEFINED IN SUBDIVISION THREE OF SECTION 217.05 OF THIS ARTI-
11 CLE. FOR THOSE SERVICE MEMBERS OR VETERANS WHOSE OFFENSE EXCLUDED THEM
12 FROM ENTERING THE ALTERNATIVE RESOLUTION PROGRAM, AN EVALUATION SHALL BE
13 CONDUCTED AS DEFINED IN PARAGRAPHS (A), (B), (C), (D) AND (F) OF SUBDI-
14 VISION FOUR OF SECTION 217.05. THE DEFENDANT SHALL PROVIDE A WRITTEN
15 AUTHORIZATION, IN COMPLIANCE WITH THE REQUIREMENTS OF ANY APPLICABLE
16 STATE OR FEDERAL LAWS, RULES OR REGULATIONS AUTHORIZING DISCLOSURE OF
17 THE RESULTS OF THE ASSESSMENT TO THE DEFENDANT'S ATTORNEY, THE PROSECU-
18 TOR, THE COURT, AUTHORIZED COURT PERSONNEL AND OTHER INDIVIDUALS SPECI-
19 FIED IN SUCH AUTHORIZATION FOR THE PURPOSE OF DETERMINING WHETHER THE
20 DEFENDANT IS AN ELIGIBLE SERVICE MEMBER OR VETERAN, OR FOR THE PURPOSES
21 OF PROVIDING AN EVALUATION REPORT AS PART OF ANY PRE-SENTENCE INVESTI-
22 GATION AND REPORT PURSUANT TO SECTION 390.30 OF THIS CHAPTER.

23 (B) UPON RECEIPT OF THE ELIGIBLE SERVICE MEMBER OR VETERAN EVALUATION
24 REPORT, THE COURT SHALL PROVIDE A COPY TO THE DEFENDANT AND THE PROSECU-
25 TOR.

26 (C) THE COURT SHALL, UPON THE REQUEST OF EITHER PARTY OR WHERE THE
27 EVALUATION INDICATES THAT THE DEFENDANT MAY NOT MEET THE DEFINITION OF
28 AN ELIGIBLE SERVICE MEMBER OR VETERAN AS DEFINED IN SUBDIVISION THREE OF
29 SECTION 217.05 OF THIS ARTICLE, ORDER A HEARING ON THE ISSUE OF WHETHER
30 THE DEFENDANT IS AN ELIGIBLE SERVICE MEMBER OR VETERAN. IF THE COURT
31 ORDERS A HEARING, THE HEARING MUST BE HELD AS SOON AS PRACTICABLE SO AS
32 TO FACILITATE EARLY INTERVENTION IN THE EVENT THE DEFENDANT IS FOUND TO
33 BE AN ELIGIBLE SERVICE MEMBER OR VETERAN. AT THE HEARING, THE COURT MAY
34 CONSIDER ORAL OR WRITTEN ARGUMENTS, TAKE TESTIMONY FROM WITNESSES
35 OFFERED BY EITHER PARTY, AND CONSIDER ANY RELEVANT EVIDENCE INCLUDING,
36 BUT NOT LIMITED TO, EVIDENCE THAT:

37 (I) THE DEFENDANT SUFFERS FROM POST-TRAUMATIC STRESS DISORDER, OTHER
38 MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR
39 MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR COMBINATION
40 THEREOF;

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

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

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

49 (I) THE DEFENDANT SUFFERS FROM POST-TRAUMATIC STRESS DISORDER, OTHER
50 MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR
51 MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR COMBINATION
52 THEREOF;

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

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

3 (IV) IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CLASS A, B, OR C
4 FELONIES, A DETERMINATION IF INSTITUTIONAL CONFINEMENT OF THE DEFENDANT
5 IS NECESSARY FOR THE PROTECTION OF THE PUBLIC.

6 4. NOTWITHSTANDING ANY LAW TO THE CONTRARY, WHEN THE COURT DETERMINES,
7 PURSUANT TO PARAGRAPH (D) OF SUBDIVISION THREE OF THIS SECTION, THAT BY
8 A PREPONDERANCE OF THE EVIDENCE THE DEFENDANT IS AN ELIGIBLE SERVICE
9 MEMBER OR VETERAN, AND THE COURT FINDS BY A PREPONDERANCE OF THE
10 EVIDENCE THAT INSTITUTIONAL CONFINEMENT IS NOT NECESSARY FOR THE
11 PROTECTION OF THE PUBLIC, OR WHEN THE PARTIES AND THE COURT AGREE TO A
12 FINDING THAT THE DEFENDANT IS AN ELIGIBLE SERVICE MEMBER OR VETERAN, THE
13 COURT MUST:

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

21 (B) IF THE DEFENDANT IS CHARGED WITH ONE OR MORE CLASS A, B, OR C
22 FELONY OFFENSES, ALLOW THE DEFENDANT TO PARTICIPATE IN THE ALTERNATIVE
23 RESOLUTION PROGRAM OFFERED BY THIS ARTICLE, WHICH IS DESIGNED TO TREAT
24 THE ELIGIBLE SERVICE MEMBER'S OR VETERAN'S POST-TRAUMATIC STRESS DISOR-
25 DER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER
26 PHYSICAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION, OR COMBINATION
27 THEREOF:

28 (I) WITHOUT A PLEA OF GUILTY; OR

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

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

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

38 (B) TERMS AND CONDITIONS. IN DETERMINING THE TERMS AND CONDITIONS OF
39 THE TREATMENT PLAN, THE COURT SHALL CONSIDER THE RECOMMENDATIONS IN THE
40 ELIGIBLE SERVICE MEMBER OR VETERAN EVALUATION REPORT AND THE RECOMMENDA-
41 TIONS OF THE DEFENDANT'S HEALTH CARE PROVIDERS, IF ANY. THE TREATMENT
42 PLAN MAY REQUIRE THE DEFENDANT, WITH THE ASSISTANCE OF TREATMENT PROVID-
43 ERS, TO DEVELOP A PLAN FOR ONGOING RECOVERY AFTER DISPOSITION OF THE
44 CRIMINAL CASE.

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

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

54 (D) THE DEFENDANT SHALL AGREE ON THE RECORD OR IN WRITING TO ABIDE BY
55 THE TERMS AND CONDITIONS OF THE TREATMENT PLAN ORDERED PURSUANT TO PARA-
56 GRAPH (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 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. Subdivision 2 of section 390.30 of the criminal procedure law is amended to read as follows:

2. Physical and mental examinations. Whenever information is available with respect to the defendant's physical and mental condition, the pre-sentence investigation must include the gathering of such information, INCLUDING ANY EVALUATION REPORT PURSUANT TO SUBDIVISION FOUR OF SECTION 217.05 OF THIS CHAPTER. In the case of a felony or a class A misdemeanor, or in any case where a person under the age of twenty-one is convicted of a crime, the court may order that the defendant undergo a thorough physical or mental examination in a designated facility and may further order that the defendant remain in such facility for such purpose for a period not exceeding thirty days.

S 3. This act shall take effect immediately.