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I N   A S S E M B L Y

February 17, 2016

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Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to participation in treatment for opioid abuse or dependence under the judicial diversion program

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

1     Section 1. Subdivision 5 of section 216.05 of the criminal procedure  
2     law, as amended by chapter 258 of the laws of 2015, is amended to read  
3     as follows:  
4     5. (A) The defendant shall agree on the record or in writing to abide  
5     by the release conditions set by the court, which, shall include:  
6     participation in a specified period of alcohol or substance abuse treat-  
7     ment at a specified program or programs identified by the court, which  
8     may include periods of detoxification, residential or outpatient treat-  
9     ment, or both, as determined after taking into account the views of the  
10    health care professional who conducted the alcohol and substance abuse  
11    evaluation and any health care professionals responsible for providing  
12    such treatment or monitoring the defendant's progress in such treatment;  
13    and may include: (i) periodic court appearances, which may include peri-  
14    odic urinalysis; (ii) a requirement that the defendant refrain from  
15    engaging in criminal behaviors; (iii) if the defendant needs treatment  
16    for opioid abuse or dependence, that he or she may participate in and  
17    receive medically prescribed drug treatments under the care of a health  
18    care professional licensed or certified under title eight of the educa-  
19    tion law, acting within his or her lawful scope of practice.  
20    (B) NO COURT SHALL BE AUTHORIZED, PURSUANT TO THIS SUBDIVISION, TO  
21    ESTABLISH ANY RELEASE CONDITION, FOR ANY DEFENDANT NEEDING TREATMENT FOR  
22    OPIOID ABUSE OR DEPENDENCE, WHICH REQUIRES USE OF ANY SPECIFIED TYPE OR  
23    BRAND OF DRUG DURING THE COURSE OF MEDICALLY PRESCRIBED DRUG TREATMENTS  
24    UNDER THE CARE OF A HEALTH CARE PROFESSIONAL.

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

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1 S 2. Paragraph (a) of subdivision 9 of section 216.05 of the criminal  
2 procedure law, as amended by chapter 258 of the laws of 2015, is amended  
3 to read as follows:

4 (a) If at any time during the defendant's participation in the judi-  
5 cial diversion program, the court has reasonable grounds to believe that  
6 the defendant has violated a release condition or has failed to appear  
7 before the court as requested, the court shall direct the defendant to  
8 appear or issue a bench warrant to a police officer or an appropriate  
9 peace officer directing him or her to take the defendant into custody  
10 and bring the defendant before the court without unnecessary delay;  
11 provided, however, that under no circumstances shall a defendant who  
12 requires treatment for opioid abuse or dependence be deemed to have  
13 violated a release condition on the basis of his or her participation in  
14 medically prescribed drug treatments under the care of a health care  
15 professional licensed or certified under title eight of the education  
16 law, acting within his or her lawful scope of practice, NOR SHALL ANY  
17 DEFENDANT BE DEEMED TO HAVE VIOLATED ANY RELEASE CONDITION WHICH THE  
18 COURT DID NOT HAVE THE AUTHORITY TO IMPOSE OR ESTABLISH PURSUANT TO  
19 SUBDIVISION FIVE OF THIS SECTION. The provisions of subdivision one of  
20 section 530.60 of this chapter relating to revocation of recognizance or  
21 bail shall apply to such proceedings under this subdivision.

22 S 3. This act shall take effect immediately and shall apply to every  
23 defendant applying for participation in or participating in a judicial  
24 diversion program, pursuant to article 216 of the criminal procedure  
25 law, on or after such date.