

3914--A

2015-2016 Regular Sessions

I N S E N A T E

February 20, 2015

Introduced by Sens. GRIFFO, ADDABBO, CROCI, FUNKE, GALLIVAN, MURPHY, ORTT, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- 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.

17 A NATIONAL STUDY, INVISIBLE WOUNDS OF WAR, BY RAND CORPORATION IN 2008
18 FOUND ONE IN FIVE VETERANS RETURNING FROM IRAQ AND AFGHANISTAN REPORTED
19 SYMPTOMS OF PTSD OR MAJOR DEPRESSION. RESEARCHERS ALSO FOUND SERIOUS
20 TREATMENT GAPS WITH ONLY 53% OF VETERANS WITH SYMPTOMS OF MENTAL HEALTH
21 CONDITIONS SEEKING HELP, AND OF THOSE WHO SOUGHT CARE, ROUGHLY HALF

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

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1 RECEIVED MINIMALLY ADEQUATE TREATMENT. IN NEW YORK STATE, A NEEDS
2 ASSESSMENT OF NEW YORK STATE VETERANS 2011 STUDY BY RAND CORPORATION AND
3 THE NEW YORK STATE HEALTH FOUNDATION FOUND AN ESTIMATED 85,000 VETERANS
4 RETURNING HOME SINCE 2001 HAVE AN UNUSUALLY HIGH RATE OF MENTAL HEALTH
5 PROBLEMS. THIS STUDY FOUND NEARLY ONE IN FOUR NEW YORK STATE VETERANS
6 HAD A PROBABLE DIAGNOSIS OF PTSD AND/OR MAJOR DEPRESSION. A FOLLOW UP
7 2011 REPORT BY THE IRAQ AND AFGHANISTAN VETERANS OF AMERICA, NEW YORK'S
8 NEWEST VETERANS: KEY FINDINGS AND POLICY IMPLICATIONS OF THE RAND CORPO-
9 RATION'S NEEDS ASSESSMENT OF NEW YORK STATE VETERANS RECOMMENDED A POLI-
10 CY "TO SUCCESSFULLY EXECUTE AN ALTERNATIVE SENTENCING PROGRAM FOR VETER-
11 ANS WHOSE CRIMES STEM FROM SERVICE-RELATED INJURIES."

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

33 S 217.05 DEFINITIONS.

34 THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

35 1. (A) "VETERAN" MEANS A FORMER MEMBER OF THE UNITED STATES MILITARY,
36 INCLUDING SERVICE IN THE NATIONAL GUARD OR OTHER RESERVE COMPONENTS OF
37 THE ARMED FORCES OF THE UNITED STATES.

38 (B) "SERVICE MEMBER" MEANS A CURRENT MEMBER OF THE UNITED STATES MILI-
39 TARY, INCLUDING SERVICE IN THE NATIONAL GUARD OR OTHER RESERVE COMPO-
40 NENTS OF THE ARMED FORCES OF THE UNITED STATES.

41 2. "MILITARY SERVICE" MEANS THE PERFORMANCE OF ANY DUTY IN THE UNITED
42 STATES MILITARY, INCLUDING SERVICE IN THE NATIONAL GUARD OR OTHER
43 RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.

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

45 (A) A SERVICE MEMBER OR VETERAN WHO IS ACCUSED OF ONE OR MORE
46 OFFENSES, AS DEFINED IN SUBDIVISION ONE OF SECTION 10.00 OF THE PENAL
47 LAW, EXCEPT FOR SEX OFFENSES DEFINED IN ARTICLES ONE HUNDRED THIRTY, TWO
48 HUNDRED FIFTY-FIVE AND TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AND
49 OFFENSES DEFINED IN SECTIONS 125.25 (MURDER IN THE SECOND DEGREE),
50 125.26 (AGGRAVATED MURDER), 125.27 (MURDER IN THE FIRST DEGREE), 135.25
51 (KIDNAPPING IN THE FIRST DEGREE), 150.20 (ARSON IN THE FIRST DEGREE) AND
52 490.25 (CRIME OF TERRORISM) OF THE PENAL LAW AND EXCEPT FOR OFFENSES
53 DEFINED IN SECTION 135.20 (KIDNAPPING), SECTION 120.11 (AGGRAVATED
54 ASSAULT UPON A POLICE OFFICER OR PEACE OFFICER), SECTION 215.17 (INTIM-
55 IDATING A VICTIM OR WITNESS), 490.40 (CRIMINAL POSSESSION OF A CHEMICAL
56 WEAPON OR BIOLOGICAL WEAPON) AND SECTION 490.47 (CRIMINAL USE OF A CHEM-

1 ICAL WEAPON OR BIOLOGICAL WEAPON), WHICH REQUIRE THE CONSENT OF THE
2 DISTRICT ATTORNEY;

3 (B) A SERVICE MEMBER OR VETERAN WHO SUFFERS FROM POST-TRAUMATIC STRESS
4 DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY,
5 OTHER PHYSICAL OR MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION
6 OR COMBINATION THEREOF, THAT WAS, AT LEAST IN PART, CAUSED BY, EXACER-
7 BATED BY OR RESULTED FROM THE SERVICE MEMBER'S OR VETERAN'S MILITARY
8 SERVICE; AND

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

12 4. "VETERAN OR SERVICE MEMBER EVALUATION" MEANS A WRITTEN ASSESSMENT
13 AND REPORT BY A COURT-APPROVED ENTITY OR LICENSED HEALTH CARE PROFES-
14 SIONAL, AS ARTICULATED AND AUTHORIZED BY THEIR SPECIFIC SCOPE OF PRAC-
15 TICE, EXPERIENCED IN THE TREATMENT OF INDIVIDUALS SUFFERING FROM
16 POST-TRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESSES OR CONDITIONS,
17 TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURIES, ALCOHOL OR
18 SUBSTANCE ABUSE OR ADDICTION, OR A COMBINATION THEREOF, OR BY AN ENTITY
19 CERTIFIED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS EXPERI-
20 ENCED IN THE TREATMENT OF SUCH ILLNESSES, INJURIES, OR CONDITIONS, WHICH
21 SHALL INCLUDE:

22 (A) AN ASSESSMENT AS TO WHETHER THE DEFENDANT IS SUFFERING FROM POST-
23 TRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESSES OR CONDITIONS, TRAU-
24 MATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURIES, ALCOHOL OR
25 SUBSTANCE ABUSE OR ADDICTION OR A COMBINATION THEREOF;

26 (B) WHETHER THE DEFENDANT'S POST-TRAUMATIC STRESS DISORDER, OTHER
27 MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR
28 MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION OR A COMBINATION
29 THEREOF WAS, AT LEAST IN PART, CAUSED BY, EXACERBATED BY OR RESULTED
30 FROM HIS OR HER MILITARY SERVICE;

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

34 (D) A RECOMMENDATION AS TO WHETHER THE DEFENDANT'S ILLNESS, INJURY OR
35 OTHER CONDITION, IF ANY, COULD BE EFFECTIVELY ADDRESSED BY TREATMENT;

36 (E) A RECOMMENDATION AS TO WHETHER THE DEFENDANT'S ILLNESS, INJURY OR
37 OTHER CONDITION, IF ANY, COULD BE EFFECTIVELY ADDRESSED BY THE ALTERNA-
38 TIVE RESOLUTION PROGRAM IN ACCORDANCE WITH THIS ARTICLE; AND

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

42 S 217.10 ALTERNATIVE RESOLUTION PROGRAM; COURT PROCEDURES.

43 1. DETERMINATION OF SERVICE MEMBER OR VETERAN STATUS. NOTWITHSTANDING
44 ANY LAW TO THE CONTRARY, AT ANY TIME AFTER THE ARRAIGNMENT OF A DEFEND-
45 ANT, BUT PRIOR TO THE ENTRY OF A PLEA OF GUILTY OR THE COMMENCEMENT OF
46 TRIAL, THE DEFENDANT CLAIMS TO BE A SERVICE MEMBER OR VETERAN, AS
47 DEFINED IN SECTION 217.05 OF THIS ARTICLE, THE COURT SHALL ORDER THE
48 DEFENDANT TO PROVIDE EVIDENCE THAT THE DEFENDANT IS A SERVICE MEMBER OR
49 VETERAN. SUCH EVIDENCE MAY INCLUDE, BUT IS NOT LIMITED TO, RECORDS OF
50 THE UNITED STATES DEPARTMENT OF DEFENSE, THE UNITED STATES DEPARTMENT OF
51 VETERANS AFFAIRS OR A STATE OR LOCAL VETERANS AGENCY DEVOTED TO VETER-
52 ANS, GUARD MEMBERS OR OTHER RESERVE COMPONENTS OF THE ARMED FORCES OF
53 THE UNITED STATES.

54 2. THE COURT, UPON REVIEW OF THE EVIDENCE PRESENTED AND ANY TESTIMONY
55 OFFERED BY THE DEFENDANT, SHALL DETERMINE BY A PREPONDERANCE OF THE

1 EVIDENCE WHETHER THE DEFENDANT IS A SERVICE MEMBER OR VETERAN, AS
2 DEFINED IN SECTION 217.05 OF THIS ARTICLE.

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

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

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

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

39 (II) SUCH ILLNESS, INJURY OR OTHER CONDITION WAS, AT LEAST IN PART,
40 CAUSED BY, EXACERBATED BY OR RESULTED FROM THE DEFENDANT'S MILITARY
41 SERVICE; AND

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

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

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

50 (II) SUCH ILLNESS, INJURY OR OTHER CONDITION WAS, AT LEAST IN PART,
51 CAUSED BY, EXACERBATED BY OR RESULTED FROM THE DEFENDANT'S MILITARY
52 SERVICE;

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

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

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

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

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

26 (I) ENTERING A PLEA OF GUILTY TO THE CHARGE OR CHARGES; OR

27 (II) ENTERING A PLEA OF GUILTY TO A LESSER CHARGE AS MAY BE AGREED BY
28 THE PARTIES.

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

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

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

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

1 (D) THE DEFENDANT SHALL AGREE ON THE RECORD OR IN WRITING TO ABIDE BY
2 THE TERMS AND CONDITIONS OF THE TREATMENT PLAN ORDERED PURSUANT TO PARA-
3 GRAPH (A) OF THIS SUBDIVISION.

4 6. FINAL DISPOSITION. (A) DISMISSAL. NOTWITHSTANDING ANY LAW TO THE
5 CONTRARY, IF THE DEFENDANT IS ALLOWED TO PARTICIPATE IN THE PROGRAM
6 PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION, UPON THE
7 DEFENDANT'S AGREEMENT TO ABIDE BY THE TERMS AND CONDITIONS OF THE TREAT-
8 MENT PLAN, AND SUCCESSFUL COMPLETION THEREOF, THE COURT SHALL DISMISS
9 THE ACCUSATORY INSTRUMENT, EXCEPT FOR FELONIES INVOLVING INTIMATE PART-
10 NER VIOLENCE OR DOMESTIC VIOLENCE, WHICH FINAL DISPOSITION MAY INCLUDE,
11 BUT IS NOT LIMITED TO: (I) A SENTENCE OF PROBATION SUPERVISION; OR (II)
12 REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM PROBATION SUPER-
13 VISION AND, UPON THE DEFENDANT'S SUCCESSFUL COMPLETION OF THE INTERIM
14 PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF ANY OTHER
15 LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA AND
16 DISMISSING THE INDICTMENT; OR (III) REQUIRING THE DEFENDANT TO UNDERGO A
17 PERIOD OF INTERIM PROBATION SUPERVISION AND, UPON SUCCESSFUL COMPLETION
18 OF THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION
19 OF ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY
20 PLEA, ENTER A GUILTY PLEA TO A MISDEMEANOR OFFENSE AND SENTENCING THE
21 DEFENDANT IN ACCORDANCE WITH THE TREATMENT PLAN ORDER, WHICH MAY INCLUDE
22 A PERIOD OF PROBATION SUPERVISION PURSUANT TO SECTION 65.00 OF THE PENAL
23 LAW; OR (IV) ALLOWING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY PLEA
24 AND DISMISSING THE INDICTMENT. IT IS NOT INTENDED THAT CRIMINAL CONTEMPT
25 CHARGES FOR VIOLATIONS OF ORDERS OF PROTECTION NOT ALLEGING VIOLENCE, BE
26 INCLUDED.

27 UPON DISMISSAL OF THE ACCUSATORY INSTRUMENT, THE COURT SHALL ENTER AN
28 ORDER DIRECTING THAT THE RECORD OF SUCH ACTION OR PROCEEDING BE SEALED
29 AND DIRECTING THE CLERK OF THE COURT WHEREIN SUCH CRIMINAL ACTION OR
30 PROCEEDING WAS TERMINATED TO IMMEDIATELY NOTIFY THE COMMISSIONER OF THE
31 DIVISION OF CRIMINAL JUSTICE SERVICES AND THE HEADS OF ALL APPROPRIATE
32 POLICE DEPARTMENTS AND OTHER LAW ENFORCEMENT AGENCIES THAT THE ACTION
33 HAS BEEN TERMINATED AND THAT THE RECORD OF SUCH ACTION OR PROCEEDING
34 SHALL BE SEALED. UPON RECEIPT OF SUCH NOTIFICATION, THE AGENCY, DIVI-
35 SION, OR DEPARTMENT SHALL COMPLY WITH THE PROVISIONS OF SUBDIVISION ONE
36 OF SECTION 160.50 OF THIS CHAPTER.

37 (B) NOTWITHSTANDING ANY LAW TO THE CONTRARY, IF THE DEFENDANT IS
38 ALLOWED TO PARTICIPATE IN THE PROGRAM PURSUANT TO SUBPARAGRAPH (I) OR
39 (II) OF PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION, UPON THE
40 DEFENDANT'S AGREEMENT TO ABIDE BY THE TERMS AND CONDITIONS OF THE TREAT-
41 MENT PLAN, AND SUCCESSFUL COMPLETION THEREOF, THE COURT SHALL, IF THE
42 DEFENDANT HAS PLED TO A CLASS A, B, OR C FELONY, PERMIT THE DEFENDANT TO
43 WITHDRAW THAT PLEA AND SUBSTITUTE A PLEA TO A CLASS D FELONY OR LOWER
44 OFFENSE. UPON ENTRY OF THE SUBSTITUTED PLEA, THE FINAL DISPOSITION MAY
45 INCLUDE, BUT IS NOT LIMITED TO: (I) A SENTENCE OF PROBATION SUPER-
46 VISION; OR (II) REQUIRING THE DEFENDANT TO UNDERGO A PERIOD OF INTERIM
47 PROBATION SUPERVISION AND, UPON THE DEFENDANT'S SUCCESSFUL COMPLETION OF
48 THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING THE PROVISION OF
49 ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS OR HER GUILTY
50 PLEA AND DISMISSING THE INDICTMENT; OR (III) REQUIRING THE DEFENDANT TO
51 UNDERGO A PERIOD OF INTERIM PROBATION SUPERVISION AND, UPON SUCCESSFUL
52 COMPLETION OF THE INTERIM PROBATION SUPERVISION TERM, NOTWITHSTANDING
53 THE PROVISION OF ANY OTHER LAW, PERMITTING THE DEFENDANT TO WITHDRAW HIS
54 OR HER GUILTY PLEA, ENTER A GUILTY PLEA TO A MISDEMEANOR OFFENSE AND
55 SENTENCING THE DEFENDANT IN ACCORDANCE WITH THE TREATMENT PLAN ORDER,
56 WHICH MAY INCLUDE A PERIOD OF PROBATION SUPERVISION PURSUANT TO SECTION

1 65.00 OF THE PENAL LAW; OR (IV) ALLOWING THE DEFENDANT TO WITHDRAW HIS
2 OR HER GUILTY PLEA AND DISMISSING THE INDICTMENT.

3 S 2. Subdivision 2 of section 390.30 of the criminal procedure law is
4 amended to read as follows:

5 2. Physical and mental examinations. Whenever information is available
6 with respect to the defendant's physical and mental condition, the pre-
7 sentence investigation must include the gathering of such information,
8 INCLUDING ANY EVALUATION REPORT PURSUANT TO SUBDIVISION FIVE OF SECTION
9 217.05 OF THIS CHAPTER. In the case of a felony or a class A misdemea-
10 nor, or in any case where a person under the age of twenty-one is
11 convicted of a crime, the court may order that the defendant undergo a
12 thorough physical or mental examination in a designated facility and may
13 further order that the defendant remain in such facility for such
14 purpose for a period not exceeding thirty days.

15 S 3. This act shall take effect immediately.