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I N S E N A T E

June 18, 2012

Introduced by Sens. SALAND, BONACIC, DeFRANCISCO, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to establish youth courts and authorize criminal and family courts to transfer the dispositional phase of proceedings to youth courts and to amend the criminal procedure law and the family court act, in relation thereto

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

1 Section 1. There is hereby established a youth court diversion  
2 program:

3 1. Legislative findings. Young people sometimes make bad decisions  
4 that can lead to contact with the justice system, and those youth who  
5 become involved in the justice system are at greater risk for future,  
6 more serious involvement as adults. The legislature finds that diversion  
7 programs can help youth make better decisions, reduce their future  
8 contacts with the criminal justice system and encourage positive devel-  
9 opment. The legislature further finds that youth courts, which have a  
10 long history as a diversion alternative in the State of New York, are a  
11 valuable resource for the courts, law enforcement and probation depart-  
12 ments, and schools. Youth courts use positive peer pressure to hold  
13 young people accountable for their actions, providing them with the  
14 opportunity to redress any harm they have caused while supporting their  
15 positive engagement with the community. The legislature further finds  
16 that youth courts provide young people with meaningful civic education  
17 about the justice system.

18 2. Definitions. As used in this section:

19 (a) "Youth court" means a tribunal of young people who have been  
20 trained to conduct dispositional hearings for youth alleged to have  
21 committed certain offenses and to determine and assign constructive  
22 sanctions designed to restore the community, reduce recidivism, and  
23 serve as an alternative to further formal processes. Models include, but  
24 are not limited to, a tribunal presided over by an adult judge or a

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

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1 youth judge, or a peer tribunal. Sanctions may be determined by either a  
2 peer jury or peer tribunal.

3 (b) "Sanction" means the acts a referred youth is to perform to  
4 redress any harm caused by his or her conduct and other constructive  
5 exercises meant to provide insight into the consequences of his or her  
6 behavior and to help him or her make better decisions in the future.  
7 Sanctions may include, but are not limited to, performance of community  
8 service, participation on a youth court jury, attendance at youth court-  
9 approved education workshops, curfew limitations, essay writing, letters  
10 of apology, restitution and behavior modification classes. Inability to  
11 pay restitution shall not be a factor in determining whether youth court  
12 is an appropriate diversion in any given proceeding, action or referral.

13 (c) "Youth" means:

14 (i) an individual under the age of 19 at the time of the alleged  
15 offense who is referred to youth court from family or criminal court,  
16 probation or police; or

17 (ii) an individual under the age of 21 who is currently enrolled in  
18 school and is referred in a school disciplinary proceeding by the school  
19 administration for a school-related offense.

20 (d) "Consent" means the agreement of the youth to waive further  
21 proceedings in court or school and to referral of the dispositional  
22 phase of the waived proceeding to a youth court program. Consent also  
23 means the agreement of the youth to cooperate with the youth court  
24 program and to complete the assessed sanction.

25 (e) "Organizing entity" means the school, non-profit organization, or  
26 governmental unit or agency including a municipal corporation that  
27 undertakes establishment of a youth court program.

28 3. Case referral. (a) Youth courts may accept referrals of proceedings  
29 from appropriate sources, which may include, but are not limited to,  
30 schools, probation, police, presentment agency or prosecutor, involving  
31 a youth whose alleged offense or offenses violates a state law, municipi-  
32 pal law or ordinance or school policy.

33 (b)(i) Where a proceeding has been commenced in criminal court,  
34 violation and misdemeanor offenses as defined by article 10 of the penal  
35 law may be referred to a youth court program at the discretion of the  
36 presiding court with the consent of the district attorney.

37 (ii) Where a proceeding has been commenced in family court, misdemea-  
38 nors may be referred to a youth court program at the discretion of the  
39 presiding court.

40 (c) A youth must consent to the referral of the dispositional phase of  
41 the proceeding to a youth court program.

42 (d) Each youth court program retains the right to decline any refer-  
43 rals received based upon criteria established in its by-laws or proce-  
44 dure manual.

45 4. Failure to complete sanctions. The failure of a youth who has  
46 previously consented to referral to a youth court program to cooperate  
47 or complete the assigned sanction or sanctions will result in notice of  
48 the failure being provided to the referring body, which may take such  
49 action as it determines appropriate or as provided by law; provided,  
50 however, that the youth may not receive a harsher sanction, disposition  
51 or sentence from the referring body than he or she would have received  
52 but for the referral to youth court.

53 5. Completion of sanctions. Upon the youth's completion of the  
54 assigned sanction or sanctions, all court, police and probation records  
55 pertaining to the offense which resulted in the referral shall be sealed

1 automatically, notwithstanding any law dealing generally with the pres-  
2 ervation and destruction of public records.

3 6. Liability. The organizing entity, the youth court, its board and  
4 staff, youth court volunteers, and youth referred to the youth court  
5 program shall be immune from any claims that may arise as a result of  
6 activities related to youth court.

7 7. Confidentiality. All records from proceedings of a youth court  
8 program shall be confidential, except as necessary to provide informa-  
9 tion or notice to the referring body. Such records shall remain property  
10 of the youth court and may not be used in any subsequent family or crim-  
11 inal court or school hearings.

12 8. Application. This section shall apply to all youth courts estab-  
13 lished in New York State, whether preexisting or established subsequent  
14 to the enactment of this section.

15 S 2. Subdivision 3 of section 160.50 of the criminal procedure law is  
16 amended by adding a new paragraph (m) to read as follows:

17 (M) AN ORDER DISMISSING AN ACTION PURSUANT TO SECTION 217.30 OF THIS  
18 PART WAS ENTERED.

19 S 3. Subdivision 6 of section 170.55 of the criminal procedure law, as  
20 added by chapter 134 of the laws of 1982 and as renumbered by chapter 39  
21 of the laws of 1988, is amended to read as follows:

22 6. The court may as a condition of an adjournment in contemplation of  
23 dismissal order, require the defendant to perform services for a public  
24 or not-for-profit corporation, association, institution or agency.  
25 WHERE A CASE IS REFERRED TO A YOUTH COURT FOR DETERMINATION OF SANCTION  
26 AS A CONDITION OF AN ADJOURNMENT IN CONTEMPLATION OF DISMISSAL ORDER,  
27 THE SANCTION MAY INCLUDE THE REQUIREMENT THAT THE DEFENDANT PERFORM  
28 SERVICES FOR A GOVERNMENTAL UNIT OR AGENCY INCLUDING A MUNICIPAL CORPO-  
29 RATION, PUBLIC OR NOT-FOR-PROFIT CORPORATION, ASSOCIATION, INSTITUTION  
30 OR AGENCY. Such condition may only be imposed where the defendant has  
31 consented to the amount and conditions of such service. The court may  
32 not impose such conditions in excess of the length of the adjournment.

33 S 4. The criminal procedure law is amended by adding a new article 217  
34 to read as follows:

35 ARTICLE 217

36 YOUTH COURT DIVERSION PROGRAM

37 SECTION 217.10 JURISDICTION OF YOUTH COURT.

38 217.20 RESTORATION OF PROCEEDING TO PRESIDING COURT.

39 217.30 DISMISSAL OF ACTION.

40 S 217.10 JURISDICTION OF YOUTH COURT.

41 IN ANY JURISDICTION IN WHICH AN ESTABLISHED YOUTH COURT ACCEPTS REFER-  
42 RALS FROM SCHOOLS, LAW ENFORCEMENT, PROBATION AND/OR A COURT REGARDING  
43 AN ELIGIBLE DEFENDANT, WHEN A PROCEEDING HAS BEEN COMMENCED IN SUCH  
44 COURT, AT ANY TIME BEFORE FINAL DISPOSITION OF A PROCEEDING, THE COURT  
45 MAY REFER THE PROCEEDING TO THE YOUTH COURT PROGRAM UNDER THE FOLLOWING  
46 CONDITIONS:

47 1. VIOLATIONS AND MISDEMEANOR OFFENSES AS DEFINED BY ARTICLE TEN OF  
48 THE PENAL LAW MAY BE REFERRED TO AN ESTABLISHED YOUTH COURT PROGRAM AT  
49 THE DISCRETION OF THE PRESIDING COURT AND WITH THE CONSENT OF THE  
50 DISTRICT ATTORNEY.

51 2. THE YOUTH MUST CONSENT TO THE REFERRAL OF THE PROCEEDING TO A YOUTH  
52 COURT PROGRAM.

53 3. THE COURT SHALL ISSUE AN ORDER ADJOURNING THE PROCEEDING IN CONTEM-  
54 PLATION OF DISMISSAL FOR NOT MORE THAN SIX MONTHS FOR PURPOSES OF REFER-  
55 RAL TO AN ESTABLISHED YOUTH COURT PROGRAM.

56 S 217.20 RESTORATION OF PROCEEDING TO PRESIDING COURT.

1 UPON FAILURE OF A YOUTH TO COOPERATE WITH THE YOUTH COURT PROGRAM OR  
2 TO COMPLETE THE ASSIGNED SANCTION OR SANCTIONS WITHIN SIX MONTHS OF THE  
3 COURT ORDER ADJOURNING THE PROCEEDING IN CONTEMPLATION OF DISMISSAL, THE  
4 COURT MAY RESTORE THE PROCEEDING TO THE CALENDAR UPON A DETERMINATION  
5 THAT DISMISSAL OF THE ACCUSATORY INSTRUMENT WOULD NOT BE IN THE FURTHER-  
6 ANCE OF JUSTICE; PROVIDED, HOWEVER, THAT THE YOUTH MAY NOT RECEIVE A  
7 HARSHER SENTENCE THAN HE OR SHE WOULD HAVE RECEIVED BUT FOR THE REFERRAL  
8 TO YOUTH COURT.

9 S 217.30 DISMISSAL OF ACTION.

10 IF THE PROCEEDING HAS NOT BEEN RESTORED TO THE CALENDAR WITHIN SIX  
11 MONTHS PURSUANT TO SECTION 217.20 OF THIS ARTICLE, THE ACCUSATORY  
12 INSTRUMENT SHALL BE DISMISSED BY THE COURT IN FURTHERANCE OF JUSTICE AT  
13 THE EXPIRATION OF THE SIX MONTH PERIOD. UPON DISMISSAL OF THE ACTION,  
14 THE ARREST AND PROSECUTION SHALL BE DEEMED A NULLITY AND THE DEFENDANT  
15 SHALL BE RESTORED TO THE STATUS HE OR SHE OCCUPIED BEFORE HIS OR HER  
16 ARREST AND PROSECUTION. ALL PAPERS AND RECORDS RELATING TO THE PROCEED-  
17 ING THAT HAS BEEN DISMISSED PURSUANT TO THIS SECTION SHALL BE SUBJECT TO  
18 THE PROVISIONS OF SECTION 160.50 OF THIS PART.

19 S 5. Subdivision 2 of section 315.3 of the family court act, as  
20 amended by chapter 880 of the laws of 1985, is amended to read as  
21 follows:

22 2. Rules of court shall define the permissible terms and conditions  
23 which may be included in an order that the proceeding be adjourned in  
24 contemplation of dismissal; such permissible terms and conditions may  
25 include supervision by the probation service, a requirement that the  
26 respondent cooperate with a mental health, social services or other  
27 appropriate community facility or agency to which the respondent may be  
28 referred, A REFERRAL TO A YOUTH COURT DIVERSION PROGRAM PURSUANT TO  
29 SECTION 316.1 OF THIS PART and a requirement that the respondent comply  
30 with such other reasonable conditions as the court shall determine to be  
31 necessary or appropriate to ameliorate the conduct which gave rise to  
32 the filing of the petition or to prevent placement with the commissioner  
33 of social services or the [division for youth] OFFICE OF CHILDREN AND  
34 FAMILY SERVICES.

35 S 6. The family court act is amended by adding a new section 316.1 to  
36 read as follows:

37 S 316.1. YOUTH COURT DIVERSION PROGRAM. 1. IN ANY JURISDICTION IN  
38 WHICH AN ESTABLISHED YOUTH COURT ACCEPTS REFERRALS FROM SCHOOLS, LAW  
39 ENFORCEMENT, PROBATION AND/OR A COURT REGARDING A RESPONDENT UNDER THE  
40 AGE OF SIXTEEN, WHEN A PROCEEDING HAS BEEN COMMENCED IN SUCH COURT, AT  
41 ANY TIME BEFORE A FINDING IS ENTERED UNDER SECTION 352.1 OF THIS ARTI-  
42 CLE, THE COURT MAY REFER THE PROCEEDING TO THE YOUTH COURT PROGRAM UNDER  
43 THE FOLLOWING CONDITIONS:

44 (A) ALL MISDEMEANOR OFFENSES AS DEFINED BY ARTICLE TEN OF THE PENAL  
45 LAW MAY BE REFERRED TO AN ESTABLISHED YOUTH COURT PROGRAM AT THE  
46 DISCRETION OF THE PRESIDING COURT.

47 (B) THE YOUTH MUST CONSENT TO THE REFERRAL OF THE PROCEEDING TO A  
48 YOUTH COURT PROGRAM; AND

49 (C) THE COURT SHALL ISSUE AN ORDER PURSUANT TO SECTION 315.3 OF THIS  
50 PART, ADJOURNING THE PROCEEDING FOR A PERIOD NOT TO EXCEED SIX MONTHS IN  
51 CONTEMPLATION OF DISMISSAL FOR PURPOSES OF REFERRAL TO AN ESTABLISHED  
52 YOUTH COURT PROGRAM.

53 2. UPON FAILURE OF A YOUTH TO COOPERATE WITH THE YOUTH COURT PROGRAM  
54 OR TO COMPLETE THE ASSIGNED SANCTION OR SANCTIONS WITHIN SIX MONTHS OF  
55 THE COURT ORDER ADJOURNING THE PROCEEDING IN CONTEMPLATION OF DISMISSAL,  
56 THE COURT MAY RESTORE THE PROCEEDING TO THE CALENDAR, UPON A DETERMI-

1 NATION THAT DISMISSAL OF THE PETITION WOULD NOT BE IN THE FURTHERANCE OF  
2 JUSTICE; PROVIDED, HOWEVER, THAT THE YOUTH MAY NOT RECEIVE A HARsher  
3 DISPOSITION THAN HE OR SHE WOULD HAVE RECEIVED BUT FOR THE REFERRAL TO  
4 YOUTH COURT.

5 3. IF THE PROCEEDING HAS NOT BEEN RESTORED TO THE CALENDAR WITHIN SIX  
6 MONTHS, THE PETITION SHALL, PURSUANT TO SECTION 315.3 OF THIS PART, BE  
7 DISMISSED BY THE COURT IN FURTHERANCE OF JUSTICE AT THE EXPIRATION OF  
8 THE SIX MONTH PERIOD.

9 S 7. This act shall take effect on the sixtieth day after it shall  
10 have become a law.