

10708

I N A S S E M B L Y

June 15, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Lentol) --  
read once and referred to the Committee on Codes

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  
25 youth judge, or a peer tribunal. Sanctions may be determined by either a  
26 peer jury or peer tribunal.

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

LBD16273-01-2

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

11 (c) "Youth" means:

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

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

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

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

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

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

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

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

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

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

51 5. Completion of sanctions. Upon the youth's completion of the  
52 assigned sanction or sanctions, all court, police and probation records  
53 pertaining to the offense which resulted in the referral shall be sealed  
54 automatically, notwithstanding any law dealing generally with the pres-  
55 ervation and destruction of public records.

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

7. Confidentiality. All records from proceedings of a youth court program shall be confidential, except as necessary to provide information or notice to the referring body. Such records shall remain property of the youth court and may not be used in any subsequent family or criminal court or school hearings.

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

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

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

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

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

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

ARTICLE 217

YOUTH COURT DIVERSION PROGRAM

SECTION 217.10 JURISDICTION OF YOUTH COURT.

217.20 RESTORATION OF PROCEEDING TO PRESIDING COURT.

217.30 DISMISSAL OF ACTION.

S 217.10 JURISDICTION OF YOUTH COURT.

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

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

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

3. THE COURT SHALL ISSUE AN ORDER ADJOURNING THE PROCEEDING IN CONTEMPLATION OF DISMISSAL FOR NOT MORE THAN SIX MONTHS FOR PURPOSES OF REFERRAL TO AN ESTABLISHED YOUTH COURT PROGRAM.

S 217.20 RESTORATION OF PROCEEDING TO PRESIDING COURT.

UPON FAILURE OF A YOUTH TO COOPERATE WITH THE YOUTH COURT PROGRAM OR TO COMPLETE THE ASSIGNED SANCTION OR SANCTIONS WITHIN SIX MONTHS OF THE

1 COURT ORDER ADJOURNING THE PROCEEDING IN CONTEMPLATION OF DISMISSAL, THE  
2 COURT MAY RESTORE THE PROCEEDING TO THE CALENDAR UPON A DETERMINATION  
3 THAT DISMISSAL OF THE ACCUSATORY INSTRUMENT WOULD NOT BE IN THE FURTHER-  
4 ANCE OF JUSTICE; PROVIDED, HOWEVER, THAT THE YOUTH MAY NOT RECEIVE A  
5 HARSHER SENTENCE THAN HE OR SHE WOULD HAVE RECEIVED BUT FOR THE REFERRAL  
6 TO YOUTH COURT.

7 S 217.30 DISMISSAL OF ACTION.

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

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

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

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

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

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

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

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

51 2. UPON FAILURE OF A YOUTH TO COOPERATE WITH THE YOUTH COURT PROGRAM  
52 OR TO COMPLETE THE ASSIGNED SANCTION OR SANCTIONS WITHIN SIX MONTHS OF  
53 THE COURT ORDER ADJOURNING THE PROCEEDING IN CONTEMPLATION OF DISMISSAL,  
54 THE COURT MAY RESTORE THE PROCEEDING TO THE CALENDAR, UPON A DETERMI-  
55 NATION THAT DISMISSAL OF THE PETITION WOULD NOT BE IN THE FURTHERANCE OF  
56 JUSTICE; PROVIDED, HOWEVER, THAT THE YOUTH MAY NOT RECEIVE A HARSHER

1 DISPOSITION THAN HE OR SHE WOULD HAVE RECEIVED BUT FOR THE REFERRAL TO  
2 YOUTH COURT.

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

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