

1879--A

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse -- recommitted to the Committee on Alcoholism and Drug Abuse in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the judicial diversion program for alcohol and substance abuse offenders; and to amend the penal law, in relation to the crime of unauthorized departure from a rehabilitation facility

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

1     Section 1. Subdivisions 4, 5, 8 and paragraph (a) of subdivision 9 of  
2     section 216.05 of the criminal procedure law, as added by section 4 of  
3     part AAA of chapter 56 of the laws of 2009, subdivision 8 as amended by  
4     chapter 347 of the laws of 2012, are amended to read as follows:  
5     4. When an authorized court, AFTER CONSIDERING THE UNDERLYING CHARGES  
6     AND THE PROPENSITY OR LACK THEREOF FOR VIOLENT CONDUCT OF THE DEFENDANT,  
7     AND AFTER REVIEWING OR HEARING ONE OR MORE WRITTEN OR ORAL OPINIONS FROM  
8     A LICENSED PSYCHOLOGIST OR PSYCHIATRIST AS TO THE PROPENSITY OF THE  
9     DEFENDANT FOR FUTURE VIOLENT CONDUCT, AND AFTER MAKING AN ON-THE-RECORD  
10    DETERMINATION AS TO THE REASONS WHY, BASED ON ALL EVIDENCE, determines,  
11    pursuant to paragraph (b) of subdivision three of this section, that an  
12    eligible defendant should be offered alcohol or substance abuse treatment,  
13    or when the parties and the court agree to an eligible defendant's  
14    participation in alcohol or substance abuse treatment, an eligible  
15    defendant may be allowed to participate in the judicial diversion  
16    program offered by this article. Prior to the court's issuing an order  
17    granting judicial diversion, the eligible defendant shall be required to

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

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1 enter a plea of guilty to the charge or charges; provided, however, that  
2 no such guilty plea shall be required when:

3 (a) the people and the court consent to the entry of such an order  
4 without a plea of guilty; or

5 (b) based on a finding of exceptional circumstances, the court deter-  
6 mines that a plea of guilty shall not be required. For purposes of this  
7 subdivision, exceptional circumstances exist when, regardless of the  
8 ultimate disposition of the case, the entry of a plea of guilty is like-  
9 ly to result in severe collateral consequences.

10 5. The defendant shall agree on the record or in writing to abide by  
11 the release conditions set by the court, which, shall include: partic-  
12 ipation in a specified period of alcohol or substance abuse treatment at  
13 a specified program or programs identified by the court, which may  
14 include periods of detoxification, residential or outpatient treatment,  
15 or both, as determined after taking into account the views of the health  
16 care professional who conducted the alcohol and substance abuse evalu-  
17 ation and any health care professionals responsible for providing such  
18 treatment or monitoring the defendant's progress in such treatment; and  
19 may include: (i) periodic court appearances, which may include periodic  
20 urinalysis, PROVIDED, HOWEVER, THAT DEFENDANTS MAY MAKE SUCH COURT  
21 APPEARANCES BY VIDEO CONFERENCE, AT THE SOLE DISCRETION OF THE COURT;  
22 (ii) a requirement that the defendant refrain from engaging in criminal  
23 behaviors.

24 8. During the period of a defendant's participation in the judicial  
25 diversion program, the court shall retain jurisdiction of the defendant,  
26 provided, however, that the court may allow such defendant to reside in  
27 another jurisdiction while participating in a judicial diversion program  
28 under conditions set by the court and agreed to by the defendant pursu-  
29 ant to subdivisions five and six of this section. The court may require  
30 the defendant to appear in court at any time to enable the court to  
31 monitor the defendant's progress in alcohol or substance abuse treat-  
32 ment. The court shall provide notice, reasonable under the circum-  
33 stances, to the people, the treatment provider, the defendant and the  
34 defendant's counsel whenever it orders or otherwise requires the appear-  
35 ance of the defendant in court. Failure to appear as required without  
36 reasonable cause therefor shall constitute a violation of the conditions  
37 of the court's agreement with the defendant. AT THE SOLE DISCRETION OF  
38 THE COURT, ANY COURT APPEARANCE REQUIRED PURSUANT TO THIS SUBDIVISION  
39 MAY BE MADE BY VIDEO CONFERENCE.

40 (a) If at any time during the defendant's participation in the judi-  
41 cial diversion program, the court has reasonable grounds to believe that  
42 the defendant has violated a release condition or has failed to appear  
43 before the court as requested, the court shall direct the defendant to  
44 appear or issue a bench warrant to a police officer or an appropriate  
45 peace officer directing him or her to take the defendant into custody  
46 and bring the defendant before the court without unnecessary delay. AT  
47 THE SOLE DISCRETION OF THE COURT, ANY COURT APPEARANCE REQUIRED PURSUANT  
48 TO THIS SUBDIVISION MAY BE MADE BY VIDEO CONFERENCE. The provisions of  
49 subdivision one of section 530.60 of this chapter relating to revocation  
50 of recognizance or bail shall apply to such proceedings under this  
51 subdivision.

52 S 2. Section 216.05 of the criminal procedure law is amended by adding  
53 two new subdivisions 5-a and 12 to read as follows:

54 5-A. WHEN AN AUTHORIZED COURT DETERMINES, PURSUANT TO PARAGRAPH (B) OF  
55 SUBDIVISION THREE OF THIS SECTION, THAT AN ELIGIBLE DEFENDANT SHOULD BE  
56 OFFERED ALCOHOL OR SUBSTANCE ABUSE TREATMENT, OR WHEN THE PARTIES AND

1 THE COURT AGREE TO AN ELIGIBLE DEFENDANT'S PARTICIPATION IN ALCOHOL OR  
2 SUBSTANCE ABUSE TREATMENT, THE COURT SHALL TRANSMIT THE ELIGIBLE DEFEND-  
3 ANT'S ARREST RECORD AND CONVICTION STATEMENT TO THE FACILITY WHERE THE  
4 DEFENDANT IS TO RECEIVE TREATMENT.

5 12. A FACILITY WHICH IS TREATING A DEFENDANT UNDER THE PROVISIONS OF  
6 THIS SECTION SHALL NOTIFY THE LOCAL POLICE DEPARTMENT WHICH HAS JURIS-  
7 DICTION OVER THE MUNICIPALITY WHERE THE FACILITY IS LOCATED, OF THE  
8 DEFENDANT'S PLACEMENT AND ARREST RECORD (OR IF THERE BE NO MUNICIPAL  
9 POLICE DEPARTMENT, THEN THE SHERIFF OF THE COUNTY IN WHICH THE FACILITY  
10 IS LOCATED), WHICH SHALL BE PROVIDED TO FACILITY STAFF AT THE FACILITY  
11 IN A MANNER ORDERED BY THE COURT. THE FACILITY SHALL ALSO SUBMIT TO THE  
12 DIVISION OF CRIMINAL JUSTICE SERVICES A SECURITY PLAN DESIGNED TO  
13 PROVIDE FOR THE SAFETY OF STAFF, RESIDENTS AND THE COMMUNITY FROM  
14 VIOLENT BEHAVIOR BY RESIDENTS. SUCH PLAN SHALL BE UPDATED AT LEAST EVERY  
15 FIVE YEARS OR AS OTHERWISE DIRECTED BY THE COMMISSIONER OF THE DIVISION  
16 OF CRIMINAL JUSTICE SERVICES.

17 S 3. The penal law is amended by adding a new section 205.70 to read  
18 as follows:

19 S 205.70 UNAUTHORIZED DEPARTURE FROM A REHABILITATION FACILITY.

20 A PERSON IS GUILTY OF UNAUTHORIZED DEPARTURE FROM A REHABILITATION  
21 FACILITY WHEN A COURT DETERMINES THAT AN ELIGIBLE DEFENDANT, AS DEFINED  
22 BY SUBDIVISION ONE OF SECTION 216.00 OF THE CRIMINAL PROCEDURE LAW,  
23 LEAVES, DEPARTS OR ESCAPES FROM THE TREATMENT FACILITY TO WHICH SUCH  
24 PERSON WAS ASSIGNED FOR A PERIOD OF ALCOHOL OR SUBSTANCE ABUSE TREATMENT  
25 AS PART OF THE JUDICIAL DIVERSION PROGRAM PURSUANT TO SECTION 216.05 OF  
26 THE CRIMINAL PROCEDURE LAW WITHOUT THE CONSENT OF THE COURT OR WRITTEN  
27 CONSENT OF THE FACILITY MANAGEMENT.

28 UNAUTHORIZED DEPARTURE FROM A REHABILITATION FACILITY IS A CLASS D  
29 FELONY.

30 S 4. This act shall take effect immediately.