S T A T E O F N E W Y O R K

5311

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed 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:

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

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

2. Definitions. As used in this section:

(a) "Youth court" means a tribunal of young people who have been trained to conduct dispositional hearings for youth alleged to have committed certain offenses and to determine and assign constructive sanctions designed to restore the community, reduce recidivism, and serve as an alternative to further formal processes. Models include, but

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

LBD04698-01-3

are not limited to, a tribunal presided over by an adult judge or a youth judge, or a peer tribunal. Sanctions may be determined by either a peer jury or peer tribunal.

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

(c) "Youth" means:

(i) an individual under the age of 21 at the time of the alleged offense who is referred to youth court from family or criminal court, probation or police; or

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

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

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

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

(b)(i) Where a proceeding has been commenced in criminal court, violation and misdemeanor offenses as defined by article 10 of the penal law may be referred to a youth court program at the discretion of the presiding court. Felony offenses as defined by article 10 of the penal law may be referred to a youth court program at the discretion of the court, with the agreement of the prosecutor.

(ii) Where proceeding has been commenced in family court, misdemeanor and non-designated felony offenses as defined by article 10 of the penal law and subdivision 8 of section 301.2 of the family court act, may be referred to a youth court program at the discretion of the presiding court. Designated felony offenses as defined by subdivision 8 of section 301.2 of the family court act may be referred to a youth court program at the discretion of the court, with the agreement of the presentment agency.

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

(d) Each youth court program retains the right to decline any referrals received based upon criteria established in its by-laws or procedure manual.

4. Failure to complete sanctions. The failure of a youth who has previously consented to referral to a youth court program to cooperate or complete the assigned sanction or sanctions will result in notice of the failure being provided to the referring body, which may take such

action as it determines appropriate or as provided by law; provided, however, that the youth may not receive a harsher sanction, disposition or sentence from the referring body than he or she would have received but for the referral to youth court.

5. Completion of sanctions. Upon the youth's completion of the assigned sanction or sanctions, all court, police and probation records pertaining to the offense which resulted in the referral shall be sealed automatically, notwithstanding any law dealing generally with the preservation 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 SERVICERS 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 A DEFENDANT UNDER THE AGE OF TWENTY-ONE, 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.

2. FELONY 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 WITH THE CONSENT OF THE PEOPLE.

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

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

S 217.30 DISMISSAL OF ACTION.

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

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

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

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

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

(A) EXCEPT WHERE THERE IS AN ALLEGATION THAT A YOUTH COMMITTED A DESIGNATED FELONY ACT, VIOLATIONS, MISDEMEANOR AND FELONY 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.

DESIGNATED FELONY OFFENSES AS DEFINED BY SUBDIVISION EIGHT OF SECTION 301.2 OF THIS ARTICLE MAY BE REFERRED TO A YOUTH COURT PROGRAM AT THE DISCRETION OF THE COURT, WITH THE AGREEMENT OF THE PRESENTMENT AGENCY.

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

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

2. 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 COURT ORDER ADJOURNING THE PROCEEDING IN CONTEMPLATION OF DISMISSAL, THE COURT MAY RESTORE THE PROCEEDING TO THE CALENDAR, UPON A DETERMINATION THAT DISMISSAL OF THE PETITION WOULD NOT BE IN THE FURTHERANCE OF JUSTICE; PROVIDED, HOWEVER, THAT THE YOUTH MAY NOT RECEIVE A HARSHER DISPOSITION THAN HE OR SHE WOULD HAVE RECEIVED BUT FOR THE REFERRAL TO YOUTH COURT.

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

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