

3914--B

2015-2016 Regular Sessions

I N   S E N A T E

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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 -- 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

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

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

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

34 S 217.05 DEFINITIONS.

35 THE FOLLOWING DEFINITIONS ARE APPLICABLE TO THIS ARTICLE:

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

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

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

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

46 (A) A SERVICE MEMBER OR VETERAN WHO IS ACCUSED OF ONE OR MORE  
47 OFFENSES, AS DEFINED IN SUBDIVISION ONE OF SECTION 10.00 OF THE PENAL  
48 LAW, EXCEPT FOR SEX OFFENSES DEFINED IN ARTICLES ONE HUNDRED THIRTY, TWO  
49 HUNDRED FIFTY-FIVE AND TWO HUNDRED SIXTY-THREE OF THE PENAL LAW, AND  
50 OFFENSES DEFINED IN SECTIONS 125.25 (MURDER IN THE SECOND DEGREE),  
51 125.26 (AGGRAVATED MURDER), 125.27 (MURDER IN THE FIRST DEGREE), 135.25  
52 (KIDNAPPING IN THE FIRST DEGREE), 150.20 (ARSON IN THE FIRST DEGREE) AND  
53 490.25 (CRIME OF TERRORISM) OF THE PENAL LAW;

54 (B) A SERVICE MEMBER OR VETERAN WHO SUFFERS FROM POST-TRAUMATIC STRESS  
55 DISORDER, OTHER MENTAL ILLNESS OR CONDITION, TRAUMATIC BRAIN INJURY,  
56 OTHER PHYSICAL OR MENTAL INJURY, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION

OR COMBINATION THEREOF, THAT WAS, AT LEAST IN PART, CAUSED BY, EXACERBATED BY OR RESULTED FROM THE SERVICE MEMBER'S OR VETERAN'S MILITARY SERVICE; AND

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

4. "VETERAN OR SERVICE MEMBER EVALUATION" MEANS A WRITTEN ASSESSMENT AND REPORT BY A COURT-APPROVED ENTITY OR LICENSED HEALTH CARE PROFESSIONAL, AS ARTICULATED AND AUTHORIZED BY THEIR SPECIFIC SCOPE OF PRACTICE, EXPERIENCED IN THE TREATMENT OF INDIVIDUALS SUFFERING FROM POST-TRAUMATIC STRESS DISORDER, OTHER MENTAL ILLNESSES OR CONDITIONS, TRAUMATIC BRAIN INJURY, OTHER PHYSICAL OR MENTAL INJURIES, ALCOHOL OR SUBSTANCE ABUSE OR ADDICTION, OR A COMBINATION THEREOF, OR BY AN ENTITY CERTIFIED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS EXPERIENCED IN THE TREATMENT OF SUCH ILLNESSES, INJURIES, OR CONDITIONS, WHICH SHALL INCLUDE:

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

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

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

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

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

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

S 217.10 ALTERNATIVE RESOLUTION PROGRAM; COURT PROCEDURES.

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

2. THE COURT, UPON REVIEW OF THE EVIDENCE PRESENTED AND ANY TESTIMONY OFFERED BY THE DEFENDANT, SHALL DETERMINE BY A PREPONDERANCE OF THE EVIDENCE WHETHER THE DEFENDANT IS A SERVICE MEMBER OR VETERAN, AS DEFINED IN SECTION 217.05 OF THIS ARTICLE.

3. DETERMINATION OF SERVICE MEMBER OR VETERAN STATUS. (A) IF THE COURT DETERMINES THAT THE DEFENDANT IS A SERVICE MEMBER OR VETERAN, THE COURT SHALL ORDER AN EVALUATION OF THE DEFENDANT, AS DEFINED IN SUBDIVISION FOUR OF SECTION 217.05 OF THIS ARTICLE, TO EVALUATE WHETHER THE DEFEND-

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

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

18 (C) UPON RECEIPT OF THE ELIGIBLE SERVICE MEMBER OR VETERAN EVALUATION  
19 REPORT, THE DISTRICT ATTORNEY SHALL REVIEW SUCH REPORT. FOR ALL FELO-  
20 NIES, DISTRICT ATTORNEY CONSENT IS REQUIRED, FOR THE ELIGIBLE SERVICE  
21 MEMBER OR VETERAN TO ENTER THE ALTERNATIVE RESOLUTION PROGRAM.

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

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

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

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

42 (E) THE COURT SHALL CONSIDER AND MAKE FINDINGS OF FACT WITH RESPECT TO  
43 WHETHER:

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

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

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

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

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

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

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

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

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

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

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

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

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