

9313

I N A S S E M B L Y

February 17, 2016

Introduced by M. of A. ROSENTHAL -- read once and referred to the
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to participation
in treatment for opioid abuse or dependence under the judicial diver-
sion program

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

1 Section 1. Subdivision 5 of section 216.05 of the criminal procedure
2 law, as amended by chapter 258 of the laws of 2015, is amended to read
3 as follows:
4 5. The defendant shall agree on the record or in writing to abide by
5 the release conditions set by the court, which, shall include: partic-
6 ipation in a specified period of alcohol or substance abuse treatment at
7 a specified program or programs identified by the court, which may
8 include periods of detoxification, residential or outpatient treatment,
9 or both, as determined after taking into account the views of the health
10 care professional who conducted the alcohol and substance abuse evalu-
11 ation and any health care professionals responsible for providing such
12 treatment or monitoring the defendant's progress in such treatment; and
13 may include: (i) periodic court appearances, which may include periodic
14 urinalysis; (ii) a requirement that the defendant refrain from engaging
15 in criminal behaviors; (iii) if the defendant needs treatment for opioid
16 abuse or dependence, that he or she may participate in and receive
17 medically prescribed drug treatments under the care of a health care
18 professional licensed or certified under title eight of the education
19 law, acting within his or her lawful scope of practice. PROVIDED,
20 HOWEVER, NO COURT SHALL BE AUTHORIZED TO ESTABLISH ANY RELEASE CONDI-
21 TION, FOR ANY DEFENDANT NEEDING TREATMENT FOR OPIOID ABUSE OR DEPEND-
22 ENCE, WHICH REQUIRES USE OF ANY SPECIFIED TYPE OR BRAND OF DRUG DURING
23 THE COURSE OF MEDICALLY PRESCRIBED DRUG TREATMENTS UNDER THE CARE OF A
24 HEALTH CARE PROFESSIONAL.
25 S 2. Paragraph (a) of subdivision 9 of section 216.05 of the criminal
26 procedure law, as amended by chapter 258 of the laws of 2015, is amended
27 to read as follows:

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

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1 (a) If at any time during the defendant's participation in the judi-
2 cial diversion program, the court has reasonable grounds to believe that
3 the defendant has violated a release condition or has failed to appear
4 before the court as requested, the court shall direct the defendant to
5 appear or issue a bench warrant to a police officer or an appropriate
6 peace officer directing him or her to take the defendant into custody
7 and bring the defendant before the court without unnecessary delay;
8 provided, however, that under no circumstances shall a defendant who
9 requires treatment for opioid abuse or dependence be deemed to have
10 violated a release condition on the basis of his or her participation in
11 medically prescribed drug treatments under the care of a health care
12 professional licensed or certified under title eight of the education
13 law, acting within his or her lawful scope of practice, NOR SHALL ANY
14 DEFENDANT BE DEEMED TO HAVE VIOLATED ANY RELEASE CONDITION WHICH THE
15 COURT DID NOT HAVE THE AUTHORITY TO IMPOSE OR ESTABLISH PURSUANT TO
16 SUBDIVISION FIVE OF THIS SECTION. The provisions of subdivision one of
17 section 530.60 of this chapter relating to revocation of recognizance or
18 bail shall apply to such proceedings under this subdivision.

19 S 3. This act shall take effect immediately and shall apply to every
20 defendant applying for participation in or participating in a judicial
21 diversion program, pursuant to article 216 of the criminal procedure
22 law, on or after such date.