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I N   A S S E M B L Y

April 8, 2016

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

AN ACT to amend the criminal procedure law, in relation to enacting the  
"Officer Randolph Holder's law"

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

1     Section 1. This act shall be known and may be cited as the "Officer  
2     Randolph Holder's law."

3     S 2. Paragraph (b) of subdivision 1 of section 216.00 of the criminal  
4     procedure law, as added by section 4 of part AAA of chapter 56 of the  
5     laws of 2009, is amended to read as follows:

6     (b) has previously been adjudicated a SECOND FELONY OFFENDER PURSUANT  
7     TO SECTION 70.06 OF THE PENAL LAW OR A PERSISTENT FELONY OFFENDER PURSU-  
8     ANT TO SECTION 70.10 OF THE PENAL LAW OR A second violent felony offen-  
9     der pursuant to section 70.04 of the penal law or a persistent violent  
10    felony offender pursuant to section 70.08 of the penal law.

11    S 3. Paragraph (d) of subdivision 2 of section 216.00 of the criminal  
12    procedure law, as added by section 4 of part AAA of chapter 56 of the  
13    laws of 2009, is amended to read as follows:

14    (d) any other information, factor, circumstance, or recommendation  
15    deemed relevant by the assessing entity or specifically requested by the  
16    court. THIS SHALL INCLUDE ANY INFORMATION, FACTOR, OR CIRCUMSTANCE  
17    RELATING TO THE DEFENDANT'S POTENTIAL FOR BEHAVIOR THAT MAY JEOPARDIZE  
18    THE SAFETY OF OTHERS RECEIVING TREATMENT OR THE SAFETY OF THE PUBLIC.

19    S 4. Subdivision 3 of section 216.05 of the criminal procedure law, as  
20    added by section 4 of part AAA of chapter 56 of the laws of 2009, is  
21    amended to read as follows:

22    3. [(a) Upon receipt of the evaluation report either party may request  
23    a hearing on the issue of whether the eligible defendant should be  
24    offered alcohol or substance abuse treatment pursuant to this article.  
25    At such a proceeding, which shall be held as soon as practicable so as  
26    to facilitate early intervention in the event that the defendant is  
27    found to need alcohol or substance abuse treatment, the court may  
28    consider oral and written arguments, may take testimony from witnesses

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

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1 offered by either party, and may consider any relevant evidence includ-  
2 ing, but not limited to, evidence that:

3 (i) the defendant had within the preceding ten years (excluding any  
4 time during which the offender was incarcerated for any reason between  
5 the time of the acts that led to the youthful offender adjudication and  
6 the time of commission of the present offense) been adjudicated a youth-  
7 ful offender for: (A) a violent felony offense as defined in section  
8 70.02 of the penal law; or (B) any offense for which a merit time allow-  
9 ance is not available pursuant to subparagraph (ii) of paragraph (d) of  
10 subdivision one of section eight hundred three of the correction law;  
11 and

12 (ii) in the case of a felony offense defined in subdivision four of  
13 section 410.91 of this chapter, any statement of or submitted by the  
14 victim, as defined in paragraph (a) of subdivision two of section 380.50  
15 of this chapter.

16 (b)] Upon [completion of such a proceeding] CONSENT OF THE PROSECUTOR,  
17 the court shall consider and make findings of fact with respect to  
18 whether:

19 [(i)] (A) the defendant is an eligible defendant as defined in subdi-  
20 vision one of section 216.00 of this article;

21 [(ii)] (B) the defendant has a history of alcohol or substance abuse  
22 or dependence;

23 [(iii)] (C) such alcohol or substance abuse or dependence is a  
24 contributing factor to the defendant's criminal behavior;

25 [(iv)] (D) the defendant's participation in judicial diversion could  
26 effectively address such abuse or dependence; [and]

27 [(v)] (E) institutional confinement of the defendant is or may not be  
28 necessary for the protection of the public; AND

29 (F) ENTRY INTO THE DIVERSION PROGRAM POSES A RISK TO PUBLIC SAFETY.

30 S 5. This act shall take effect on the ninetieth day after it shall  
31 have become a law.