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

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I N S E N A T E

(PREFILED)

January 6, 2016

Introduced by Sens. RANZENHOFER, FUNKE, HANNON, MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the criminal procedure law, in relation to authorizing alcohol and substance abuse treatment in another jurisdiction for defendants in judicial diversion programs or other judicially sanctioned programs

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

Section 1. The opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law, as amended by chapter 90 of the laws of 2014, is amended to read as follows:

"Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four of section 410.91 of this chapter[, provided]. A DEFENDANT SHALL NOT BE FOUND INELIGIBLE BECAUSE OF HIS OR HER RESIDENCY IN ANOTHER JURISDICTION WITHIN THE STATE. PROVIDED, however, a defendant is not an "eligible defendant" if he or she:

S 2. The opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law, as added by section 4 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

"Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four of section 410.91 of this chapter[, provided]. A DEFENDANT SHALL NOT BE FOUND INELIGIBLE BECAUSE OF HIS OR HER RESIDENCY IN ANOTHER JURISDICTION WITHIN THE STATE. PROVIDED, however, a defendant is not an "eligible defendant" if he or she:

S 3. Subdivisions 5 and 8 of section 216.05 of the criminal procedure law, subdivision 5 as amended by chapter 258 of the laws of 2015 and

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

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subdivision 8 as amended by chapter 347 of the laws of 2012, are amended to read as follows:

5. The defendant shall agree on the record or in writing to abide by the release conditions set by the court, which, shall include: participation in a specified period of alcohol or substance abuse treatment at a specified program or programs identified by the court, SUCH PROGRAM OR PROGRAMS MAY BE LOCATED IN ANOTHER JURISDICTION WITHIN THE STATE IF THE DEFENDANT RESIDES IN SUCH OTHER JURISDICTION AND SUCH PROGRAMS ARE AVAILABLE AND APPROVED BY THE COURT AND THE JUDICIAL DIVERSION PROGRAM, which may include periods of detoxification, residential or outpatient treatment, or both, as determined after taking into account the views of the health care professional who conducted the alcohol and substance abuse evaluation and any health care professionals responsible for providing such treatment or monitoring the defendant's progress in such treatment; and may include: (i) periodic court appearances, which may include periodic urinalysis; (ii) a requirement that the defendant refrain from engaging in criminal behaviors; (iii) if the defendant needs treatment for opioid abuse or dependence, that he or she may participate in and receive medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice.

8. During the period of a defendant's participation in the judicial diversion program, the court shall retain jurisdiction of the defendant, provided, however, that the court may (I) allow such defendant to reside in another jurisdiction while participating in a judicial diversion program WITHIN THE JURISDICTION WHERE THE DEFENDANT IS CHARGED UNDER CONDITIONS SET BY THE COURT AND AGREED TO BY THE DEFENDANT PURSUANT TO SUBDIVISIONS FIVE AND SIX OF THIS SECTION OR (II) ALLOW SUCH DEFENDANT TO RESIDE IN ANOTHER JURISDICTION WITHIN THE STATE AND COMPLETE ALCOHOL OR SUBSTANCE ABUSE TREATMENT WITHIN SUCH OTHER JURISDICTION AS PART OF THE JUDICIAL DIVERSION PROGRAM under conditions set by the court and agreed to by the defendant pursuant to subdivisions five and six of this section. The court may require the defendant to appear in court at any time to enable the court to monitor the defendant's progress in alcohol or substance abuse treatment. The court shall provide notice, reasonable under the circumstances, to the people, the treatment provider, the defendant and the defendant's counsel whenever it orders or otherwise requires the appearance of the defendant in court. Failure to appear as required without reasonable cause therefor shall constitute a violation of the conditions of the court's agreement with the defendant.

S 4. The criminal procedure law is amended by adding a new article 217 to read as follows:

ARTICLE 217

ALCOHOL OR SUBSTANCE ABUSE TREATMENT IN ANOTHER JURISDICTION

SECTION 217.00 ALCOHOL OR SUBSTANCE ABUSE TREATMENT IN ANOTHER JURISDICTION.

S 217.00 ALCOHOL OR SUBSTANCE ABUSE TREATMENT IN ANOTHER JURISDICTION.

1. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, WHERE A DEFENDANT HAS BEEN GRANTED PARTICIPATION IN A JUDICIAL DIVERSION PROGRAM UNDER ARTICLE TWO HUNDRED SIXTEEN OF THIS CHAPTER, OR ANOTHER JUDICIALLY SANCTIONED PROGRAM THAT REQUIRES ALCOHOL OR SUBSTANCE ABUSE TREATMENT, AND THE DEFENDANT RESIDES IN ANOTHER JURISDICTION WITHIN THE STATE WHERE ALCOHOL OR SUBSTANCE ABUSE TREATMENT IS AVAILABLE AND SUCH TREATMENT IS APPROVED BY THE COURT AND THE JUDICIAL DIVERSION PROGRAM OR OTHER JUDICIALLY SANCTIONED PROGRAM, THE COURT, WHILE RETAINING JURIS-

DICTION OF THE DEFENDANT, MAY ALLOW SUCH DEFENDANT TO RECEIVE ALCOHOL OR SUBSTANCE ABUSE TREATMENT IN THE JURISDICTION WHERE THE DEFENDANT RESIDES AS PART OF THE JUDICIAL DIVERSION PROGRAM OR JUDICIALLY SANCTIONED PROGRAM UNDER CONDITIONS SET BY THE COURT AND AGREED TO BY THE DEFENDANT. A DEFENDANT'S RESIDENCY IN ANOTHER JURISDICTION SHALL NOT PREVENT HIS OR HER PARTICIPATION IN A JUDICIAL DIVERSION PROGRAM OR OTHER JUDICIALLY SANCTIONED PROGRAM IN THE JURISDICTION WHERE THE DEFENDANT IS CHARGED.

2. AS A CONDITION OF THE DEFENDANT'S PARTICIPATION IN THE JUDICIAL DIVERSION PROGRAM OR OTHER JUDICIALLY SANCTIONED PROGRAM, THE COURT MAY REQUIRE THE DEFENDANT TO APPEAR IN COURT AT ANY TIME TO ENABLE THE COURT TO MONITOR THE DEFENDANT'S PROGRESS IN ALCOHOL OR SUBSTANCE ABUSE TREATMENT. THE COURT SHALL PROVIDE NOTICE, REASONABLE UNDER THE CIRCUMSTANCES, TO THE PEOPLE, THE TREATMENT PROVIDER, THE DEFENDANT AND THE DEFENDANT'S COUNSEL WHENEVER IT ORDERS OR OTHERWISE REQUIRES THE APPEARANCE OF THE DEFENDANT IN COURT. FAILURE TO APPEAR AS REQUIRED WITHOUT REASONABLE CAUSE THEREFOR SHALL CONSTITUTE A VIOLATION OF THE CONDITIONS OF THE COURT'S AGREEMENT WITH THE DEFENDANT.

S 5. This act shall take effect immediately, provided that the amendments to the opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 4 of part AAA of chapter 56 of the laws of 2009, as amended, when upon such date the provisions of section two of this act shall take effect.