

# STATE OF NEW YORK

3099

2017-2018 Regular Sessions

## IN ASSEMBLY

January 26, 2017

Introduced by M. of A. BRINDISI, HUNTER, ORTIZ, JENNE, COOK, PERRY, JOHNS, WEPRIN, McDONOUGH, ABINANTI, GIGLIO, ZEBROWSKI, MONTESANO, WRIGHT, ROZIC, McDONALD, STIRPE, KEARNS, LUPARDO, LAVINE, BARRETT, FAHY, GUNTHER, THIELE, AUBRY, HEVESI, BENEDETTO, PALMESANO, BLAKE, MOSLEY, SKARTADOS, RAIA, OTIS, DiPIETRO, ENGLEBRIGHT, ARROYO, HOOPER, GALEF, LUPINACCI, STECK, PAULIN -- Multi-Sponsored by -- M. of A. BRONSON, BUTLER, COLTON, DenDEKKER, HAWLEY, LAWRENCE, McKEVITT, OAKS, O'DONNELL, RA, RIVERA, SCHIMMINGER, SIMANOWITZ, SIMON, WALKER -- read once and referred to the Committee on Codes

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:

Section 1. Title I of the criminal procedure law is amended by adding a new article 217 to read as follows:

### ARTICLE 217

#### JUSTICE FOR OUR VETERANS ACT

#### Section 217.00 Legislative findings and declarations.

##### 217.05 Definitions.

##### 217.10 Alternative resolution program; court procedures.

#### § 217.00 Legislative findings and declarations.

The legislature finds that an increasing number of New York state veterans and service members suffer from serious trauma as a result of their military service, such as post-traumatic stress disorder, traumatic brain injury and other mental or physical impairments or illnesses. Studies have found that many are not receiving treatment. The devastating consequences of war are harming the mental and physical health of a growing number of service members, returning veterans and their families.

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

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1 A national study, Invisible Wounds of War, by RAND Corporation in 2008  
2 found one in five veterans returning from Iraq and Afghanistan reported  
3 symptoms of PTSD or major depression. Researchers also found serious  
4 treatment gaps with only 53% of veterans with symptoms of mental health  
5 conditions seeking help, and of those who sought care, roughly half  
6 received minimally adequate treatment. In New York state, A Needs  
7 Assessment of New York State Veterans 2011 study by RAND Corporation and  
8 the New York State Health Foundation found an estimated 85,000 veterans  
9 returning home since 2001 have an unusually high rate of mental health  
10 problems. This study found nearly one in four New York state veterans  
11 had a probable diagnosis of PTSD and/or major depression. A follow up  
12 2011 report by the Iraq and Afghanistan Veterans of America, New York's  
13 Newest Veterans: Key Findings and Policy Implications of the RAND Corpo-  
14 ration's Needs Assessment of New York State Veterans recommended a poli-  
15 cy "to successfully execute an alternative sentencing program for veter-  
16 ans whose crimes stem from service-related injuries."

17 The men and women who served and sacrificed for our country frequently  
18 come home to a new frontline of indifference when suffering from a  
19 mental or physical illness or injury. Untreated veterans who then commit  
20 a crime are lost in the criminal justice system. There is no statewide  
21 mechanism to identify veterans, and many are sentenced by courts unaware  
22 of their status, let alone if they have an untreated mental or physical  
23 health condition that caused or contributed to their criminal act. The  
24 men and women who put their lives on the line for America's freedom  
25 deserve any needed support upon returning home. Accordingly, the legis-  
26 lature finds that our laws must be strengthened to ensure untreated  
27 service members and veterans with mental or physical health ailments,  
28 the most vulnerable of our returning warriors, receive treatment and an  
29 alternative resolution process in the criminal justice system. The  
30 legislature hereby declares that a just and humanitarian criminal  
31 justice process is needed to provide veterans with a medical evaluation  
32 and any needed treatment for a diagnosed injury or illness which will  
33 assist them to successfully re-enter society. In the interests of  
34 justice, the legislature further declares that courts need to consider  
35 if a veteran's service-related ailment played a role in his or her  
36 offense, and whether charges should be reduced or dismissed upon the  
37 conclusion of the veteran's treatment.

38 § 217.05 Definitions.

39 The following definitions are applicable to this article:

40 1. (a) "Veteran" means a former member of the United States military,  
41 including service in the national guard or other reserve components of  
42 the armed forces of the United States.

43 (b) "Service member" means a current member of the United States mili-  
44 tary, including service in the national guard or other reserve compo-  
45 nents of the armed forces of the United States.

46 2. "Military service" means the performance of any duty in the United  
47 States military, including service in the national guard or other  
48 reserve components of the armed forces of the United States.

49 3. "Eligible service member or veteran" means:

50 (a) a service member or veteran who is accused of one or more  
51 offenses, as defined in subdivision one of section 10.00 of the penal  
52 law, except for sex offenses defined in articles one hundred thirty, two  
53 hundred fifty-five and two hundred sixty-three of the penal law, and  
54 offenses defined in sections 125.25 (murder in the second degree),  
55 125.26 (aggravated murder), 125.27 (murder in the first degree), 135.25

1 (kidnapping in the first degree), 150.20 (arson in the first degree) and  
2 490.25 (crime of terrorism) of the penal law;

3 (b) a service member or veteran who suffers from post-traumatic stress  
4 disorder, other mental illness or condition, traumatic brain injury,  
5 other physical or mental injury, alcohol or substance abuse or addiction  
6 or combination thereof, that was, at least in part, caused by, exacer-  
7 bated by or resulted from the service member's or veteran's military  
8 service; and

9 (c) a service member or veteran whose specified illness, injury or  
10 other condition may have played a role in the commission of one or more  
11 of the charged offenses.

12 4. "Veteran or service member evaluation" means a written assessment  
13 and report by a court-approved entity or licensed health care profes-  
14 sional, as articulated and authorized by their specific scope of prac-  
15 tice, experienced in the treatment of individuals suffering from post-  
16 traumatic stress disorder, other mental illnesses or conditions,  
17 traumatic brain injury, other physical or mental injuries, alcohol or  
18 substance abuse or addiction, or a combination thereof, or by an entity  
19 certified by the United States Department of Veterans Affairs as experi-  
20 enced in the treatment of such illnesses, injuries, or conditions, which  
21 shall include:

22 (a) an assessment as to whether the defendant is suffering from post-  
23 traumatic stress disorder, other mental illnesses or conditions, trau-  
24 matic brain injury, other physical or mental injuries, alcohol or  
25 substance abuse or addiction or a combination thereof;

26 (b) whether the defendant's post-traumatic stress disorder, other  
27 mental illness or condition, traumatic brain injury, other physical or  
28 mental injury, alcohol or substance abuse or addiction or a combination  
29 thereof was, at least in part, caused by, exacerbated by or resulted  
30 from his or her military service;

31 (c) an assessment of whether the defendant's illness, injury or other  
32 condition, if any, may have played a role in the commission of one or  
33 more of the charged offenses;

34 (d) a recommendation as to whether the defendant's illness, injury or  
35 other condition, if any, could be effectively addressed by treatment;

36 (e) a recommendation as to whether the defendant's illness, injury or  
37 other condition, if any, could be effectively addressed by the alterna-  
38 tive resolution program in accordance with this article; and

39 (f) any other information, factor, circumstance, or recommendation  
40 deemed relevant by the assessing entity or specifically requested by the  
41 court.

42 § 217.10 Alternative resolution program; court procedures.

43 1. Determination of service member or veteran status. Notwithstanding  
44 any law to the contrary, at any time after the arraignment of a defend-  
45 ant, but prior to the entry of a plea of guilty or the commencement of  
46 trial, the defendant claims to be a service member or veteran, as  
47 defined in section 217.05 of this article, the court shall order the  
48 defendant to provide evidence that the defendant is a service member or  
49 veteran. Such evidence may include, but is not limited to, records of  
50 the United States Department of Defense, the United States Department of  
51 Veterans Affairs or a state or local veterans agency devoted to veter-  
52 ans, guard members or other reserve components of the armed forces of  
53 the United States.

54 2. The court, upon review of the evidence presented and any testimony  
55 offered by the defendant, shall determine by a preponderance of the

1 evidence whether the defendant is a service member or veteran, as  
2 defined in section 217.05 of this article.

3 3. Determination of service member or veteran status. (a) If the court  
4 determines that the defendant is a service member or veteran, the court  
5 shall order an evaluation of the defendant, as defined in subdivision  
6 four of section 217.05 of this article, to evaluate whether the defend-  
7 ant is an eligible service member or veteran, as defined in subdivision  
8 three of section 217.05 of this article. For those service members or  
9 veterans whose offense excluded them from entering the alternative  
10 resolution program, an evaluation shall be conducted as defined in para-  
11 graphs (a), (b), (c), (d) and (f) of subdivision four of section 217.05.  
12 The defendant shall provide a written authorization, in compliance with  
13 the requirements of any applicable state or federal laws, rules or regu-  
14 lations authorizing disclosure of the results of the assessment to the  
15 defendant's attorney, the prosecutor, the court, authorized court  
16 personnel and other individuals specified in such authorization for the  
17 purpose of determining whether the defendant is an eligible service  
18 member or veteran, or for the purposes of providing an evaluation report  
19 as part of any pre-sentence investigation and report pursuant to section  
20 390.30 of this chapter.

21 (b) Upon receipt of the eligible service member or veteran evaluation  
22 report, the court shall provide a copy to the defendant and the prosecu-  
23 tor.

24 (c) Upon receipt of the eligible service member or veteran evaluation  
25 report, the district attorney shall review such report. For all felo-  
26 nies, district attorney consent is required, for the eligible service  
27 member or veteran to enter the alternative resolution program.

28 (d) The court shall, upon the request of either party or where the  
29 evaluation indicates that the defendant may not meet the definition of  
30 an eligible service member or veteran as defined in subdivision three of  
31 section 217.05 of this article, order a hearing on the issue of whether  
32 the defendant is an eligible service member or veteran. If the court  
33 orders a hearing, the hearing must be held as soon as practicable so as  
34 to facilitate early intervention in the event the defendant is found to  
35 be an eligible service member or veteran. At the hearing, the court may  
36 consider oral or written arguments, take testimony from witnesses  
37 offered by either party, and consider any relevant evidence including,  
38 but not limited to, evidence that:

39 (i) the defendant suffers from post-traumatic stress disorder, other  
40 mental illness or condition, traumatic brain injury, other physical or  
41 mental injury, alcohol or substance abuse or addiction or combination  
42 thereof;

43 (ii) such illness, injury or other condition was, at least in part,  
44 caused by, exacerbated by or resulted from the defendant's military  
45 service; and

46 (iii) such illness, injury or other condition may have played a role  
47 in the commission of one or more of the charged offenses or offense.

48 (e) The court shall consider and make findings of fact with respect to  
49 whether:

50 (i) the defendant suffers from post-traumatic stress disorder, other  
51 mental illness or condition, traumatic brain injury, other physical or  
52 mental injury, alcohol or substance abuse or addiction or combination  
53 thereof;

54 (ii) such illness, injury or other condition was, at least in part,  
55 caused by, exacerbated by or resulted from the defendant's military  
56 service;

1 (iii) such illness, injury or other condition may have played a role  
2 in the commission of one or more of the charged offenses or offense; and  
3 (iv) if the defendant is charged with one or more class A, B, or C  
4 felonies, a determination if institutional confinement of the defendant  
5 is necessary for the protection of the public.

6 4. Notwithstanding any law to the contrary, when the court determines,  
7 pursuant to paragraph (e) of subdivision three of this section, that by  
8 a preponderance of the evidence the defendant is an eligible service  
9 member or veteran, and if the defendant is charged with a class A, B or  
10 C felony, and the court finds by a preponderance of the evidence that  
11 institutional confinement is not necessary for the protection of the  
12 public, and if the defendant is charged with a felony and the district  
13 attorney consents, or when the parties and the court agree to a finding  
14 that the defendant is an eligible service member or veteran, the court  
15 must:

16 (a) if the defendant is charged with one or more offenses, none of  
17 which is a class A, B, or C felony, allow the defendant to participate  
18 in the alternative resolution program offered by this article, which is  
19 designed to treat the eligible service member's or veteran's post-trau-  
20 matic stress disorder, other mental illness or condition, traumatic  
21 brain injury, other physical injury, alcohol or substance abuse or  
22 addiction, or combination thereof, without a plea of guilty; or

23 (b) if the defendant is charged with one or more class A, B, or C  
24 felony offenses, allow the defendant to participate in the alternative  
25 resolution program offered by this article, which is designed to treat  
26 the eligible service member's or veteran's post-traumatic stress disor-  
27 der, other mental illness or condition, traumatic brain injury, other  
28 physical injury, alcohol or substance abuse or addiction, or combination  
29 thereof conditioned on the defendant:

30 (i) entering a plea of guilty to the charge or charges; or  
31 (ii) entering a plea of guilty to a lesser charge as may be agreed by  
32 the parties.

33 5. Alternative resolution program; treatment plan. (a) The court shall  
34 issue an order granting participation in the alternative resolution  
35 program that sets forth: (i) the terms, conditions, and length of the  
36 eligible service member's or veteran's treatment plan; (ii) the final  
37 disposition of the proceeding as set forth in subdivision six of this  
38 section; and (iii) the disposition of the proceeding if the defendant  
39 fails to satisfy the terms and conditions of the treatment plan. As  
40 part of such plan, the court may transfer the case to an existing veter-  
41 an or other treatment court in the county of jurisdiction or adjoining  
42 county.

43 (b) Terms and conditions. In determining the terms and conditions of  
44 the treatment plan, the court shall consider the recommendations in the  
45 eligible service member or veteran evaluation report and the recommenda-  
46 tions of the defendant's health care providers, if any. The treatment  
47 plan may require the defendant, with the assistance of treatment provid-  
48 ers, to develop a plan for ongoing recovery after disposition of the  
49 criminal case.

50 (c) Length of treatment plan. (i) Where the defendant is charged with  
51 one or more offenses, none of which is a class A, B, or C felony, the  
52 treatment plan may not extend beyond twelve months. However, upon a  
53 showing that additional treatment is needed, and the consent of the  
54 defendant, the court may extend a treatment plan for up to twelve addi-  
55 tional months.



1 (ii) Where the defendant is charged with one or more class A, B, or C  
2 felony offenses, the treatment plan may not extend beyond eighteen  
3 months. However, upon a showing that additional treatment is needed,  
4 and the consent of the defendant, the court may extend a treatment plan  
5 for up to twelve additional months.

6 (d) The defendant shall agree on the record or in writing to abide by  
7 the terms and conditions of the treatment plan ordered pursuant to para-  
8 graph (a) of this subdivision.

9 6. Final disposition. (a) Dismissal. Notwithstanding any law to the  
10 contrary, if the defendant is allowed to participate in the program  
11 pursuant to paragraph (a) of subdivision four of this section, upon the  
12 defendant's agreement to abide by the terms and conditions of the treat-  
13 ment plan, and successful completion thereof, the court shall dismiss  
14 the accusatory instrument, except for felonies involving intimate part-  
15 ner violence or domestic violence, which final disposition may include,  
16 but is not limited to: (i) a sentence of probation supervision; or (ii)  
17 requiring the defendant to undergo a period of interim probation super-  
18 vision and, upon the defendant's successful completion of the interim  
19 probation supervision term, notwithstanding the provision of any other  
20 law, permitting the defendant to withdraw his or her guilty plea and  
21 dismissing the indictment; or (iii) requiring the defendant to undergo a  
22 period of interim probation supervision and, upon successful completion  
23 of the interim probation supervision term, notwithstanding the provision  
24 of any other law, permitting the defendant to withdraw his or her guilty  
25 plea, enter a guilty plea to a misdemeanor offense and sentencing the  
26 defendant in accordance with the treatment plan order, which may include  
27 a period of probation supervision pursuant to section 65.00 of the penal  
28 law; or (iv) allowing the defendant to withdraw his or her guilty plea  
29 and dismissing the indictment. It is not intended that criminal contempt  
30 charges for violations of orders of protection not alleging violence, be  
31 included.

32 Upon dismissal of the accusatory instrument, the court shall enter an  
33 order directing that the record of such action or proceeding be sealed  
34 and directing the clerk of the court wherein such criminal action or  
35 proceeding was terminated to immediately notify the commissioner of the  
36 division of criminal justice services and the heads of all appropriate  
37 police departments and other law enforcement agencies that the action  
38 has been terminated and that the record of such action or proceeding  
39 shall be sealed. Upon receipt of such notification, the agency, divi-  
40 sion, or department shall comply with the provisions of subdivision one  
41 of section 160.50 of this chapter.

42 (b) Notwithstanding any law to the contrary, if the defendant is  
43 allowed to participate in the program pursuant to subparagraph (i) or  
44 (ii) of paragraph (b) of subdivision four of this section, upon the  
45 defendant's agreement to abide by the terms and conditions of the treat-  
46 ment plan, and successful completion thereof, the court shall, if the  
47 defendant has pled to a class A, B, or C felony, permit the defendant to  
48 withdraw that plea and substitute a plea to a class D felony or lower  
49 offense. Upon entry of the substituted plea, the final disposition may  
50 include, but is not limited to: (i) a sentence of probation super-  
51 vision; or (ii) requiring the defendant to undergo a period of interim  
52 probation supervision and, upon the defendant's successful completion of  
53 the interim probation supervision term, notwithstanding the provision of  
54 any other law, permitting the defendant to withdraw his or her guilty  
55 plea and dismissing the indictment; or (iii) requiring the defendant to  
56 undergo a period of interim probation supervision and, upon successful

1 completion of the interim probation supervision term, notwithstanding  
2 the provision of any other law, permitting the defendant to withdraw his  
3 or her guilty plea, enter a guilty plea to a misdemeanor offense and  
4 sentencing the defendant in accordance with the treatment plan order,  
5 which may include a period of probation supervision pursuant to section  
6 65.00 of the penal law; or (iv) allowing the defendant to withdraw his  
7 or her guilty plea and dismissing the indictment.

8 § 2. Subdivision 2 of section 390.30 of the criminal procedure law is  
9 amended to read as follows:

10 2. Physical and mental examinations. Whenever information is available  
11 with respect to the defendant's physical and mental condition, the pre-  
12 sentence investigation must include the gathering of such information,  
13 including any evaluation report pursuant to subdivision five of section  
14 217.05 of this chapter. In the case of a felony or a class A misdemea-  
15 nor, or in any case where a person under the age of twenty-one is  
16 convicted of a crime, the court may order that the defendant undergo a  
17 thorough physical or mental examination in a designated facility and may  
18 further order that the defendant remain in such facility for such  
19 purpose for a period not exceeding thirty days.

20 § 3. This act shall take effect immediately.