STATE OF NEW YORK

3404

2017-2018 Regular Sessions

IN ASSEMBLY

January 27, 2017

Introduced by M. of A. MALLIOTAKIS, CASTORINA -- 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:

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

§ 2. Paragraph (b) 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:

(b) has previously been adjudicated a **second felony offender pursuant to section 70.06 of the penal law or a persistent felony offender pursuant to section 70.10 of the penal law or a** second violent felony offender pursuant to section 70.04 of the penal law or a persistent violent felony offender pursuant to section 70.08 of the penal law.

§ 3. Paragraph (d) of subdivision 2 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:

(d) any other information, factor, circumstance, or recommendation deemed relevant by the assessing entity or specifically requested by the court. **This shall include any information, factor, or circumstance relating to the defendant's potential for behavior that may jeopardize the safety of others receiving treatment or the safety of the public.**

§ 4. Subdivision 3 of section 216.05 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:

3. [~~(a) Upon receipt of the evaluation report either party may request a hearing on the issue of whether the eligible defendant should be offered alcohol or substance abuse treatment pursuant to this article. At such a proceeding, which shall be held as soon as practicable so as~~

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

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~~to facilitate early intervention in the event that the defendant is found to need alcohol or substance abuse treatment, the court may consider oral and written arguments, may take testimony from witnesses offered by either party, and may consider any relevant evidence including, but not limited to, evidence that:~~

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

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

~~(b)~~] Upon [~~completion of such a proceeding~~] **consent of the prosecutor**, the court shall consider and make findings of fact with respect to whether:

[~~(i)~~] **(a)** the defendant is an eligible defendant as defined in subdivision one of section 216.00 of this article;

[~~(ii)~~] **(b)** the defendant has a history of alcohol or substance abuse or dependence;

[~~(iii)~~] **(c)** such alcohol or substance abuse or dependence is a contributing factor to the defendant's criminal behavior;

[~~(iv)~~] **(d)** the defendant's participation in judicial diversion could effectively address such abuse or dependence; [~~and~~]

[~~(v)~~] **(e)** institutional confinement of the defendant is or may not be necessary for the protection of the public**; and**

(f) entry into the diversion program poses a risk to public safety.

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