

# STATE OF NEW YORK

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2050--A

2017-2018 Regular Sessions

## IN SENATE

January 11, 2017

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Introduced by Sens. BONACIC, AVELLA, BOYLE, CARLUCCI, CROCI, DeFRANCISCO, FELDER, GALLIVAN, GOLDEN, GRIFFO, HANNON, LANZA, LARKIN, LAVALLE, LITTLE, MARCELLINO, MARCHIONE, O'MARA, ORTT, RANZENHOFER, RITCHIE, ROBACH, SAVINO, SERINO, SEWARD, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the judicial diversion program for alcohol and substance abuse offenders; and to amend the penal law, in relation to the crime of unauthorized departure from a rehabilitation facility

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 4, 5, 8 and paragraph (a) of subdivision 9 of  
2 section 216.05 of the criminal procedure law, subdivision 4 as added by  
3 section 4 of part AAA of chapter 56 of the laws of 2009, subdivision 5  
4 as amended by chapter 67 of the laws of 2016, subdivision 8 as amended  
5 by chapter 315 of the laws of 2016 and paragraph (a) of subdivision 9 as  
6 amended by chapter 258 of the laws of 2015, are amended to read as  
7 follows:

8 4. When an authorized court, after considering the underlying charges  
9 and the propensity or lack thereof for violent conduct of the defendant,  
10 and after reviewing or hearing one or more written or oral opinions from  
11 a licensed psychologist or psychiatrist as to the propensity of the  
12 defendant for future violent conduct, and after making an on-the-record  
13 determination as to the reasons why, based on all evidence, determines,  
14 pursuant to paragraph (b) of subdivision three of this section, that an  
15 eligible defendant should be offered alcohol or substance abuse treat-  
16 ment, or when the parties and the court agree to an eligible defendant's  
17 participation in alcohol or substance abuse treatment, an eligible  
18 defendant may be allowed to participate in the judicial diversion

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

LBD04154-03-7

1 program offered by this article. Prior to the court's issuing an order  
2 granting judicial diversion, the eligible defendant shall be required to  
3 enter a plea of guilty to the charge or charges; provided, however, that  
4 no such guilty plea shall be required when:

5 (a) the people and the court consent to the entry of such an order  
6 without a plea of guilty; or

7 (b) based on a finding of exceptional circumstances, the court deter-  
8 mines that a plea of guilty shall not be required. For purposes of this  
9 subdivision, exceptional circumstances exist when, regardless of the  
10 ultimate disposition of the case, the entry of a plea of guilty is like-  
11 ly to result in severe collateral consequences.

12 5. The defendant shall agree on the record or in writing to abide by  
13 the release conditions set by the court, which, shall include: partic-  
14 ipation in a specified period of alcohol or substance abuse treatment at  
15 a specified program or programs identified by the court, which may  
16 include periods of detoxification, residential or outpatient treatment,  
17 or both, as determined after taking into account the views of the health  
18 care professional who conducted the alcohol and substance abuse evalu-  
19 ation and any health care professionals responsible for providing such  
20 treatment or monitoring the defendant's progress in such treatment; and  
21 may include: (i) periodic court appearances, which may include periodic  
22 urinalysis, provided, however, that defendants may make such court  
23 appearances by video conference, at the sole discretion of the court;  
24 (ii) a requirement that the defendant refrain from engaging in criminal  
25 behaviors; (iii) if the defendant needs treatment for opioid abuse or  
26 dependence, that he or she may participate in and receive medically  
27 prescribed drug treatments under the care of a health care professional  
28 licensed or certified under title eight of the education law, acting  
29 within his or her lawful scope of practice, provided that no court shall  
30 require the use of any specified type or brand of drug during the course  
31 of medically prescribed drug treatments.

32 8. During the period of a defendant's participation in the judicial  
33 diversion program, the court shall retain jurisdiction of the defendant,  
34 provided, however, that the court may allow such defendant to (i) reside  
35 in another jurisdiction, or (ii) participate in alcohol and substance  
36 abuse treatment and other programs in the jurisdiction where the defend-  
37 ant resides or in any other jurisdiction, while participating in a judi-  
38 cial diversion program under conditions set by the court and agreed to  
39 by the defendant pursuant to subdivisions five and six of this section.  
40 The court may require the defendant to appear in court at any time to  
41 enable the court to monitor the defendant's progress in alcohol or  
42 substance abuse treatment. The court shall provide notice, reasonable  
43 under the circumstances, to the people, the treatment provider, the  
44 defendant and the defendant's counsel whenever it orders or otherwise  
45 requires the appearance of the defendant in court. Failure to appear as  
46 required without reasonable cause therefor shall constitute a violation  
47 of the conditions of the court's agreement with the defendant. At the  
48 sole discretion of the court, any court appearance required pursuant to  
49 this subdivision may be made by video conference.

50 (a) If at any time during the defendant's participation in the judi-  
51 cial diversion program, the court has reasonable grounds to believe that  
52 the defendant has violated a release condition or has failed to appear  
53 before the court as requested, the court shall direct the defendant to  
54 appear or issue a bench warrant to a police officer or an appropriate  
55 peace officer directing him or her to take the defendant into custody  
56 and bring the defendant before the court without unnecessary delay;

provided, however, that under no circumstances shall a defendant who requires treatment for opioid abuse or dependence be deemed to have violated a release condition on the basis of his or her participation in 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. At the sole discretion of the court, any court appearance required pursuant to this subdivision may be made by video conference. The provisions of subdivision one of section 530.60 of this chapter relating to revocation of recognizance or bail shall apply to such proceedings under this subdivision.

§ 2. Section 216.05 of the criminal procedure law is amended by adding two new subdivisions 5-a and 12 to read as follows:

5-a. When an authorized court determines, pursuant to paragraph (b) of subdivision three of this section, that an eligible defendant should be offered alcohol or substance abuse treatment, or when the parties and the court agree to an eligible defendant's participation in alcohol or substance abuse treatment, the court shall transmit the eligible defendant's arrest record and conviction statement to the facility where the defendant is to receive treatment.

12. A facility which is treating a defendant under the provisions of this section shall notify the local police department which has jurisdiction over the municipality where the facility is located, of the defendant's placement and arrest record (or if there be no municipal police department, then the sheriff of the county in which the facility is located), which shall be provided to facility staff at the facility in a manner ordered by the court. The facility shall also submit to the division of criminal justice services a security plan designed to provide for the safety of staff, residents and the community from violent behavior by residents. Such plan shall be updated at least every five years or as otherwise directed by the commissioner of the division of criminal justice services.

§ 3. The penal law is amended by adding a new section 205.70 to read as follows:

§ 205.70 Unauthorized departure from a rehabilitation facility.

A person is guilty of unauthorized departure from a rehabilitation facility when a court determines that an eligible defendant, as defined by subdivision one of section 216.00 of the criminal procedure law, leaves, departs or escapes from the treatment facility to which such person was assigned for a period of alcohol or substance abuse treatment as part of the judicial diversion program pursuant to section 216.05 of the criminal procedure law without the consent of the court or written consent of the facility management.

Unauthorized departure from a rehabilitation facility is a class D felony.

§ 4. This act shall take effect immediately.