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

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

§ 217.05 Definitions.

The following definitions are applicable to this article:

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

(b) "Service member" means a current member of the United States military, including service in the national guard or other reserve components of the armed forces of the United States.

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

3. "Eligible service member or veteran" means:

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

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

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

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

4. "Veteran or service member evaluation" means a written assessment and report by a court-approved entity or licensed health care professional, as articulated and authorized by their specific scope of practice, experienced in the treatment of individuals suffering from post-traumatic stress disorder, other mental illnesses or conditions, traumatic brain injury, other physical or mental injuries, alcohol or substance abuse or addiction, or a combination thereof, or by an entity certified by the United States Department of Veterans Affairs as experienced in the treatment of such illnesses, injuries, or conditions, which shall include:

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

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

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

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

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

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

§ 217.10 Alternative resolution program; court procedures.

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

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

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

3. Determination of service member or veteran status. (a) If the court determines that the defendant is a service member or veteran, the court shall order an evaluation of the defendant, as defined in subdivision four of section 217.05 of this article, to evaluate whether the defendant is an eligible service member or veteran, as defined in subdivision three of section 217.05 of this article. For those service members or veterans whose offense excluded them from entering the alternative resolution program, an evaluation shall be conducted as defined in paragraphs (a), (b), (c), (d) and (f) of subdivision four of section 217.05. The defendant shall provide a written authorization, in compliance with the requirements of any applicable state or federal laws, rules or regulations authorizing disclosure of the results of the assessment to the defendant's attorney, the prosecutor, the court, authorized court personnel and other individuals specified in such authorization for the purpose of determining whether the defendant is an eligible service member or veteran, or for the purposes of providing an evaluation report as part of any pre-sentence investigation and report pursuant to section 390.30 of this chapter.

(b) Upon receipt of the eligible service member or veteran evaluation report, the court shall provide a copy to the defendant and the prosecutor.

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

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

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

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

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

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

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

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

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

(iv) if the defendant is charged with one or more class A, B, or C felonies, a determination if institutional confinement of the defendant is necessary for the protection of the public.

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

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

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

(i) entering a plea of guilty to the charge or charges; or

(ii) entering a plea of guilty to a lesser charge as may be agreed by the parties.

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

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

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

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

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

6. Final disposition. (a) Dismissal. Notwithstanding any law to the contrary, if the defendant is allowed to participate in the program pursuant to paragraph (a) of subdivision four of this section, upon the defendant's agreement to abide by the terms and conditions of the treatment plan, and successful completion thereof, the court shall dismiss the accusatory instrument, except for felonies involving intimate partner violence or domestic violence, which final disposition may include, but is not limited to: (i) a sentence of probation supervision; or (ii) requiring the defendant to undergo a period of interim probation supervision and, upon the defendant's successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea and dismissing the indictment; or (iii) requiring the defendant to undergo a period of interim probation supervision and, upon successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea, enter a guilty plea to a misdemeanor offense and sentencing the defendant in accordance with the treatment plan order, which may include a period of probation supervision pursuant to section 65.00 of the penal law; or (iv) allowing the defendant to withdraw his or her guilty plea and dismissing the indictment. It is not intended that criminal contempt charges for violations of orders of protection not alleging violence, be included.

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

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

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

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

2. Physical and mental examinations. Whenever information is available with respect to the defendant's physical and mental condition, the presentence investigation must include the gathering of such information**, including any evaluation report pursuant to subdivision five of section 217.05 of this chapter**. In the case of a felony or a class A misdemeanor, or in any case where a person under the age of twenty-one is convicted of a crime, the court may order that the defendant undergo a thorough physical or mental examination in a designated facility and may further order that the defendant remain in such facility for such purpose for a period not exceeding thirty days.

§ 3. This act shall take effect immediately.