

# STATE OF NEW YORK

5138

2019-2020 Regular Sessions

## IN ASSEMBLY

February 7, 2019

Introduced by M. of A. BLAKE -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing a judicial diversion program for young defendants

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

1 Section 1. The criminal procedure law is amended by adding a new article 217 to read as follows:

### ARTICLE 217

#### JUDICIAL DIVERSION PROGRAM FOR YOUNG DEFENDANTS

##### Section 217.00 Definitions.

##### 217.05 Judicial diversion program; court procedures.

§ 217.00 Definitions. The following definitions are applicable to this article:

1. "Eligible defendant" shall mean any person under the age of twenty-four who stands charged with any non-violent felony or misdemeanor. For purposes of this section, "non-violent felony" shall mean and include any felony not defined in subdivision one of section 70.02 of the penal law. A defendant is not an "eligible defendant" if he or she:

(a) within the preceding ten years, excluding any time during which the offender was incarcerated for any reason between the time of commission of the previous offense and the time of commission of the present offense, has previously been convicted of: (i) a violent felony offense as defined in section 70.02 of the penal law or (ii) any other 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; or

(b) has previously been adjudicated 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.

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

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1 A defendant who also stands charged with a violent felony offense as  
2 defined in section 70.02 of the penal law or an offense for which merit  
3 time allowance is not available pursuant to subparagraph (ii) of para-  
4 graph (d) of subdivision one of section eight hundred three of the  
5 correction law for which the court must, upon the defendant's conviction  
6 thereof, sentence the defendant to incarceration in state prison is not  
7 an eligible defendant while such charges are pending. A defendant who is  
8 excluded from the judicial diversion program pursuant to this paragraph  
9 or paragraph (a) or (b) of this subdivision may become an eligible  
10 defendant upon the prosecutor's consent.

11 2. "Job training program" shall mean a program administered by the  
12 department of labor, including but not limited to programs that provide  
13 businesses with wage reimbursements or other stipends under the unem-  
14 ployment strikeforce, that provides participants with job training, job  
15 opportunities, and wages whose goal is to aid young and/or unemployed  
16 individuals' participation in the job market.

17 § 217.05 Judicial diversion program; court procedures.

18 1. At any time after the arraignment of an eligible defendant, but  
19 prior to the entry of a plea of guilty or the commencement of trial, the  
20 court may determine that an eligible defendant should be offered judi-  
21 cial diversion in a specified job training program or programs identi-  
22 fied by the court. An eligible defendant may decline to participate in  
23 such a program at any time. Prior to the court's issuing an order grant-  
24 ing judicial diversion, the eligible defendant shall be required to  
25 enter a plea of guilty to the charge or charges; provided, however, that  
26 no guilty plea shall be required when:

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

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

34 2. The eligible defendant shall agree on the record or in writing to  
35 abide by the release conditions set by the court, which, shall include:  
36 participation in a specified job training program for a period of  
37 sixteen months; periodic court appearances; and a requirement that the  
38 defendant refrain from engaging in criminal behaviors.

39 3. Upon an eligible defendant's agreement to abide by the conditions  
40 set by the court, the court shall issue a securing order providing for  
41 bail or release on the defendant's own recognizance and conditioning any  
42 release upon the agreed upon conditions. The job training program shall  
43 begin as specified by the court and as soon as practicable after the  
44 defendant's release. In the event that a job training program is not  
45 immediately available or becomes unavailable during the course of the  
46 defendant's participation in the judicial diversion program, the court  
47 may release the defendant pursuant to the securing order.

48 4. During the period of a defendant's participation in the judicial  
49 diversion program, the court shall retain jurisdiction of the defendant.  
50 The court may require the defendant to appear in court at any time to  
51 enable the court to monitor the defendant's progress in the program. The  
52 court shall provide notice, reasonable under the circumstances, to the  
53 people, the job training program provider, the defendant and the defend-  
54 ant's counsel whenever it orders or otherwise requires the appearance of  
55 the defendant in court. Failure to appear as required without reasonable

1 cause therefor shall constitute a violation of the conditions of the  
2 court's agreement with the defendant.

3 5. After the defendant has participated in the job training program  
4 for a period of sixteen months and upon the court's determination that  
5 the defendant has successfully completed such program and has otherwise  
6 satisfied the conditions required for successful completion of the judi-  
7 cial diversion program, the court shall comply with the terms and condi-  
8 tions it set for final disposition when it accepted the defendant's  
9 agreement to participate in the judicial diversion program. Such dispo-  
10 sition may include, but is not limited to:

11 (a) requiring the defendant to undergo a period of interim probation  
12 supervision and, upon the defendant's successful completion of the  
13 interim probation supervision term, notwithstanding the provision of any  
14 other law, permitting the defendant to withdraw his or her guilty plea  
15 and dismissing the indictment; or

16 (b) requiring the defendant to undergo a period of interim probation  
17 supervision and, upon successful completion of the interim probation  
18 supervision term, notwithstanding the provision of any other law,  
19 permitting the defendant to withdraw his or her guilty plea, enter a  
20 guilty plea to a misdemeanor offense and sentencing the defendant as  
21 promised in the plea agreement, which may include a period of probation  
22 supervision pursuant to section 65.00 of the penal law; or

23 (c) allowing the defendant to withdraw his or her guilty plea and  
24 dismissing the indictment.

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