

# STATE OF NEW YORK

5681

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

Introduced by M. of A. MALLIOTAKIS -- 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:

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

3 § 2. Paragraph (b) of subdivision 1 of section 216.00 of the criminal  
4 procedure law, as added by section 4 of part AAA of chapter 56 of the  
5 laws of 2009, is amended to read as follows:

6 (b) has previously been adjudicated a second felony offender pursuant  
7 to section 70.06 of the penal law or a persistent felony offender pursu-  
8 ant to section 70.10 of the penal law or a second violent felony offen-  
9 der pursuant to section 70.04 of the penal law or a persistent violent  
10 felony offender pursuant to section 70.08 of the penal law.

11 § 3. Paragraph (d) of subdivision 2 of section 216.00 of the criminal  
12 procedure law, as added by section 4 of part AAA of chapter 56 of the  
13 laws of 2009, is amended to read as follows:

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

19 § 4. Subdivision 3 of section 216.05 of the criminal procedure law, as  
20 added by section 4 of part AAA of chapter 56 of the laws of 2009, is  
21 amended to read as follows:

22 3. [~~(a) Upon receipt of the evaluation report either party may request~~  
23 ~~a hearing on the issue of whether the eligible defendant should be~~  
24 ~~offered alcohol or substance abuse treatment pursuant to this article.~~  
25 ~~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.

LBD09765-01-9

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

6 ~~(i) the defendant had within the preceding ten years (excluding any~~  
7 ~~time during which the offender was incarcerated for any reason between~~  
8 ~~the time of the acts that led to the youthful offender adjudication and~~  
9 ~~the time of commission of the present offense) been adjudicated a youth-~~  
10 ~~ful offender for: (A) a violent felony offense as defined in section~~  
11 ~~70.02 of the penal law, or (B) any offense for which a merit time allow-~~  
12 ~~ance is not available pursuant to subparagraph (ii) of paragraph (d) of~~  
13 ~~subdivision one of section eight hundred three of the correction law,~~  
14 ~~and~~

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

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

22 ~~[(i)]~~ (a) the defendant is an eligible defendant as defined in subdivi-  
23 sion one of section 216.00 of this article;

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

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

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

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

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

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