

# STATE OF NEW YORK

8296

## IN SENATE

May 8, 2020

Introduced by Sen. ADDABBO -- read twice and ordered printed, and when printed to be committed 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:

1 Section 1. Title I of the criminal procedure law is amended by adding  
2 a new article 217 to read as follows:

3 ARTICLE 217

4 JUSTICE FOR OUR VETERANS ACT

5 Section 217.00 Legislative findings and declarations.

6 217.05 Definitions.

7 217.10 Alternative resolution program; court procedures.

8 § 217.00 Legislative findings and declarations.

9 The legislature finds that an increasing number of New York state  
10 veterans and service members suffer from serious trauma as a result of  
11 their military service, such as post-traumatic stress disorder, traumati-  
12 c brain injury and other mental or physical impairments or illnesses.  
13 Studies have found that many are not receiving treatment. The devastat-  
14 ing consequences of war are harming the mental and physical health of a  
15 growing number of service members, returning veterans and their fami-  
16 lies.

17 A national study, Invisible Wounds of War, by RAND Corporation in 2008  
18 found one in five veterans returning from Iraq and Afghanistan reported  
19 symptoms of PTSD or major depression. Researchers also found serious  
20 treatment gaps with only 53% of veterans with symptoms of mental health  
21 conditions seeking help, and of those who sought care, roughly half  
22 received minimally adequate treatment. In New York state, A Needs  
23 Assessment of New York State Veterans 2011 study by RAND Corporation and  
24 the New York State Health Foundation found an estimated 85,000 veterans  
25 returning home since 2001 have an unusually high rate of mental health  
26 problems. This study found nearly one in four New York state veterans  
27 had a probable diagnosis of PTSD and/or major depression. A follow up

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

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1 2011 report by the Iraq and Afghanistan Veterans of America, New York's  
2 Newest Veterans: Key Findings and Policy Implications of the RAND Corpo-  
3 ration's Needs Assessment of New York State Veterans recommended a poli-  
4 cy "to successfully execute an alternative sentencing program for veter-  
5 ans whose crimes stem from service-related injuries."

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

27 § 217.05 Definitions.

28 The following definitions are applicable to this article:

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

32 (b) "Service member" means a current member of the United States mili-  
33 tary, including service in the national guard or other reserve compo-  
34 ponents of the armed forces of the United States.

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

38 3. "Eligible service member or veteran" means:

39 (a) a service member or veteran who is accused of one or more  
40 offenses, as defined in subdivision one of section 10.00 of the penal  
41 law, except for sex offenses defined in articles one hundred thirty, two  
42 hundred fifty-five and two hundred sixty-three of the penal law, and  
43 offenses defined in sections 125.25 (murder in the second degree),  
44 125.26 (aggravated murder), 125.27 (murder in the first degree), 135.25  
45 (kidnapping in the first degree), 150.20 (arson in the first degree) and  
46 490.25 (crime of terrorism) of the penal law;

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

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

1 4. "Veteran or service member evaluation" means a written assessment  
2 and report by a court-approved entity or licensed health care profes-  
3 sional, as articulated and authorized by their specific scope of prac-  
4 tice, experienced in the treatment of individuals suffering from post-  
5 traumatic stress disorder, other mental illnesses or conditions,  
6 traumatic brain injury, other physical or mental injuries, alcohol or  
7 substance abuse or addiction, or a combination thereof, or by an entity  
8 certified by the United States Department of Veterans Affairs as experi-  
9 enced in the treatment of such illnesses, injuries, or conditions, which  
10 shall include:

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

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

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

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

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

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

31 § 217.10 Alternative resolution program; court procedures.

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

43 2. The court, upon review of the evidence presented and any testimony  
44 offered by the defendant, shall determine by a preponderance of the  
45 evidence whether the defendant is a service member or veteran, as  
46 defined in section 217.05 of this article.

47 3. Determination of service member or veteran status. (a) If the court  
48 determines that the defendant is a service member or veteran, the court  
49 shall order an evaluation of the defendant, as defined in subdivision  
50 four of section 217.05 of this article, to evaluate whether the defend-  
51 ant is an eligible service member or veteran, as defined in subdivision  
52 three of section 217.05 of this article. For those service members or  
53 veterans whose offense excluded them from entering the alternative  
54 resolution program, an evaluation shall be conducted as defined in para-  
55 graphs (a), (b), (c), (d) and (f) of subdivision four of section 217.05  
56 of this article. The defendant shall provide a written authorization, in

1 compliance with the requirements of any applicable state or federal  
2 laws, rules or regulations authorizing disclosure of the results of the  
3 assessment to the defendant's attorney, the prosecutor, the court,  
4 authorized court personnel and other individuals specified in such  
5 authorization for the purpose of determining whether the defendant is an  
6 eligible service member or veteran, or for the purposes of providing an  
7 evaluation report as part of any pre-sentence investigation and report  
8 pursuant to section 390.30 of this chapter.

9 (b) Upon receipt of the eligible service member or veteran evaluation  
10 report, the court shall provide a copy to the defendant and the prosecu-  
11 tor.

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

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

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

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

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

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

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

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

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

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

50 4. Notwithstanding any law to the contrary, when the court determines,  
51 pursuant to paragraph (e) of subdivision three of this section, that by  
52 a preponderance of the evidence the defendant is an eligible service  
53 member or veteran, and if the defendant is charged with a class A, B or  
54 C felony, and the court finds by a preponderance of the evidence that  
55 institutional confinement is not necessary for the protection of the  
56 public, and if the defendant is charged with a felony and the district

1 attorney consents, or when the parties and the court agree to a finding  
2 that the defendant is an eligible service member or veteran, the court  
3 must:

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

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

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

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

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

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

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

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

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

52 6. Final disposition. (a) Dismissal. Notwithstanding any law to the  
53 contrary, if the defendant is allowed to participate in the program  
54 pursuant to paragraph (a) of subdivision four of this section, upon the  
55 defendant's agreement to abide by the terms and conditions of the treat-  
56 ment plan, and successful completion thereof, the court shall dismiss

1 the accusatory instrument, except for felonies involving intimate part-  
2 ner violence or domestic violence, which final disposition may include,  
3 but is not limited to: (i) a sentence of probation supervision; or (ii)  
4 requiring the defendant to undergo a period of interim probation super-  
5 vision and, upon the defendant's successful completion of the interim  
6 probation supervision term, notwithstanding the provision of any other  
7 law, permitting the defendant to withdraw his or her guilty plea and  
8 dismissing the indictment; or (iii) requiring the defendant to undergo a  
9 period of interim probation supervision and, upon successful completion  
10 of the interim probation supervision term, notwithstanding the provision  
11 of any other law, permitting the defendant to withdraw his or her guilty  
12 plea, enter a guilty plea to a misdemeanor offense and sentencing the  
13 defendant in accordance with the treatment plan order, which may include  
14 a period of probation supervision pursuant to section 65.00 of the penal  
15 law; or (iv) allowing the defendant to withdraw his or her guilty plea  
16 and dismissing the indictment. It is not intended that criminal contempt  
17 charges for violations of orders of protection not alleging violence, be  
18 included.

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

29 (b) Notwithstanding any law to the contrary, if the defendant is  
30 allowed to participate in the program pursuant to subparagraph (i) or  
31 (ii) of paragraph (b) of subdivision four of this section, upon the  
32 defendant's agreement to abide by the terms and conditions of the treat-  
33 ment plan, and successful completion thereof, the court shall, if the  
34 defendant has pled to a class A, B, or C felony, permit the defendant to  
35 withdraw that plea and substitute a plea to a class D felony or lower  
36 offense. Upon entry of the substituted plea, the final disposition may  
37 include, but is not limited to: (i) a sentence of probation super-  
38 vision; or (ii) requiring the defendant to undergo a period of interim  
39 probation supervision and, upon the defendant's successful completion of  
40 the interim probation supervision term, notwithstanding the provision of  
41 any other law, permitting the defendant to withdraw his or her guilty  
42 plea and dismissing the indictment; or (iii) requiring the defendant to  
43 undergo a period of interim probation supervision and, upon successful  
44 completion of the interim probation supervision term, notwithstanding  
45 the provision of any other law, permitting the defendant to withdraw his  
46 or her guilty plea, enter a guilty plea to a misdemeanor offense and  
47 sentencing the defendant in accordance with the treatment plan order,  
48 which may include a period of probation supervision pursuant to section  
49 65.00 of the penal law; or (iv) allowing the defendant to withdraw his  
50 or her guilty plea and dismissing the indictment.

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

53 2. Physical and mental examinations. Whenever information is available  
54 with respect to the defendant's physical and mental condition, the pre-  
55 sentence investigation must include the gathering of such information,  
56 including any evaluation report pursuant to subdivision five of section

1 217.05 of this chapter. In the case of a felony or a class A misdemea-  
2 nor, or in any case where a person under the age of twenty-one is  
3 convicted of a crime, the court may order that the defendant undergo a  
4 thorough physical or mental examination in a designated facility and may  
5 further order that the defendant remain in such facility for such  
6 purpose for a period not exceeding thirty days.  
7 § 3. This act shall take effect immediately.