

STATE OF NEW YORK

4678

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. MOSLEY -- 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.

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

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

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1 returning home since 2001 have an unusually high rate of mental health
2 problems. This study found nearly one in four New York state veterans
3 had a probable diagnosis of PTSD and/or major depression. A follow up
4 2011 report by the Iraq and Afghanistan Veterans of America, New York's
5 Newest Veterans: Key Findings and Policy Implications of the RAND Corpo-
6 ration's Needs Assessment of New York State Veterans recommended a poli-
7 cy "to successfully execute an alternative sentencing program for veter-
8 ans whose crimes stem from service-related injuries."

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

30 § 217.05 Definitions.

31 The following definitions are applicable to this article:

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

35 (b) "Service member" means a current member of the United States mili-
36 tary, including service in the national guard or other reserve compo-
37 nents of the armed forces of the United States.

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

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

42 (a) a service member or veteran who is accused of one or more
43 offenses, as defined in subdivision one of section 10.00 of the penal
44 law, except for sex offenses defined in articles one hundred thirty, two
45 hundred fifty-five and two hundred sixty-three of the penal law, and
46 offenses defined in sections 125.25 (murder in the second degree),
47 125.26 (aggravated murder), 125.27 (murder in the first degree), 135.25
48 (kidnapping in the first degree), 150.20 (arson in the first degree) and
49 490.25 (crime of terrorism) of the penal law;

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

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

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

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

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

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

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

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

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

34 § 217.10 Alternative resolution program; court procedures.

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

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

50 3. Determination of service member or veteran status. (a) If the court
51 determines that the defendant is a service member or veteran, the court
52 shall order an evaluation of the defendant, as defined in subdivision
53 four of section 217.05 of this article, to evaluate whether the defend-
54 ant is an eligible service member or veteran, as defined in subdivision
55 three of section 217.05 of this article. For those service members or
56 veterans whose offense excluded them from entering the alternative

1 resolution program, an evaluation shall be conducted as defined in para-
2 graphs (a), (b), (c), (d) and (f) of subdivision four of section 217.05.
3 The defendant shall provide a written authorization, in compliance with
4 the requirements of any applicable state or federal laws, rules or regu-
5 lations authorizing disclosure of the results of the assessment to the
6 defendant's attorney, the prosecutor, the court, authorized court
7 personnel and other individuals specified in such authorization for the
8 purpose of determining whether the defendant is an eligible service
9 member or veteran, or for the purposes of providing an evaluation report
10 as part of any pre-sentence investigation and report pursuant to section
11 390.30 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

53 4. Notwithstanding any law to the contrary, when the court determines,
54 pursuant to paragraph (e) of subdivision three of this section, that by
55 a preponderance of the evidence the defendant is an eligible service
56 member or veteran, and if the defendant is charged with a class A, B or

1 C felony, and the court finds by a preponderance of the evidence that
2 institutional confinement is not necessary for the protection of the
3 public, and if the defendant is charged with a felony and the district
4 attorney consents, or when the parties and the court agree to a finding
5 that the defendant is an eligible service member or veteran, the court
6 must:

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

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

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

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

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

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

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

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

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

55 6. Final disposition. (a) Dismissal. Notwithstanding any law to the
56 contrary, if the defendant is allowed to participate in the program

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

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

32 (b) Notwithstanding any law to the contrary, if the defendant is
33 allowed to participate in the program pursuant to subparagraph (i) or
34 (ii) of paragraph (b) of subdivision four of this section, upon the
35 defendant's agreement to abide by the terms and conditions of the treat-
36 ment plan, and successful completion thereof, the court shall, if the
37 defendant has pled to a class A, B, or C felony, permit the defendant to
38 withdraw that plea and substitute a plea to a class D felony or lower
39 offense. Upon entry of the substituted plea, the final disposition may
40 include, but is not limited to: (i) a sentence of probation super-
41 vision; or (ii) requiring the defendant to undergo a period of interim
42 probation supervision and, upon the defendant's successful completion of
43 the interim probation supervision term, notwithstanding the provision of
44 any other law, permitting the defendant to withdraw his or her guilty
45 plea and dismissing the indictment; or (iii) requiring the defendant to
46 undergo a period of interim probation supervision and, upon successful
47 completion of the interim probation supervision term, notwithstanding
48 the provision of any other law, permitting the defendant to withdraw his
49 or her guilty plea, enter a guilty plea to a misdemeanor offense and
50 sentencing the defendant in accordance with the treatment plan order,
51 which may include a period of probation supervision pursuant to section
52 65.00 of the penal law; or (iv) allowing the defendant to withdraw his
53 or her guilty plea and dismissing the indictment.

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

1 2. Physical and mental examinations. Whenever information is available
2 with respect to the defendant's physical and mental condition, the pre-
3 sentence investigation must include the gathering of such information,
4 including any evaluation report pursuant to subdivision five of section
5 217.05 of this chapter. In the case of a felony or a class A misdemea-
6 nor, or in any case where a person under the age of twenty-one is
7 convicted of a crime, the court may order that the defendant undergo a
8 thorough physical or mental examination in a designated facility and may
9 further order that the defendant remain in such facility for such
10 purpose for a period not exceeding thirty days.
11 § 3. This act shall take effect immediately.