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:

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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A defendant who also stands charged with a violent felony offense as defined in section 70.02 of the penal law or an offense for which 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 for which the court must, upon the defendant's conviction thereof, sentence the defendant to incarceration in state prison is not an eligible defendant while such charges are pending. A defendant who is excluded from the judicial diversion program pursuant to this paragraph or paragraph (a) or (b) of this subdivision may become an eligible defendant upon the prosecutor's consent.

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

§ 217.05 Judicial diversion program; court procedures.

1. At any time after the arraignment of an eligible defendant, but prior to the entry of a plea of guilty or the commencement of trial, the court may determine that an eligible defendant should be offered judicial diversion in a specified job training program or programs identified by the court. An eligible defendant may decline to participate in such a program at any time. Prior to the court's issuing an order granting judicial diversion, the eligible defendant shall be required to enter a plea of guilty to the charge or charges; provided, however, that no guilty plea shall be required when:

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

(b) based on a finding of exceptional circumstances, the court determines that a plea of guilty shall not be required. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences.

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

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

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

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

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

(a) 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

(b) 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 as promised in the plea agreement, which may include a period of probation supervision pursuant to section 65.00 of the penal law; or

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

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