§ 216.00 Definitions.

The following definitions are applicable to this article:

1. * "Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-two of the penal law, an offense defined in sections 105.10 and 105.13 of the penal law provided that the underlying crime for the conspiracy charge is a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-two of the penal law, auto stripping in the second degree as defined in section 165.10 of the penal law, auto stripping in the first degree as defined in section 165.11 of the penal law, identity theft in the second degree as defined in section 190.79 of the penal law, identity theft in the first degree as defined in section 190.80 of the penal law, or any other specified offense as defined in subdivision five of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she:

* NB Effective until July 5, 2028

* "Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-two of the penal law, an offense defined in sections 105.10 and 105.13 of the penal law provided that the underlying crime for the conspiracy charge is a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-two of the penal law, auto stripping in the second degree as defined in section 165.10 of the penal law, auto stripping in the first degree as defined in section 165.11 of the penal law, identity theft in the second degree as defined in section 190.79 of the penal law, identity theft in the first degree as defined in section 190.80 of the penal law, or any other specified offense as defined in subdivision five of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she:

* NB Effective July 5, 2028

(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 felony and the time of commission of the present felony, 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 (iii) a class A felony offense defined in article two hundred twenty of the penal 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.

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. "Alcohol and substance use evaluation" means a written assessment and report by a court-approved entity or licensed health care professional experienced in the treatment of alcohol and substance use disorder, or by an addiction and substance abuse counselor credentialed by the office of addiction services and supports pursuant to section 19.07 of the mental hygiene law, which shall include:

(a) an evaluation as to whether the defendant has a history of alcohol or substance use disorder, as such terms are defined in the diagnostic and statistical manual of mental disorders, fifth edition, and a co-occurring mental disorder or mental illness and the relationship between such use and mental disorder or mental illness, if any;

(b) a recommendation as to whether the defendant's alcohol or substance use, if any, could be effectively addressed by judicial diversion in accordance with this article;

(c) a recommendation as to the treatment modality, level of care and length of any proposed treatment to effectively address the defendant's alcohol or substance use and any co-occurring mental disorder or illness; and

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