NEW YORK CITY BAR

REPORT ON LEGISLATION BY THE CORRECTIONS AND COMMUNITY REENTRY COMMITTEE, CRIMINAL COURTS COMMITTEE AND THE MASS INCARCERATION TASK FORCE

A.4869	**M. of A. Forrest**
S.4547	**Sen. Ramos**

AN ACT to amend the criminal procedure law, in relation to judicial diversion programs; and to repeal certain provisions of such law relating thereto.

Treatment Court Expansion Act

THIS BILL IS APPROVED

The New York City Bar Association ("City Bar") supports passage of the Treatment Court Expansion Act, which would help ensure that people receive appropriate therapeutic treatments for various functional impairments, including mental health disorders and substance use disorder.

I. BACKGROUND

Despite the fact that large numbers of people with mental health disorders are funneled into and through the criminal justice system, the criminal justice system is not structured to assist people with significant mental health problems and address their needs. A review in May of 2020 found that half of all people incarcerated in New York City jails had a mental illness,[1] and the New York City Department of Correction (DOC) has failed to provide even marginal mental health care, resulting in numerous suicide deaths in 2021.[2] The New York State prison system is similar, with more than 14,000 incarcerated in State prisons who suffer from mental illnesses.[3] The Vera

[1] "People With Mental Health Diagnoses Left Out of 'Historic' NYC Decarceration," Filter, May 26, 2020, *available at* https://filtermag.org/rikers-mental-illness-coronavirus/ (All websites last visited May 15, 2025).

[2] George Joseph and Reuven Blau, "Self-Harm is Exploding in New York City Jails, Internal Numbers Show," The City, Sept. 7, 2021, *available at* https://www.thecity.nyc/2021/9/7/22659614/self-harm-suicide-rikers-island-new-york-city-jails-rising.

[3] "Eliminating Barriers to the Treatment of Mental Illness," Treatment Advocacy Center, *available at* https://www.treatmentadvocacycenter.org/browse-by-state/new-york.

About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Institute for Justice reported, "studies have shown that incarceration exacerbates behavioral health problems. More than four out of five people in jail who have a mental illness do not receive treatment there. Even when people do receive care, the trauma and destabilizing impact of jail — which includes being held in overcrowded, dehumanizing, and often violent environments — worsen mental health challenges."[4] The Treatment Court Expansion Act would create a new norm to address mental health disorders in a manner that is humane, just, and will also increase public safety by addressing some of the pressures that cause people to commit crimes.

II. CURRENT MODELS

Currently, Article 216 of the Criminal Procedure Law only allows for judicial diversion for a narrow range of individuals, specifically individuals suffering from substance use disorder. There is no codified treatment court for individuals suffering from other mental health disorders or functional impairments. Instead, any programming offered to such individuals is subject to prosecutorial consent and varies widely from county to county. In addition, even for those who do suffer from substance use disorder, the strict nature of the programming and the narrow definitions of who qualifies substantially limit the number of individuals with substance use disorder who can take part in judicial diversion.

A. Mental Health Courts

Several counties in New York have "mental health courts" which provide mental health treatment for individuals charged with crime, typically after a referral and approval from the prosecutor.[5] However, very few individuals are given the opportunity to participate in the court. In 2019, only 210 individuals participated in mental health treatment court, and in 2020 that number dropped to 90.[6] In addition, participants were concentrated in Brooklyn, which has a robust and long-standing mental health court often heralded as a particularly successful model. The Center for Court Innovation, which provides services to the Kings County Mental Health Court, reports that individuals who participate in the program have a "46% reduction in the likelihood of a rearrest for a participant versus a comparison group."[7] Despite its success, Brooklyn's court has not been replicated in other counties, and prosecutors in other counties allow far fewer individuals to take part in mental health court.

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[4] Lauren Jones, Sandra van den Heuvel, and Amanda Lawson, "The Cost of Incarceration in New York State: How Counties Outside New York City Can Reduce Jail Spending and Invest in Communities," Vera Institute of Justice, Jan. 2021, *available at* https://www.vera.org/downloads/publications/the-cost-of-incarceration-in-new-york-state.pdf.

[5] "Problem-Solving Courts," New York State Unified Court System, *available at* https://ww2.nycourts.gov/courts/problem_solving/mh/courts.shtml.

[6] Michael Rempel, Krystal Rodriguez, Tyler Nims, Joanna Weill, Madison Volpe, and Zachary Katznelson, "Closing Rikers Island: A Roadmap for Reducing Jail in New York City," A More Just NYC and Center for Court Innovation, Jul. 2021, at 42.

[7] "Brooklyn Mental Health Court," Center for Court Innovation, *available at* https://www.courtinnovation.org/programs/brooklyn-mental-health-court.

The current system relies entirely on prosecutorial consent and is not available in all counties. Many of these Courts do not allow individuals to participate who are accused of violent crimes, which bans many of the people most in need of mental health treatment from participating. In addition, the courts that do exist lack uniformity, with different prosecutors' offices having different requirements for entry into the program and different definitions of success. Often the requirements are extremely onerous, meaning that very few individuals are allowed to receive treatment in place of incarceration.

B. Drug Treatment Courts

The current drug treatment courts, while helping many, have narrow parameters which restrict the number of individuals who are eligible. Only individuals charged with low-level drug sales and some property crimes are eligible, categorically denying treatment to many individuals charged with felonies.

In addition, the onerous requirements of drug court, which often end in incarceration if the individual is not successful at complete abstinence, further discourages participation in drug court. Individuals may choose short prison terms over the years-long process required to succeed in drug treatment courts, which can still end in incarceration if perfect abstinence is not achieved. Those most at risk of drug overdose frequently do not engage in drug diversion courts.[8] The punitive protocols of drug treatment courts in New York are at odds with what is known about the nature of substance use disorder, and the ways that harm reduction, rather than complete abstinence, are worthy goals that can reduce overdose deaths.[9]

III. THE PROPOSED LEGISLATION

The Treatment Court Expansion Act would expand diversion courts in several ways. First, it would allow for diversion for anyone with a "functional impairment" including mental illness or substance use disorder. Second, it would allow for a court to consider offering diversion to any individual, regardless of the crime with which they were charged. Finally, it would encourage individuals to take advantage of diversion by removing barriers to entry, such as requiring pleas before entering treatment programs, and by creating a system that acknowledges difficulties and setbacks that individuals with serious mental illnesses and substance use disorder are likely to face while in the program. This legislation is a crucial step in undoing the long history of incarceration and further harming of people with mental illnesses and substance use disorder, rather than acknowledging and addressing the struggles they face.

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[8] "Drug courts also can fail to serve those most in need of treatment due to stringent eligibility criteria, which can both result in an inefficient use of limited treatment resources and skew the evidence of their effectiveness. For example, a study found that over half of the 907 individuals who died from overdoses in Philadelphia in 2016 had prior contact with the criminal legal system in the last two years, but only nine were deemed eligible to participate in drug court." "Reconciling Drug Courts, Decarceration, and Harm Reduction," Fair and Just Prosecution, *available at* https://fairandjustprosecution.org/wp-content/uploads/2021/02/FJP-Drug-Courts-Issue-Brief.pdf.

[9] *See generally id.*

IV. CONCLUSION

For the aforementioned reasons, we respectfully urge our elected officials to support the Treatment Court Expansion Act.

Corrections and Community Reentry Committee
Alexis Flyer and Stephanie A. Holmes, Co-Chairs

Criminal Courts Committee
Carola Beeney and Anna G. Cominsky, Co-Chairs

Mass Incarceration Task Force
Tess M. Cohen, Chair

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