

# TREATMENT NOT JAIL: FAQ

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## WHAT WILL THE TREATMENT NOT JAIL ACT DO?

- TNJ will **expand access** to treatment for people who are entangled in the criminal legal system by building on existing law that establishes drug courts in every county in the state. The TNJ model will allow people with a wide variety of “functional impairments” - including mental illness, development and intellectual disabilities, traumatic brain injuries and similar disorders - the opportunity to argue to a judge that they should receive treatment rather than a jail sentence.
- TNJ will **improve** upon the existing **treatment court model** by:
  - embracing **harm reduction** principles
  - adopting the tenets of **procedural justice**
  - allowing participation without the coercive and proven-ineffective requirement of a plea of guilty (AKA the “**pre-plea model**”)
  - lifting arbitrary eligibility restrictions that tie access to the person’s criminal history and criminal charges, **instead allowing judges to review each case to decide if treatment is in the public interest.**

## HOW DO TREATMENT COURTS IMPROVE PUBLIC SAFETY?

- **Incarceration has repeatedly proven to be a poor strategy for reducing crime.** Indeed, a robust body of evidence - studying New York and other jurisdictions - shows that imprisoning people actually makes them more likely to reoffend, and ultimately, makes our communities less safe. [1]
- **Treatment courts are highly successful methods of reducing crime, and thus, have received widespread, bipartisan support.** [2] Indeed, in a national survey conducted this fall, 81% of the 1,000 registered voters polled believe courts should help find treatment options for those charged with crimes, and 79% support diversion for low-risk offenders. [3]
- Currently, **mental health diversion is wildly underutilized:** half of the counties in New York do not even have a mental health treatment court, and those that do have significant barriers that prevent people most in need of treatment from being able to participate. In 2021, over **274,000 adults were arrested in NY state but only 570 individuals were admitted to mental health courts.**
- Drug diversion courts do exist in every county in New York, but they do not address mental health diagnoses, and are otherwise in need of overhaul.

## WHY THE PRE-PLEA MODEL?

- The Treatment Not Jail Act adopts the “pre-plea” model, which allows applicants to participate in diversion programs and access treatment without requiring them to plead guilty first. New York’s drug treatment courts and many mental health courts currently require participants to plead guilty at the outset of the program. However, for the reasons listed below, the “pre-plea” model has been embraced as a critical component of the newer generation of treatment courts, namely New York’s opioid courts [5] and the newly inaugurated Misdemeanor Mental Health Court in Midtown, Manhattan. Indeed, in 2018, the state of California passed legislation creating mental health treatment courts across the state and adopted a pre-plea model. [6]

1.ACCESS	2.EFFECTIVENESS	3.EFFICIENCY
<p>Requiring a guilty plea excludes many people from treatment, namely noncitizens who almost categorically cannot plead guilty due to exposure to deportation, even where the plea is vacated and dismissed. [7]</p>	<p>In treatment court settings, true voluntariness of the participant is critically linked with success. [8] Requiring an up-front plea often leads to coercive and in some cases abusive treatment modalities. Thus, the pre-plea model has shown to be more effective at reducing rearrest rates than courts requiring up-front pleas of guilty. [9]</p>	<p>Discarding the up-front plea requirement significantly speeds up and streamlines what has historically been an inordinately cumbersome admissions process. In Manhattan’s Felony Mental Health Court, for example, it takes applicants nearly one year on average to become enrolled in mental health court programming. [10] Operating without a plea allows courts to swiftly intervene when those in need of treatment enter the criminal legal system. [10]</p>

## WHY NOT DISQUALIFY VIOLENT FELONIES?

- Rather than tie eligibility to broad charge categories, like drug offenses or nonviolent felonies, TNJ would allow judges to make individual, case-by-case admissions determinations based on all the circumstances in a person’s case, as is the case in Brooklyn’s Mental Health Treatment Court, a nationally-recognized treatment model.

- Under the TNJ model, judges will be able to consider whether an underlying mental health or substance use issue contributed to the person’s criminal legal system involvement, whether the underlying issue can effectively be treated, and finally, whether it is in the best interest of the public to permit treatment, rather than jail or prison. This means that even those with violent felonies may be admitted to treatment court.
  - TNJ understands that being accused of a violent charge does not mean that allowing the person to participate in treatment will make the community less safe. In fact, the data is clear that people accused of violent charges are as likely to succeed as those charged with non-violent offenses. [11]
  - Even when another person is harmed, allowing the person accused of committing that harm to receive treatment ultimately keeps everyone safer by addressing the underlying causes of the criminal behavior.
  - 75% of those harmed in violent felony cases support treatment for the accused party. [12]

## WHY IS TNJ SUCH AN IMPORTANT FINANCIAL INVESTMENT FOR NYS?

**Treatment courts are a far more cost-effective public safety method than traditional carceral responses.**

- New York City on average expends \$556,539 to incarcerate just one person per year. [13]
- Treatment courts, however, actually save the state money and resources: the New York Office of Court Administration estimates that every \$1 invested in treatment courts produces \$2.21 in benefits to the state. [14]

## CITATIONS AND RESOURCES

[1] Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, 91(3\_suppl), 48S–65S. <https://doi.org/10.1177/0032885511415224>; Stemon, D. (2017, July). “The Prison Paradox: More Incarceration Will Not Make Us Safer.” Vera Institute. Retrieved January 2022, from [https://www.vera.org/downloads/publications/for-the-record-prison-paradox\\_02.pdf](https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf); Emily Leslie & Nolan Pope, The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments 60 *J. OF L. AND ECON.* 3, 529–557 (2017), [www.econweb.umd.edu/~pope/pretrial\\_paper.pdf](http://www.econweb.umd.edu/~pope/pretrial_paper.pdf); Will Dobbie et al., The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges (Nat’l. Bureau of Econ. Research, Working Paper No. N22511, 2018), [www.nber.org/papers/w22511.pdf](http://www.nber.org/papers/w22511.pdf).

[2] Michael Mueller-Smith & Kevin T. Schnepel, Diversion in the Criminal Justice System, 8 *THE REV. OF ECON. STUD.* 2, 883–936 (2021), <https://doi.org/10.1093/restud/rdaa030> (finding that diversion cuts reoffending rates in half and grows quarterly employment rates by nearly 50% over 10 years); Amanda Agan, Jennifer Doleac & Anna Harvey, Misdemeanor Prosecution (Nat’l Bureau of Econ. Res., Working Paper No. 28600, 2021), [https://www.nber.org/system/files/working\\_papers/w28600/w28600.pdf](https://www.nber.org/system/files/working_papers/w28600/w28600.pdf) (finding non-prosecution of a nonviolent misdemeanor offense leads to large reductions in the likelihood of a new criminal complaint over the next two years); David Huizinga & Kimberly L. Henry, The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies, in *THE LONG VIEW ON CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH* 244 (Akiva M. Liberman, ed., 2008); John Laub & Robert Sampson, Life-Course and Developmental

Criminology: Looking Back, Moving Forward, J. OF DEV. AND LIFE-COURSE CRIMINOLOGY (2020); Shelli B. Rossman, Janeen Buck Willison, Kamala Mallik-Kane, KiDeuk Kim, Sara Debus Sherrill, P. Mitchell Downey, Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York, Nat'l Inst. of Justice (April 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238264.pdf>.

[3] See, e.g. United States Senate Republican Policy Committee, Bipartisan Safer Communities Act, Sept. 2022, <https://www.rpc.senate.gov/policy-papers/the-bipartisan-communities-acts-treatment-court-funding>

[4] National Center for State Courts, State of the State Courts: 2022 Poll, [https://www.ncsc.org/\\_data/assets/pdf\\_file/0019/85204/SSC\\_2022\\_Presentation.pdf](https://www.ncsc.org/_data/assets/pdf_file/0019/85204/SSC_2022_Presentation.pdf).

[5] New York Courts. Opioid Courts: Overview. [https://ww2.nycourts.gov/COURTS/problem\\_solving/opioid-courts-overview.shtml#:~:text=The%20Opioid%20Court%20model%20holds,at%20high%20risk%20of%20overdose](https://ww2.nycourts.gov/COURTS/problem_solving/opioid-courts-overview.shtml#:~:text=The%20Opioid%20Court%20model%20holds,at%20high%20risk%20of%20overdose); Brad Hoylman, Midtown Community Court Launches Misdemeanor Mental Health Court, Expands Age Eligibility for Specialized Part Aimed at Young Adult, Low-Level Offenders. March 22, 2022. <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/midtown-community-court-launches-misdemeanor-mental-health>.

[6] CA Penal Law Section 1001.36 (2018), available at [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1001.36.&lawCode=PEN](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1001.36.&lawCode=PEN).

[7] Risks to Immigrants From Drug Court Participation. State Justice Institute, Center for Public Policy Studies, Immigration and the State Courts Initiative, <https://www.sji.gov/wp/wp-content/uploads/Immigrants-in-Drug-Court-4-1-13.pdf>.

[8] A. Opsal,, Ø Kristensen, & T. Clausen, Readiness to change among involuntarily and voluntarily admitted patients with substance use disorders. *Subst Abuse Treat Prev Policy* 14, 47 (2019). <https://doi.org/10.1186/s13011-019-0237-y>.

[9] Shannon M. Carey, Michael W. Finigan, and Kimberly Pukstas, Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs. NPC Research (March 2008), <https://www.ojp.gov/pdffiles1/nij/grants/223853.pdf>; National Drug Court Institute. Special Issue: Best Practices in Drug Court. *Drug Court Review*. Vol. VIII, Issue 1. 2012. [https://www.ndci.org/wp-content/uploads/DCR\\_best-practices-in-drug-courts.pdf](https://www.ndci.org/wp-content/uploads/DCR_best-practices-in-drug-courts.pdf).

[10] Erin Farley. A Process Evaluation of the Manhattan Mental Health Court. Center for Court Innovation. 2015. <https://www.courtinnovation.org/sites/default/files/documents/MMHC%20Process%20Evaluation%20Final.pdf>; Chelsea Rose Marcus, 'It's a cruel world, and I'm better off dead:' Manhattan Mental Health Court offers lifeline to those with serious mental illness — but they have to get in, *NY Daily News*, Nov. 14, 2020, <https://www.nydailynews.com/new-york/ny-manhattan-mental-health-court-covid-2020115-d6klmmhhkjaezolehcxzugqrm-story.html>.

[11] Naples, Michelle and Steadman, Henry, "Can Persons with Co-occurring Disorders and Violent Charges Be Successfully Diverted?" *Intl J. on Forensic Mental Health*, 2(2):137-143 (October 2003), [https://www.researchgate.net/publication/232426982\\_Can\\_Persons\\_with\\_Co-occurring\\_Disorders\\_and\\_Violent\\_Charges\\_Be\\_Successfully\\_Diverted](https://www.researchgate.net/publication/232426982_Can_Persons_with_Co-occurring_Disorders_and_Violent_Charges_Be_Successfully_Diverted).

[12] Alliance for Safety and Justice, Crime Survivors Speak: National Survey of Victim's Views on Safety and Justice, 2022, <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

[13] NYC Comptroller, NYC Department of Correction FYs 2011-21 Operating Expenditures, Jail Population, Cost Per Incarcerated Person, Staffing Ratios, Performance Measure Outcomes, And Overtime (December 2021).

[14] New York State Unified Court System, The Future of Drug Courts in New York State: A Strategic Plan (2017), [https://www.nycourts.gov/legacyPDFS/courts/problem\\_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf](https://www.nycourts.gov/legacyPDFS/courts/problem_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf) .