

TREATMENT NOT JAIL ACT

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BILL SUMMARY

OVERVIEW OF THE TREATMENT NOT JAIL ACT

New York State currently relies on a patchwork system of mostly prosecutor-driven mental health and other treatment courts to divert people from jails and prisons. These programs are wildly underutilized and in desperate need of modernization. Under the current system, our jails serve as the largest mental health facilities in the state and provide, by all accounts, abhorrent care. More often than not, incarceration profoundly exacerbates the crisis that led to a person's involvement with the criminal legal system in the first place.

We need a statewide public health solution to make our communities healthier and safer by ending the revolving door of incarceration for people with mental illness, substance use disorders, and other disabilities.

The Treatment Not Jail Act (TNJ) modernizes and expands an existing state law, CPL Article 216, that created limited drug courts in every county, to enable them to accept people with mental health concerns. TNJ also creates more efficient and fair processes, removes other arbitrary barriers to participation, and shifts the approach of the current diversion court model to one based in evidence-based practices.

TNJ EXPANDS ACCESS TO TREATMENT COURT

- TNJ expands eligibility for judicial diversion to encompass all “functional impairments,” including mental illnesses, substance use disorders, developmental disabilities, and other similar conditions that cause clinically significant distress or disability in social, occupational or other areas of functioning.
- TNJ adopts a "pre-plea" model, a model increasingly embraced by treatment courts in New York and across the country. By eliminating the requirement that people plead guilty before accessing treatment, TNJ moves cases along expeditiously and expands eligibility to non-citizens and many other groups.
- TNJ moves away from the current model of applying arbitrary, charge-based eligibility criteria, and instead allows judges to consider each application holistically and determine on a case-by-case basis whether treatment is appropriate and in the public interest.
- The bill provides more flexibility to accommodate cases with limited community-based treatment options by allowing treatment by Telehealth, encouraging courts to consider virtual court appearances, and creating a mechanism to transfer cases to the diversion court in an adjoining county or the county in which the participant resides.

TNJ CREATES A MORE FAIR AND EFFICIENT DIVERSION PROCESS

- TNJ allows eligible individuals to seek treatment before the case is adjudicated. Those who successfully complete treatment will have their charges dismissed and sealed. Participants who do not will continue through the traditional criminal court process.
- When the court believes the participant may have violated the agreed-upon terms of their participation, the court is required to conduct a hearing consistent with due process protections, including:
 - 48 hours notice to the participant and defense counsel
 - The opportunity for the participant to provide evidence and cross-examine witnesses
- If a court finds that an incident of noncompliance has occurred, TNJ requires judges to adopt a system of graduated responses. When determining an appropriate response, courts must consider mitigating circumstances, the length of time already spent in treatment, and the role of relapse in long-term recovery.
- Under TNJ, when assigning a response, courts may not change the terms of the person's custody status unless there is no reasonable explanation or mitigation for the instance of noncompliance, thus ensuring that participants are not jailed summarily.
- Under TNJ, courts may not terminate the person from the program unless it finds no other treatment is available, thus ensuring that participants are not terminated summarily.
- TNJ provides a more formal, clearly-defined system of handling confidential health information for diversion participants and applicants at all stages of the process, in accordance with state and federal health privacy laws.

TNJ INCORPORATES PROVEN-EFFECTIVE CLINICAL BEST PRACTICES TO MODERNIZE THE TREATMENT COURT MODEL

- The bill clarifies that treatment plans are to be developed by treatment providers and licensed clinicians in partnership with the participant, not by judges and lawyers. Contours of the treatment plan will be based on the specific needs of the participant and will be limited to what is clinically necessary. Any modifications to treatment plans will be based on the recommendations of the treatment provider.
- TNJ mandates that toxicology screenings be administered in accordance with guidelines issued by the Office of Addiction Services and Supports.
- TNJ is guided by proven-effective harm-reduction principles, which aim to mitigate the harms of substance use by meeting the participant "where they are" and offering low-barrier access to treatment. In accordance with harm reduction principles, in some instances - as identified by a treatment provider - TNJ allows for successful program completion even when a participant is unable to achieve full abstinence, where that participant has engaged to the best of their ability, has otherwise achieved a significant reduction or change in use, and made substantial improvements to their health and social stability.
- The bill also clarifies the role of certified peers and urges them to be deployed in every stage of the judicial diversion process.