THE BRONX DEFENDERS

The Bronx Defenders[1] calls for the passage of the Treatment Court Expansion Act (S4547/A4869) and investment in public health solutions that increase community safety and wellbeing. The Bronx is one of the most over-policed[2] and under-resourced[3] boroughs in New York City. Disinvestment in social services and healthcare have left incarceration as a catch-all for the people we represent, many of whom struggle with mental health and substance use. Every day, we represent Bronx community members whose contact with the criminal legal system is driven by untreated mental health needs, substance use disorders, or unaddressed trauma. The Treatment Court Expansion Act (TCEA) will increase statewide opportunities for holistic, health based interventions that are tailored to clients' needs. In communities across the state overburdened with systemic inequities, passing TCEA is a critical step towards a more compassionate and rational approach to treating underlying mental health diagnoses that lead New Yorkers to become trapped in cycles of incarceration.

I. Background on Treatment Court Expansion Act

New York's treatment courts operate under a patchwork system of *ad hoc* mental health courts and limited drug courts. These courts are widely underutilized and in desperate need of streamlining and modernization. For decades, jails and prisons have increasingly become our state's de facto psychiatric institutions, a cruel trend that shows no signs of abating. The care people receive behind the wall is abhorrent, and people inevitably return to our communities even more destabilized and freshly traumatized.

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[1] The Bronx Defenders is a public defender office that is radically transforming how low-income people in the Bronx are represented in the legal system. Each year, we defend nearly 20,000 Bronx residents in criminal, civil, family, and immigration cases.

[2] Stenkamp, Anna and Rempel, Michael, Racial and Neighborhood Disparities in New York City Criminal Summons Practices, New York, NY: Data Collaborative for Justice, John Jay College of Criminal Justice (2024)

[3] Pain Point Analysis: Bronx, New York State of Health, (July 29, 2022)

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 health and substance use disorders, and other disabilities.

The Treatment Court Expansion Act modernizes and expands an existing state law, CPL Article 216, which in 2009 created limited drug courts in every county, to enable them to accept people with mental health concerns. TCEA 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.

TCEA opens accessibility while still balancing public safety concerns. This legislation would expand eligibility to include all "qualifying diagnosis" which consist of a wide range of mental diagnoses, most of which are currently excluded from drug courts. The most serious offenses like Class A felonies and Class B felony sex offenses would still require affirmative DA consent to be eligible. Otherwise the local treatment court judge will make a holistic eligibility determination on a case-by-case basis.

This legislation also adopts a bifurcated pre-plea model, which allows judges to require up-front guilty pleas for people charged with violent felonies, but allows those facing non-violent felony charges and misdemeanors to enter these programs immediately, without having to plead guilty. This “pre-plea” model is already practiced in many of New York’s most successful treatment court programs.

Finally, the bill is also drafted with an eye toward the practical realities of New York’s treatment landscape. TCEA offers courts several mechanisms to adapt to a scarcity of services, and where the county simply cannot offer the level treatment that would meaningfully address the person’s needs, judges are authorized to decline admission.

Treatment courts and the policies embodied in this legislation are widely popular, and have broad support among every-day New Yorkers and experts in the fields of mental health treatment, drug policy advocates, and criminal legal system reform. TCEA is a transformative piece of legislation that finally addresses the intersection of our state’s mental health crisis and the criminal legal system with a common-sense, compassionate, and cost-saving approach.

II. Improved Public Safety and Fiscal Outcomes

TCEA is not only a bill that will make communities safer and more resilient, this legislation will save the state hundreds of millions of taxpayer dollars. Individuals with mental health challenges currently cycle through the criminal legal system, further decompensating with every arrest. It's critical to treat the root causes of criminal legal involvement. Experts believe that expanding treatment courts could cut recidivism in half and grow quarterly employment rates by 50% over 10 years, ultimately helping people become self-sustaining and autonomous.[4]

The bill will also save the state money. The New York Office of Court Administration estimates that for every $1 spent, the state will get $2.21[5] and when taking into account collateral impacts, like child welfare and improved healthcare, that number skyrockets to $10 dollars for every $1 invested.[6]

It was under similarly financially uncertain times that our state passed Drug Law Reform, the landmark legislation that established statewide drug courts. Passed in the height of the fallout from the 2008 financial crisis, New York state was facing significant budget shortfalls, and elected leaders were spurred to develop a more financially efficient criminal legal system.[7] Just 18 months after these courts were rolled out, the state reported a savings of $1M each month."[8] Now Recidiviz estimates TCEA will save New York State $908M over 5 years in reduced NYC jail costs and $894M over 5 years in reduced state prison costs. We cannot afford not to streamline and modernize our courts and we owe it to our communities.

III. Improving Medical Treatment Plans

It's critical that law enforcement act as law enforcement and clinicians as clinicians. In CPL Art. 216, prosecutors and judges make decisions about a person's mental health state and,

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[4] Recidiviz, Increasing Diversion Opportunities in New York (Dec. 2023)
[5] New York State Unified Court System
[6] Center for Court Innovation,Testing the Cost Savings of Judicial Diversion (2013)
[7] Jim Parsons, Qing Wei, Joshua Rinaldi, Christian Henrichson, Talia Sandwick Travis Wendel and Ernest Drucker, Michael Ostermann, Samuel DeWitt, Todd Clear, *A Natural Experiment in Reform: Analyzing Drug Policy Change In New York City Final Report* , p. 172, (January 2016)
[8] Public Hearing Transcript, "Implementation and Funding of the Rockefeller Drug Law Reform Legislation," , p. 20 ("with the deficits we're in right now of the millions and billions we can see that we are saving and doing what's right for the people of the state of New York.") (December 20, 2010)

more dangerously, about their treatment plan. This is not an effective or appropriate role. TCEA clarifies that a licensed clinician, not judges or lawyers, will develop an appropriate treatment plan to target the individual's qualifying diagnosis. The court retains the authority to admit or not admit a person into judicial diversion and the prosecutor has the ability to argue and present evidence that a person should or should not be admitted. But once a person is admitted, the only appropriate medical decision-maker is a state licensed healthcare professional.

IV. Importance of Clinical Assessments

It's important to know the person's mental health condition to make an appropriate determination about their suitability for treatment court. Documents in a person's court file, like the rap sheet or the indictment, cannot reveal the underlying circumstances or inherent complexity of a person in crisis. Relying only on the "appearance" of a person in court is also not an option, as this will force judges to rely on unconscious biases, ultimately leading to discrimination.

At the same time, it serves no one to fill a courtroom with frivolous applications. TCEA strikes a balance. In an effort to avoid unnecessary and duplicative clinical assessments, TCEA allows judges to refer to a previously completed assessment instead of ordering a new evaluation. In addition, the model places an initial onus on the defense to make a prima facie showing that one or more qualifying diagnoses exist. Ultimately, these measures aim to investigate the root cause of criminal legal involvement while trying to make court operations more efficient.

V. Importance of Pre-plea

One of the cornerstones of TCEA is that it promotes a pre-plea model for lower level offenses, namely nonviolent felony offenses and misdemeanors. This reduces the amount of time that a person may have to wait prior to starting treatment, which in many counties can be months or even more than a year, bridges a racial justice gap, and eliminates other barriers to these programs.

A pre-plea opens up access particularly to those who may face immigration consequences,[9] who may not be guilty (at least of the highest charge),[10] and those who are naturally apprehensive about treatment. Pre-plea diversion is vital in the Bronx where nearly one third of residents were born outside of the United States. For our non-citizen clients, taking a plea may result in them being placed into removal proceedings and being detained in inhumane conditions apart from family members, even if that plea is later vacated upon successful completion of a program.[11] Without pre-plea diversion, our clients are often forced to choose between triggering harsh immigration consequences and getting access to treatment.

In 2017, the Bronx Defenders represented a young man named Selmin Feratovic, a legal permanent resident who had been in the country since he was a child.[12] Selmin was overcharged with Burglary after he was alleged to have entered an apartment laundry room to try to pry open a coin machine. At the time of his arrest, Selmin was struggling with a serious opioid addiction. He was held at Rikers Island on bail and was offered drug treatment only if he took a plea to a felony charge that would trigger deportation proceedings. Selmin was faced with the choice between accessing drug treatment that would lead to his deportation or remaining in a cage on Rikers Island. Selmin had been incarcerated at Rikers Island for seven months when he was found dead, having overdosed days before his 28th birthday. Selmin's story exemplifies the urgent need for TCEA's pre plea model. All New Yorkers must be able to access necessary treatment without risking immigration consequences and in Selmin's case, even death.

A pre-plea model is also more effective.[13] In a comparative study of 18 drug courts nationwide, researchers concluded that the pre-plea model both increased graduation

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[9] State Justice Institute, Center for Public Policy Studies, Immigration and the State Courts Initiative, *Risks to Immigrants From Drug Court Participation* (n.d.)

[10] Flores, P., Lopez, J. Pemble-Flood, G., Riegel, H., Segura, M. *An Analysis of Drug Treatment Courts in New York State*, SUNY Rockefeller Institute of Government, Center for Law & Policy Solutions (May 23, 2018)

[11] *Matter of Mohamed*, 27 I. & N. 92 (BIA 2017)

[12] Gupta, A. *Bad Bail Practices and Immigration Policy Led to My Client's Death at Rikers*, The Marshall Project (2017)

[13] Opsal, A., Kristensen, Ø., & Clausen, T., Readiness to change among involuntarily and voluntarily admitted patients with substance use disorders, *Substance Abuse Treatment, Prevention, and Policy*, *14*(1) (October 22, 2019); D. Werb, A. Kamarulzaman, M.C. Meacham, C. Rafful, B. Fischer, S.A. Strathdee, E. Wood, *The effectiveness of compulsory drug treatment: A systematic review*, Intl. J. of Drug Policy (Feb. 2016)

rates and lowered costs.[14] Finally removing the requirement to plead guilty streamlines admissions processes which supports court operations and best medical practices. Operating without a plea allows courts to swiftly intervene when those in need of treatment enter the criminal legal system. It is primarily for this reason that New York's Opioid Intervention Courts, which are focused on immediate connection to treatment to avoid overdose, uniformly operate without requiring an up-front plea.[15] As public defenders, we see how delayed access to care can lead to deterioration, relapse, rearrest and crises for our clients. Decreasing barriers to treatment helps promote paths to recovery and stability.

As public defenders in the Bronx, we see everyday how Black and Latine community members are targeted by the criminal and immigration legal systems. Within the system itself, pre-plea benefits are not afforded equally across the state, and there exists a glaring racial divide between courts that are predominantly Black and courts that serve their white counterparts. Both the American Bar Association and the New York State Bar Association urge diversion courts to adopt a pre-plea model as a matter of racial equity. The ABA notes that "empirical study of post-plea diversion reveals a significant number of participants are subject to more severe penalties than similarly situated individuals who are not subject to diversion, particularly when the participant is a person of color."[16] In Buffalo, white people make up a staggering 83% of the total enrollment for the local opioid court, while the Buffalo drug court counterpart is far more racially diverse, with white people making up only 46% of the total population. The opioid court is much more public health oriented and embraces a pre-plea model while the drug court is punitive and reflects archaic views on treatment. Race should not be dispositive on the nature of your care. Across the state all non-violent felonies and misdemeanors should be entitled to receive the accessibility, efficiency and medical benefits of a pre-plea model.

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[14] Carey, S. M., Finigan, M., & Pukstas, K. Document Title: Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs, *NPC Research* (2008)

[15] *Opioid Courts - Overview, NYCOURTS.GOV*. (n.d.)

[16] *Criminal Justice Standards on Diversion*, American Bar Association (August 2022) ("Post-plea diversion programs, where the case is so close to the issuance of a final judgment, do not deviate significantly from the traditional criminal legal system. As a result, these programs occur in the presence of features of the criminal legal system that are often contrary to the objectives of diversion. For example, empirical study of post-plea diversion reveals a significant number of participants are subject to more severe penalties than similarly situated individuals who are not subject to diversion, particularly when the participant is a person of color.")

TCEA will expand evidence-based treatment options for New Yorkers impacted by mental health challenges and substance use who are entangled in the criminal legal system. This bill will promote cost-effective and long-term public safety outcomes by addressing the root causes of legal system involvement instead of using incarceration and punishment. Pre-plea diversion is essential for promoting racial justice and protecting immigrant New Yorkers from the devastating consequences of family separation. The Bronx Defenders urges the legislature to pass the Treatment Court Expansion Act.