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**Senate Standing Committee on Alcoholism & Substance Use**  
**The Treatment Court Expansion Act, S.4547**  
**October 10, 2025**

The Center for Justice Innovation has piloted, researched, and implemented countless groundbreaking criminal justice reform operations. Our teams work throughout all stages of involvement with the criminal legal system, using community level engagement and working within systems to connect people to community-based services that meet their underlying needs and reduce the likelihood of future harm.

Specifically related to the possible expansion of judicial diversion, the Center for Justice Innovation operates two of the most successful court-based treatment models that this legislation would build upon: the Brooklyn Mental Health Court, and the Felony ATI Court in Manhattan. Due in no small part to the leadership and vision of Judge D’Emic in Brooklyn and Judge Biben in Manhattan, as well as close partnerships with the Kings County District Attorney’s Office, the Manhattan District Attorney’s office, the Office of the Special Narcotics Prosecutor, and the institutional defense providers, these programs have been incredibly successful. They have shown that it is possible to go far beyond the current framework of Article 216 with respect to the types of behavioral health conditions that are appropriate for diversion, and the kinds of offenses that could be eligible for judicial diversion.

Brooklyn Mental Health Court has been running for almost 25 years, exclusively serving people with serious mental illness, many of whom are charged with violent felonies. In that time, we have safely diverted over 1500 people.

Since 2019, our Manhattan Justice Opportunities program – which goes beyond the traditional substance use and mental health court models to offer treatment and community support for a wide variety of needs – has partnered with the Manhattan Felony ATI Court to divert over six hundred felony defendants, many of whom wouldn’t qualify under the current Article 216. Over half of those individuals were charged with violent felonies.

However, even in a resource rich environment like New York City, despite the innovative approaches led by Judge D’Emic and Judge Biben, and despite the close partnership of

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several District Attorney offices in those counties, people who seek treatment outside of the current Article 216 framework often wait for months to be diverted. Given significant barriers to entry, many people decline to pursue these alternatives and instead choose to negotiate jail or prison sentences that do little to change behavior or impact long term public safety.

**The Center for Justice Innovation fully supports the goal of the Treatment Court Expansion Act (TCEA) to reduce barriers to the kinds of court-based responses that hold individuals accountable, offer community-based supports that provide opportunities for long term stability and reduce recidivism, and make us all safer in the process.**

As the legislature continues to deliberate on the TCEA, there are three broad considerations that will determine its durability and success:

1. Minimizing preliminary barriers to the consideration of a treatment court disposition
2. Striking a balance between preserving judicial discretion and improving incentives to participate in diversion courts
3. A sustained focus on implementation and the availability of community resources is as critical to the success of the TCEA as the procedures outlined in the legislation

*Minimize initial barriers to the consideration of treatment court*

**The Center for Justice Innovation supports reducing initial barriers to consideration of a disposition under Article 216, including the expansion of behavioral health conditions that are eligible for treatment, as well as the elimination of most charge and criminal history-based exclusions.** That does not mean that all defendants should be granted judicial diversion; rather, the decision as to whether someone should be granted diversion should be informed by an evaluation conducted by a clinician who has been specifically trained to assess whether the individual's clinical needs can be safely addressed by available community supports.

Such an assessment is worth offering even when the charges appear to be serious, or when a person has previously been convicted of a violent felony. The wide availability of clinical evaluations will not lead to a deluge of assessment requests since it is unlikely that a defendant who is facing serious charges will want to undergo an assessment that will be shared with the District Attorney and the court unless there is a chance of their case being diverted. Nor would it result in the automatic release of individuals who pose a threat to public safety; judges would still retain the authority to weigh the position of the District

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Attorney and deny diversion when warranted based on the facts of the case and the circumstances of the individual. As noted above, people facing serious, violent charges have been successfully diverted through court programs for years.

In order to speed up the process, the assessment should be offered prior to the transfer of the case to a diversion court and can occur entirely off-calendar. This way, the clinical evaluation can occur simultaneously to the resolution of preliminary legal issues with no interruption of the traditional legal proceedings, and would not require the attention of the diversion court until the clinical work is completed and the judge can make a fully informed decision.

### *Balancing judicial discretion and the chilling effect of plea requirements*

The current version of TCEA allows judges to require a guilty plea for violent felonies but does not allow for plea-based mandates for nonviolent felonies. We do not see a strong basis for that distinction, as many defendants charged with nonviolent felonies are at greater risk of noncompliance than many defendants who are charged with violent felonies. Judges who grant diversion over the District Attorney's objection are taking on a significant burden in making that decision, and many believe that the plea structure upholds a critical measure of accountability and trust between the court and the program participant.

However, it is clear that the plea negotiation process and the legal liability stemming from an up-front guilty plea have a chilling effect on some defendants' willingness to avail themselves of judicial diversion. People who have spent months in jail pretrial would often prefer to negotiate for a sentence of incarceration- which does nothing to mitigate their future likelihood of recidivism- than to try to complete a lengthy treatment mandate. Defense attorneys are often reluctant to recommend a treatment plea when, for example, a person can be sentenced to prison time after spending many months in a residential treatment program before a relapse that leads to a violation of the mandate.

A middle-ground approach would be to make pre-plea diversion possible for people who are independently motivated, but preserve the judicial discretion to impose a plea-based treatment mandate when voluntary participation is less likely based on objective factors. Accordingly, **the Center for Justice Innovation would support a presumption of pre-plea diversion for non-violent felonies absent certain specific findings that a judge should be able to consider before granting diversion.** For example, a judge could require a plea

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after making a finding of a recent history of failures to appear, previous failures to complete a treatment program, or new arrests while engaged in judicial diversion. With regard to violent felonies, judges should also have the discretion to accept someone into treatment without an up-front plea, particularly when limited community-based resources are immediately available.

In order to mitigate the chilling effect of post-plea sentencing, **the Center for Justice Innovation supports enhanced judicial discretion to depart from the statutory minimum sentence when an individual makes a meaningful effort to complete a treatment mandate after a diversion plea, even if they do not complete the mandate.** People should be rewarded, not punished, for trying to engage in treatment.

### *Implementation and Resources*

Any legislative changes that would expand access to treatment in lieu of incarceration depends largely on the availability of community-based service infrastructure to support the work of assessing individual needs, identifying local providers, hiring case managers, and expanding the number of treatment slots available to people who are justice-involved. Even in New York City, people who have been approved for some form of diversion often wait months for a bed to open up. There is currently just one residential program that is equipped to treat individuals with serious mental illness (SMI), and none for people diagnosed with SMI who do not have a co-occurring substance use disorder. Resources for people who are neurodivergent or suffer from neurodevelopmental conditions are nearly non-existent for the forensically involved population. Slots in existing treatment courts are severely limited by the number of case management and assessment staff that existing funding can sustain.

Treatment courts depend on a wide array of professionals who stretch across agencies, disciplines, government systems, and non-profits. The expansion of these services implicates significant logistical challenges involving workforce development, medical coverage, housing, transportation, and more. If service providers are not funded to meet the complex needs of the individuals they aim to serve, fewer participants be successful and the model will not be sustainable. **We urge the Legislature and the Governor to look beyond the four corners of the bill to the availability of these resources for the justice-involved population – especially outside of New York City – when considering the implementation timeline.**



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Finally, we commend the sponsors and the advocates supporting this bill, as well as the Office of Court Administration, for their thoughtful approaches to working across stakeholder groups to increase the number of people who can avoid the negative consequences of incarceration, get on the path to recovery, and make us all safer in the process.