

Testimony In Support of Treatment Court Expansion Act, S.4547/A.4869

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For 33 years, I have represented clients charged with felony offenses in Nassau County and have extensive experience in our drug treatment and mental health courts. Since 2009 when the felony judicial diversion court was created pursuant to CPL Article 216, I have seen firsthand how effective these courts are in treating clients with substance abuse and mental health disorders. For a minimum of 18 months, treatment courts provide intensive oversight by a dedicated team consisting of the judge, prosecutor, court case manager and defense attorney who meet regularly to monitor a client's progress. Clients learn to identify triggers that result in relapse and develop the tools necessary to maintain sobriety. Treatment court is not an "easy way" to deal with criminal charges. The program is demanding, and success requires genuine effort by the client to succeed. But by addressing the underlying reasons why a person offends or reoffends, which so often is rooted in addiction, clients can chart a new course toward sobriety and a stable and law-abiding life. Treatment courts have high success rates, reduce recidivism, save lives and strengthen families. Many of my former clients still contact me and repeatedly state that if they did not have the opportunity to participate in drug treatment court they would likely be dead or in prison. It is undeniable that judicial diversion works and should be expanded.

Unfortunately, CPL Article 216, the only statutory vehicle that authorizes treatment courts to exist, remains far too restrictive. Eligibility is limited to certain drug and non-violent theft offenses. Misdemeanors, DWI cases, and individuals with violent

felony convictions within the past ten years are excluded. These restrictive eligibility standards leave way too many people in need of treatment behind.

I currently represent two clients with Class C felony heroin possession charges. Both are addicted to heroin and at grave risk of overdose with heroin and/or heroin laced with fentanyl. One client is eligible for judicial diversion and will receive intensive treatment. My other client, though, is excluded from diversion because he was convicted of a violent felony offense nine years ago. Both clients are at risk of continuing to reoffend if not given intensive treatment. That is the reality criminal defendants dealing with the scourge of addiction face every day in our courts. But, the client who is ineligible for diversion will serve a 3 ½ year upstate sentence, and, without treatment, will revert to drug use and likely reoffend upon completion of his sentence. This is a tragic, yet predictable outcome, that the Treatment Court Expansion Act would prevent by removing the unnecessary restrictions to treatment.

Another flaw is the requirement that participants plead guilty to felony charges up front. Such pleas expose our clients to lengthy prison terms if they relapse or fail out of diversion. The risk of harsher punishment discourages many from even attempting treatment and defense attorneys are reluctant to advise their clients to engage in treatment considering such risks. With the exception of individuals charged with violent felony offenses the Treatment Court Expansion Act appropriately eliminates the requirement of up front pleas, removing a major disincentive and opening the door for more clients to participate in life-saving treatment.

Equally troubling, participation in judicial diversion courts is limited to clients diagnosed with substance abuse disorders. Individuals with mental health issues or

dual diagnosis are excluded from diversion programs. This is a glaring omission. New York State has dropped the ball by not focusing on the root causes of addiction, including family instability, poverty and untreated mental health issues. Programs that exist in individual counties do not operate in a uniform or consistent manner, and all have widely different treatment modes and eligibility requirements. Currently there are only 40 mental health courts statewide. These courts are funded by their respective counties, and not New York State. Accordingly, mental health courts are drastically underfunded and underutilized. Data collected since 2021 embarrassingly show that out of the hundreds of thousands of individuals arrested statewide, only 570 New Yorkers were admitted into mental health court. These statistics are worse in Nassau County, where in 2024, out of 14,291 arrested, only 10 new clients were admitted into Nassau County Mental Health Court. Contrast this to Nassau County's drug felony diversion court where 340 new clients were admitted. Clearly, while the need for expansion of these programs is enormous, access is negligible.

There are several reasons why the number of participants in mental health courts is so low. First, without a statutory mandate, mental health courts are vastly underfunded. Nassau County only has funding to accommodate 36 participants, and only Nassau county residents can participate, excluding clients residing in bordering counties. The Treatment Court Expansion Act will expand the eligibility for judicial diversion to clients with mental health, not only substance abuse issues.

Finally, another huge impediment to client participation is the way that District Attorneys are able to play a gatekeeping role. Without a statute mandating mental health courts, like Article 216 does for drug courts, these programs can only be

operated with the approval of the local District Attorney. In my county, the District Attorney's Office refuses to consider many deserving candidates and rejects almost everyone outright. In addition, they also insist on mandating a plea of guilty up front, usually to the top count. This excludes clients who are overcharged and not guilty of the top charge. Additionally, the time taken to negotiate the plea and the contract delays treatment especially for clients who are incarcerated. This undermines the very purpose of treatment courts.

The Treatment Court Expansion Act corrects these structural failures. By expanding eligibility, eliminating the up-front plea requirement for lower level offenses, and including individuals with mental health issues, it will allow more New Yorkers access to meaningful treatment. Once again, this Act is not a "get out of jail card", but rather promotes health and public safety. The Treatment Court Expansion Act will save lives, reduce crime, stabilize families and build safer communities. Throughout my career I have witnessed the power of treatment for those afflicted with the disease of addiction and for those suffering from mental illness. I urge the legislature and the Governor to bring the opportunity for change, treatment and rehabilitation to all those who need it.