TESTIMONY OF

NEW YORK ASSOCIATION OF TREATMENT COURT PROFESSIONALS

BEFORE THE
NEW YORK STATE SENATE STANDING COMMITTEE TASK FORCE ON ALCOHOL AND SUBSTANCE USE DISORDERS

THE TREATMENT COURT EXPANSION ACT (S.4547)

October 10, 2025

Presented by
Judge Jo Ann Ferdinand (Retired)
Chair of the Advisory Council NYATCP

Good morning Senators. Thank you for the opportunity to speak with you. My name is Jo Ann Ferdinand and I am a retired Judge of the Kings County Supreme Court. I founded the Brooklyn Treatment Court in 1996. It was the first Drug Treatment Court in New York City and one of four in the State: Buffalo, Rochester, and Suffolk. In my 20 years as a Treatment Court Judge, I allowed over 6,000 criminal defendants the opportunity to avoid prison time in return for enrolling in court supervised treatment. Here with me at this hearing is Retired Judge Marcia Hirsch of Queens Supreme Court, the founding Judge of the Queens Treatment Court and the immediate past President of the New York Association of Treatment Court Professionals (NYATCP). Judge Hirsh presided for 19 years over a Mental Health Court, Judicial Diversion part, a Veterans Treatment Court, and she started the first DWI Treatment Court in the state.

We are here today representing the Association, a not-for-profit organization of judges, prosecutors, defense lawyers, treatment professionals, law enforcement officers, court employees and peers, all of whom work in the nearly 400 Treatment Courts located in urban, suburban, and rural communities throughout the state. Our courts are in every community, each with different resources and needs. Together, New York's Treatment Courts have saved hundreds of thousands of individuals' whose substance use and/or mental health disorder brought them into contact with our courts by using the crisis of an arrest to motivate them to enroll in treatment. We work in Adult Drug Courts, Judicial Diversion, Mental Health, Family Treatment, Veterans Treatment, and Opioid Intervention Courts, and we believe – because the evidence proves -- that a Treatment Court which follows best practices will improve lives and communities while reducing drug use and crime.

Treatment Courts offer criminal defendants whose crimes are driven by their own substance use and/or mental health disorder, the chance to address their disease in a judicially supervised setting. Harnessing the coercive power of the court, we identify appropriate candidates, divert them from the traditional process, and enroll them into effective treatment.

Through a unique collaborative approach involving a judge, prosecutor, defense attorney, and treatment providers, these court programs connect participants with the treatment services and supports needed to change behavior and lead productive lives, free of further criminal justice involvement. Our Courts recognize that all members of the Treatment Court team play an integral role and bring unique insights. Together we have successfully diverted hundreds of thousands of individuals from jail by assessing their needs, locating appropriate and existing resources in the community, and partnering to supervise compliance and aid in overcoming barriers.

We are delighted that the Senate is looking to expand this proven tool of the criminal justice system by expanding Judicial Diversion to misdemeanors and more felonies. We appreciate the acknowledgment that the Judge must be the gatekeeper who determines admissions and termination. We find the provisions which understand the importance of prompt identification and enrollment of eligible persons, encourage the use of peers, and make clear that treatment decisions are based on medical considerations, will ensure fairness in all procedures.

We are very concerned that some of the proposed changes are contrary to evidence based on 30 years of practice. While touting the work of Treatment Courts they erode the best practices which lead to successful outcomes. These changes will have a negative impact on the future work of Treatment Courts. Without addressing the lack of available treatment resources throughout the state, this legislation, as drafted, will overwhelm courts, make empty promises of help, and lead to further delays. Failing to acknowledge the critical role of community supervision in ensuring community safety and ignoring proven best practices will weaken our Courts and hamper our programs. The clear evidence proves that collaboration across all disciplines to support and encourage participation leads to better outcomes.

In particular, the association urges you to modify the following provisions.

1) WHETHER TO REQUIRE PLEAS OF GUILTY

   With some notable exceptions, (like opioid intervention courts, and cases involving collateral consequences) we are of the strong opinion that requiring a guilty plea is a critical and essential component of treatment court programs. We have learned from research and lived experience, that without a plea of guilty, with its threat of jail in the event of non-compliance, individuals lack motivation to do the hard work of recovery. The threat of jail is a powerful motivation to complete the treatment plan. As long as the jail sentence is not greater than the individual would have received if they had not enrolled in treatment, it is a fair and effective tool to successful outcomes.

   Our collective experience has shown that many of the individuals we work with in our problem-solving courts have been offered referrals to voluntary treatment and made

the decision not to engage. Indeed, the nature of addiction and serious mental illness often means that the person living with the disease/condition is not always able to decide what is best for them in terms of their recovery or their life.

The motivation to change for most treatment court participants starts as extrinsic (the desire to avoid jail or forced hospitalization or a criminal conviction) and only evolves to intrinsic once they see the benefits of treatment and sobriety for themselves (repaired familial relationships, improved self-worth, less negative health consequences, stability in the form of employment or stable housing). Retention rates for Treatment Court participants is significantly higher than for voluntary enrollees. Some research shows between 10 and 30% of people who enroll voluntarily stay for one year while in our Treatment Courts retention rates of over 60% are common.

As an unintended consequence of not requiring a plea, Courts may be quicker to terminate someone's participation, rather than allow additional chances, where witnesses may be lost in the event a case must be returned to a trial part.

2) THE EVALUATION

In most courts the initial clinical evaluation is conducted by a court based case manager who has knowledge of the concerns of all members of the team. Under present law the evaluation is provided to the Judge, the District Attorney, and the defense lawyer to review. A proposed change to give the report to the defense lawyer alone, and to exclude the Court and the prosecutor unless the person chooses to request diversion, is, simply put, unworkable. A defense lawyer always has the option to obtain a confidential evaluation and decide whether to submit their report to the court. But to expect the Court to order an evaluation be performed by a court employee who then cannot share the report with the Court is unworkable.

Additionally, the change which requires a Court order an evaluation in all cases will waste limited resources and delay the results for all candidates thereby negatively affecting the goal of prompt referrals to treatment. There are many cases in which a Court determines that an otherwise paper eligible defendant is not an appropriate candidate based on the facts of the instant case or factors in the candidate's history separate and apart from clinical considerations. Conducting an evaluation in these instances will not change a court's determination but will delay the results for all candidates.

3) MODIFICATION OF THE TREATMENT PLAN

Once a person is determined to be legally eligible and clinically appropriate, the parties will agree on a treatment plan (the "Plan") which sets the level of care, frequency of attendance at treatment, living arrangements, and how often drug testing is required.

While under the court's supervision, participants must comply with the Plan.

Members of the Treatment Court team have knowledge about the participant's prior criminal history, people and places that might compromise their recovery, family dynamics, and other factors relevant to the structure of the Plan.

The provision which allows a Treatment Provider to modify the Plan without requiring court input is problematic. The providers may be unaware of factors known by treatment court team affecting decisions about placement and without working together they could make changes resulting in inappropriate and ineffective care. Moreover, changes to the Plan without Court knowledge and input ignores the key role of the Judge in forming a therapeutic alliance with the participant and interferes with the collaborative approach which is so critical to the success of the courts.

MISCELLANEOUS ISSUES

Many of the proposed changes will have unintended consequences by failing to recognize best practices or otherwise disturbing the proven benefits of a team approach.

- The provision that "[t]he court shall not deny access to treatment for inability to pay" ignores the fact that people with the means to pay often wait months for entry into mental health programs or beds in residential treatment. Moreover, expected cuts to Medicaid already risks creating longer delays in placement. Without providing alternative sources of payment, this is unworkable.

- Community supervision is integral to Treatment Court and a key partner on the team. Probation works as the eyes and ears of the community, identifying concerns along with a participant's needs. The proposal to prohibit community supervision or monitoring by law enforcement will negatively impact those courts which rely on probation. Law enforcement brings tremendous value to a team, particularly in smaller communities. Officers develop relationships with a participant and their family. They can identify triggers in the home or environment before they result in relapse or calamity. Making them the enemy ignores the unique benefits from a diverse and committed team. Every Treatment Court Judge can tell you about the participants who thanked the officer who made home visits, helping the person find a job, a means of transportation, or simply offering encouragement.

- Eliminating “history of substance use” for eligibility and substituting “current use” will have unanticipated result of eliminating those individuals who sought treatment voluntarily after an arrest and before referral to Judicial Diversion

- Treatment Courts strongly support the physician patient relationship. We do not interfere with medically ordered treatment. Our collaborative approach insures that participants are compliant with mental health medications while ensuring physicians have the full picture of a participant’s addiction.

On behalf of the New York Association of Treatment Court Professionals, I thank you for hearing our concerns and I offer our further services in reviewing any proposals to modify Article 216 to enhance and improve the important work of our state’s Treatment Courts. By aligning our goals and sharing our resources, New York’s Treatment Court have achieved what voluntary treatment and jail have failed to accomplish – giving our state’s residents an opportunity to restore their lives free of substance use and mental health disorders and jail.