New York State Senate Public Hearing on The Treatment Court Expansion Act (S.4547)

before the

Senate Standing Committee on Alcoholism and Substance Use Disorders

on

Friday, October 10th at 10:00am

Testimony By: Jonathan Chung, MPA
Director of Public Policy & Advocacy
National Alliance on Mental Illness of New York City (NAMI-NYC)

INTRODUCTION

Good morning, Chair Fernandez and members of the Committee on Alcoholism and Substance Use Disorders. Thank you for holding this important hearing today focused on community problem-solving courts. My name is Jonathan Chung, and I serve as the Director of Public Policy and Advocacy for the National Alliance on Mental Illness of NYC (NAMI-NYC). We are advocating for the passage and enactment of New York State bill S4547/A4869, otherwise known as the "Treatment Court Expansion Act," to amend Article 216 of Criminal Procedure Law which will provide critical off-ramps from the criminal legal system to people living with mental health conditions and often with substance use conditions.

OUR WORK

NAMI-NYC is one of the largest affiliates of the National Alliance on Mental Illness, a grassroots mental health advocacy organization. For over 40 years, NAMI-NYC has served as a leading voice for the mental health community throughout the city, providing groundbreaking advocacy, education, and support services for individuals affected by mental illness, their families, and the greater public, all completely free-of-charge.

At NAMI-NYC, we envision a world where **all people affected by mental illness live healthy, fulfilling lives supported by a community that cares**. This includes our neighbors detained on Rikers Island and many other individuals with mental health and substance use conditions who may find themselves incarcerated across the state. We want to do better and offer more opportunities for people to remove themselves from the revolving door of criminalization and hospitalization and live stably, managing their conditions in their communities.

Thus, the focus of our testimony is to urge each member of this Committee to support the Treatment Court Expansion Act (S4547), to improve our mental health court system and ensure equitable access to these alternatives in every county in New York for those who need it. You may find more information below regarding background, expected outcomes, treatment plans, and the importance of clinical assessment and the pre-plea model.

BACKGROUND ON TREATMENT COURT EXPANSION

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 prison walls is abhorrent, and people inevitably return to our communities even more destabilized and freshly traumatized.

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 rooted 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 everyday 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.

IMPROVING MEDICAL TREATMENT PLANS

It is 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, 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.

IMPORTANCE OF CLINICAL ASSESSMENTS

It is 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 defendant in court is also not an option, as this will force judges to rely on implicit 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 the defendant has one or more qualifying diagnoses. Ultimately, these measures aim to investigate the root cause of criminal legal involvement while trying to make court operations more efficient.

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,[1] who may not be guilty (at least of the highest charge),[2] and those who are naturally apprehensive about treatment. A pre-plea model is also more effective.[3] In a comparative study of 18 drug courts nationwide, researchers concluded that the pre-plea model both increased graduation rates and lowered costs.[4] 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.[5]

---

[1] State Justice Institute, Center for Public Policy Studies, Immigration and the State Courts Initiative. (n.d.). *Risks to Immigrants From Drug Court Participation*. https://www.sji.gov/wp/wp-content/uploads/Immigrants-in-Drug-Court-4-1-13.pdf

[2] Flores, P., Lopez, J. Pemble-Flood, G., Riegel, H., Segura, M. (May 23, 2018). *An Analysis of Drug Treatment Courts in New York State*. SUNY Rockefeller Institute of Government, Center for Law & Policy Solutions. https://rockinst.org/wp-content/uploads/2018/05/5-23-18-Drug-Court-Report.pdf.

[3] Opsal, A., Kristensen, Ø., & Clausen, T. (2019). Readiness to change among involuntarily and voluntarily admitted patients with substance use disorders. *Substance Abuse Treatment, Prevention, and Policy*, *14*(1). https://doi.org/10.1186/s13011-019-0237-y; 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) https://www.sciencedirect.com/science/article/abs/pii/S0955395921003066.

[4] Carey, S. M., Finigan, M., & Pukstas, K. (2008). Document Title: Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs. *NPC Research*. https://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf

[5] *Opioid Courts - Overview | NYCOURTS.GOV*. (n.d.). https://ww2.nycourts.gov/COURTS/problem_solving/opioid-courts-overview.shtml#:~:text=The%20Opioid%20Court%20model%20holds,at%20high%20risk%20of%20overdose

Yet these 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."[6] 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.

IMPROVED PUBLIC SAFETY AND FISCAL OUTCOMES

TCEA is not only a bill that will make communities safer and more resilient, but this legislation will also 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 is 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.[7]

[6] *Criminal Justice Standards on Diversion*. (n.d.). American Bar Association. https://www.americanbar.org/groups/criminal_justice/standards/diversion-standards/. ("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.").

[7] Recidiviz, Increasing Diversion Opportunities in New York (Dec 2023), available at https://www.treatmentnotjail.com/files/ugd/d807c6e2fa0e67f9294649bdf7bcc6bb20a2c0.pdf

This bill saves the state money. The New York Office of Court Administration estimates that for every $1 spent, the state will get back $2.21[8] and when considering collateral impacts like child welfare and improved healthcare, that number skyrockets to $10 dollars back for every $1 invested.[9]

It was under similarly financially uncertain times that our state passed Drug Law Reform, the landmark legislation that established statewide drug courts. Passed during 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.[10] Just 18 months after these courts were rolled out, the state reported a savings of $1 million each month."[11] Now Recidiviz estimates TCEA will save New York State $908 million over 5 years in reduced NYC jail costs and $894 million over 5 years in reduced state prison costs. The state must act now to begin realizing these savings and streamline and modernize our courts. We owe it to our communities.

CONCLUSION

Thank you, Chair Fernandez, and the members of this Committee for allowing me to testify today. I hope you and your colleagues will consider NAMI-NYC's testimony supporting the Treatment Court Expansion Act. We must unite our support for this critical piece of legislation and prioritize its passage during the next legislative session so that we may provide people with the care they need, continue to strengthen our communities, and decriminalize mental illness.

[8] New York State Unified Court System, https://www.nycourts.gov/legacyPDFS/courts/problem_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf

[9] Center for Court Innovation,Testing the Cost Savings of Judicial Diversion, 2013, https://www.innovatingjustice.org/wp-content/uploads/2013/05/NY_Judicial-Diversion_Cost-Study.pdf

[10] 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* (January 2016), p. 172, https://www.vera.org/downloads/publications/drug-law-reform-new-york-city-technical-report_03.pdf.

[11] Public Hearing Transcript, "Implementation and Funding of the Rockefeller Drug Law Reform Legislation," 20 December 2010, p. 20, https://nyassembly.gov/av/hearings/ (""with the deficits we are 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.

Respectfully,

Jonathan Chung, MPA (he/him/his)
Director of Public Policy & Advocacy
National Alliance on Mental Illness of New York City (NAMI-NYC)
307 West 38th Street, 8th floor
New York, NY 10018
Office: 212-684-3365
Direct Dial: 212-417-0953
Helpline: 212-684-3264
www.naminyc.org