



TESTIMONY OF THE NEIGHBORHOOD DEFENDER SERVICE OF HARLEM

before the

New York State Senate Committee on Alcoholism and Substance Use Disorders

IN RELATION TO

The Treatment Court Expansion Act

by

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Chair Fernandez:

I am Elizabeth Bender, Senior Policy Counsel with the Criminal Defense Practice at the Neighborhood Defender Service of Harlem (NDS). NDS is a community-based public defender office that provides high-quality legal services to residents of Northern Manhattan. Each year, our attorneys represent nearly 8,000 clients in New York County's criminal, housing, and family court systems, as well as in federal immigration court. Our social workers and non-attorney advocates support clients by providing referrals to services, connections to benefits, and support throughout their legal cases.

I write in support of the Treatment Court Expansion Act (S4547/A4869). NDS supports TCEA because we have seen how our clients living with substance use disorders and mental illness thrive when afforded appropriate treatment and community-based support. We have also witnessed the devastating effects of criminalizing mental illness and addiction—on individuals, families, and communities. We must prioritize rehabilitation over incarceration. TCEA is a vital step towards that goal.

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.

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 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.

Improved Public Safety and Fiscal Outcomes

TCEA will not just make communities safer and more resilient. It 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’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.

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 and when considering collateral impacts, like child welfare and improved healthcare, that number skyrockets to \$10 dollars for every \$1 invested.

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. Just 18 months after these courts were rolled out, the state reported a savings of \$1M each month.” 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. We owe it to our communities.

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, 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 can 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'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 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. 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 Diversion

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 model is particularly impactful for clients who may face immigration consequences, who may not be guilty (at least of the highest charge), and those who are naturally apprehensive about treatment. A pre-plea model is also more effective. In a comparative study of 18 drug courts nationwide, researchers concluded that the pre-plea model both increased graduation rates and lowered costs. Finally, removing the requirement to plead guilty streamlines admissions processes, which in turn 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.

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.” 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.