



My name is Anthony Maund and I am 35 years old. I am a member of the Katal Center, and Communities not Cages. I am also a proud member of the Treatment Not Jail Coalition, which is what I am here today to discuss. I thank you for giving me the opportunity to speak today.

## **I. My Story**

I want to first tell you about myself. I grew up in Buffalo with a developmental and learning disability, including dyslexia and ADHD. As a child, it always took me time to catch onto things. I was also emotionally disabled due to being the victim of physical and sexual abuse by a trusted family member. I was in group homes from ages 9 to 12, at which time I experienced additional abuse. My father was severely addicted to crack cocaine, which trickled down to me as a teenager. As a teenager, I was on so many medications that I was unable to function and often fell asleep in school. I turned to heroin, cocaine, speedballing and methamphetamines as a way to self-medicate my extreme pain and trauma.

I have a criminal record mostly due to my drug use. I have cycled in and out of the criminal legal system without ever once being offered the opportunity to participate in court-ordered diversion. I spent 31 months in prison and violated my parole within 12 hours of being released to a half-way house. So I was sent back to prison for an additional 22 months. Prison is no joke. Every day I witnessed people acting violently. For example, stabbing each other. People in jail minimize their violent or assaultive behaviors, see it as normal, and learn how to be bad, not how to make positive changes. I never received counseling in jail and was even put in solitary confinement. It was a horrific experience and I came out worse. Thankfully, I am in treatment now, taking the right medications, feeling supported, and am trying really hard to change my life for the better.

Not surprisingly, I currently suffer from panic disorders, anxiety, major depression, ADHD and probably post-traumatic stress disorder. I have even tried to take my life.

Please know that speaking today is the single scariest thing I have done in my life. But I am doing this to help others who will get in trouble due to their own traumatic backgrounds. I am doing it to promote change.

## II. The Systemic Failures That Perpetuate Criminal Involvement Due to Untreated Mental Health and Substance Use Issues.

Criminal legal involvement and public safety have a relationship that is connected but historically misunderstood. The current narrative on public safety is riddled with extremely damaging false narratives to the detriment of those who become entrenched in the criminal legal system, as well as communities who deserve and want to feel safe.

The common perception in our criminal legal system is that jail and prison make our communities safer. However, this is far from the truth. Studies show that jail and prison make someone *more likely* to re-offend.<sup>1</sup> The reason for this is obvious. Incarceration is an incredibly traumatizing and destabilizing experience, and those detained are left to cope without any therapy, proper medical care, or guidance. Moreover, once the period of incarceration ends, people are released from jail and prison without housing, medical care, therapy or rehabilitation systems in place, and then left to contend with the adverse collateral consequences that accompany a criminal record on their own.<sup>2</sup> This is a recipe for increased substance use, psychiatric hospitalizations, untreated mental health conditions, and inevitably, more involvement with the criminal legal system, all at the expense of public safety.

To the contrary, studies show that people who successfully complete mental health or drug diversion courts, should they be lucky enough to be eligible or accepted into one, have a significantly lower rate of recidivism.<sup>3</sup> Moreover, these programs are drastically more cost-

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<sup>1</sup> Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, 91(3\_suppl), 48S-65S. <https://doi.org/10.1177/0032885511415224>; Stemon, D. (2017, July). "The Prison Paradox: More Incarceration Will Not Make Us Safer." Vera Institute. Retrieved January 2022, from [https://www.vera.org/downloads/publications/for-the-record-prison-paradox\\_02.pdf](https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf); Emily Leslie & Nolan Pope, The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments 60 J. OF L. AND ECON. 3, 529-557 (2017), [www.econweb.umd.edu/~poppe/pretrial\\_paper.pdf](http://www.econweb.umd.edu/~poppe/pretrial_paper.pdf); Will Dobbie et al., The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges (Nat'l. Bureau of Econ. Research, Working Paper No. N22511, 2018), [www.nber.org/papers/w22511.pdf](http://www.nber.org/papers/w22511.pdf).

<sup>2</sup> Christopher Lowenkamp et al., The Hidden Costs of Pretrial Detention, THE LAURA AND JOHN ARNOLD FOUND., [https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf); Baer et al. Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio, Urban Institute Justice Policy Center (January 2006), <https://www.urban.org/sites/default/files/publication/42981/411289-Understanding-the-Challenges-of-Prisoner-Reentry.PDF>;

<sup>3</sup> Michael Mueller-Smith & Kevin T. Schnepel, Diversion in the Criminal Justice System, 8 THE REV. OF ECON. STUD. 2, 883-936 (2021), <https://doi.org/10.1093/restud/rdaa030> (finding that diversion cuts reoffending rates in half and grows quarterly employment rates by nearly 50% over 10 years); Amanda Agan, Jennifer Doleac & Anna Harvey, Misdemeanor Prosecution (Nat'l Bureau of Econ. Res., Working Paper No. 28600, 2021), [https://www.nber.org/system/files/working\\_papers/w28600/w28600.pdf](https://www.nber.org/system/files/working_papers/w28600/w28600.pdf) (finding non-prosecution of a nonviolent misdemeanor offense leads to large reductions in the likelihood of a new criminal complaint over the next two years); David Huizinga & Kimberly L. Henry, The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies, in, THE LONG VIEW ON CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 244 (Akiva M. Liberman,

efficient than incarceration. While New York City spends \$556,539 per year to incarcerate just one person in its jail system, the New York State Office of Court Administration projects that for every \$1 invested in treatment courts yields \$2.21 in savings.<sup>4</sup>

So how is it that this false narrative has lasted for so long? Why do so many people believe that incarceration protects our communities? To start, many wrongly believed that people who struggle with mental illness or substance use disorders are more likely to commit violence against another person. The truth is that these individuals are no more likely than the general public to engage in acts of violence, and in fact, those with mental illness are in fact far more likely to be the victims rather than the perpetrators of violence.<sup>5</sup> Unfortunately for the thousands of justice-involved New Yorkers seeking admission into a mental health court in New York State, this misperception leads to rejection from treatment and ultimately incarceration, which leads to a decrease in protecting the public.

Treatment courts throughout the state have also wrongly concluded that people charged with violent charges or have prior violent convictions are less likely to succeed with diversion. Yet studies consistently show that people charged with violent crimes are as likely to succeed and rehabilitate in a problem-solving court as those charged with non-violent crimes.<sup>6</sup> The result is that many treatment courts do not accept motivated, willing and ready would-be participants who are otherwise eligible but for a prior violent conviction.

Public safety is something we all care about, no matter our race, ethnicity, socioeconomic status, geographic location or political persuasion. But if we are going to increase public safety, then we must amend the existing Judicial Diversion statute to create more treatment opportunities for those in the criminal legal system who need it.

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ed., 2008); John Laub & Robert Sampson, *Life-Course and Developmental Criminology: Looking Back, Moving Forward*, J. OF DEV. AND LIFE-COURSE CRIMINOLOGY (2020); Shelli B. Rossman, Janeen Buck Willison, Kamala Mallik-Kane, KiDeuk Kim, Sara DebusSherrill, P. Mitchell Downey, *Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn*, New York, Nat'l Inst. of Justice (April 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238264.pdf>.

<sup>4</sup> New York State Unified Court System, *The Future of Drug Courts in New York State: A Strategic Plan* (2017), [https://www.nycourts.gov/legacyPDFS/courts/problem\\_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf](https://www.nycourts.gov/legacyPDFS/courts/problem_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf).

<sup>5</sup> *Mental Health Facts and Myths*, MentalHealth.gov, <https://www.mentalhealth.gov/basics/mental-health-myths-facts>; Canadian Mental Health Association, Durham, *The Myth of Violence and Mental Illness*, <https://cmhadurham.ca/finding-help/the-myth-of-violence-and-mental-illness/>.

<sup>6</sup> Naples, Michelle and Steadman, Henry, "Can Persons with Co-occurring Disorders and Violent Charges Be Successfully Diverted?" *Intl J. on Forensic Mental Health*, 2(2):137-143 (October 2003), [https://www.researchgate.net/publication/232426982\\_Can\\_Persons\\_with\\_Co-occurring\\_Disorders\\_and\\_Violent\\_Charges\\_Be\\_Successfully\\_Diverted](https://www.researchgate.net/publication/232426982_Can_Persons_with_Co-occurring_Disorders_and_Violent_Charges_Be_Successfully_Diverted).

### **III. The Treatment Not Jail Act (S.2881B-Ramos / A.8524-Forrest)**

The Treatment Not Jail Act significantly and intelligently expands on the 2009 Judicial Diversion statute, which created drug courts in New York State by introducing Criminal Procedure Law Article 216. Judicial diversion is currently the only law in the books that permits judges to offer court-mandated treatment to people with substance use disorders as an alternative to incarceration. But the current law does not go far enough. Article 216 only accepts a narrow subset of the population in need of treatment because under the statute, only a small percentage of non-violent drug and theft-related penal law charges are eligible for drug court. Moreover, even when a person is otherwise eligible, drug courts often reject people with serious mental health conditions or intellectual or developmental disabilities because “substance use” is not the primary diagnosis. So even these otherwise eligible candidates for drug court are rejected because of their impairment. Many of those who are rejected by drug courts are given a felony record and sent to state prison, where upon their release, they are without supports, without health care, and without a home – all of which can lead to drug use, psychiatric decompensation and ultimately, re-offending.

There is no analogous diversion court option for those with mental health challenges, despite the fact that mental health issues are prominent in the criminal legal system, and our society in general. One in five New Yorkers have a mental health diagnosis<sup>7</sup> and roughly half of the New York City jail population is recommended to mental health treatment<sup>8</sup> (though clearly few actually do). And yet, New York law provides no legislation that authorizes mental health courts. In the absence of any statutory authority permitting these courts, some District Attorney offices throughout the state have collaborated to create ad hoc mental health courts. However, because eligibility is determined by prosecutors, virtually no one has access to these courts. In addition to rejecting mental health court applicants due to the person’s history or underlying charges, prosecutors gatekeeping these courts often refuse to accept people with intellectual disabilities, developmental disabilities, traumatic brain injuries, neurological disorders and personality disorders - even when their criminal legal charges are directly related to their disability or impairment. To be clear, because there is no legislation authorizing mental health courts, judges have no discretion in deciding whether to admit a deserving person into these courts. As a result, the participation rates are abysmal. Statewide, there are only 30 mental health courts in existence serving only 140 participants.<sup>9</sup>

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<sup>7</sup> New York State Dept. of Health, Priority Area: Mental Health/Substance Abuse - Mental Health, [https://www.health.ny.gov/prevention/prevention\\_agenda/mental\\_health\\_and\\_substance\\_abuse/mental\\_health.htm](https://www.health.ny.gov/prevention/prevention_agenda/mental_health_and_substance_abuse/mental_health.htm).

<sup>8</sup> Greater Justice NY, People in Jail in New York City: Daily Snapshot, Vera Institute, <https://greaterjusticenyc.org/nycjail/> (last accessed Jan. 21, 2022).

<sup>9</sup> New York State Unified Court System, 2020 Annual Report (2020) <https://www.nycourts.gov/legacypdfs/20-UCS-Annual-Report.pdf>.

The result is that deserving vulnerable, justice-involved New Yorkers who have been failed by health care, educational, and child welfare systems during their lives end up in jail or prison, only to be released back into their communities without a home, without supports and without health care. This is not protecting public safety.

We are calling for an end to this cruel, ineffective, and financially asinine system. We are calling for “The Treatment Not Jail Act” (S.2881B-Ramos / A.8524-Forrest). The Treatment Not Jail legislation creates meaningful off-ramps from the carceral system and significantly expands opportunities for robust community-based substance use and mental health care services for those who need it.

This bill expands existing CPL Article 216 to permit treatment courts to accept people with mental health concerns, intellectual disabilities and other disorders that impair their functioning in society. The bill gives judges the discretion to order diversion for any offense and subsequently dismiss or reduce charges without the requirement of an up-front plea. This legislation also removes significant barriers to entry that ensure that the people most in need of help can get it. The bill increases due process protections for people with cases in these courts to ensure that they are not jailed or remanded summarily. Finally, the bill pivots away from the overly-restrictive and arbitrary charge exclusions that currently limit the pool of applicants for diversion court. First, the Treatment Not Jail Act extends treatment courts to people charged with misdemeanor offenses. There are thousands of people who are frequently targeted by police and/or arrested for low-level misdemeanors. These people should also have access to treatment courts if they so desire. Moreover, and more critically, people accused of violent offenses will no longer be categorically excluded from judicial diversion.

Treatment Not Jail understands that most people who enter into the criminal legal system are often victims of lifelong racial and economic injustice, including a lack of access to health care, stable housing, and education. Under the legislation proposed in the Treatment Not Jail Act, the prosecutor cannot summarily decide that your life is not worth saving and categorically deny your attempts to enter treatment court. Moreover, in the treatment court model proposed in this legislation, humanity is recognized and participants are required to be treated with dignity and respect. Those admitted are given the chance to get well and thrive in the community, maintaining or re-building connections to family and friends. Finally, those who complete the court-mandated treatment program will emerge without a criminal conviction and without a sentence of incarceration, thus sparing participants from the inevitable stigma and trauma that would have otherwise have thwarted the ability to procure housing and employment and proper mental health and medical care. As a result, both the participant and our communities benefit because the individual in need received treatment, not jail.

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