



Mental Health Project

Testimony of
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For decades, New York's criminal legal system has funneled far too many people with mental health concerns into local jails and state prisons. The Treatment Court Expansion Act (S4547/A4869) greatly enhances and expands judicial diversion to give people with mental health concerns the opportunity to address underlying issues through the community supports and treatment needed to promote stability and healing. The TCEA will benefit these individuals and make our communities safer.

The UJC Mental Health Project wholeheartedly supports the TCEA and urges the legislature to pass and Governor to sign the bill into law right away.

UJC Mental Health Project

For more than 25 years, the UJC Mental Health Project (MHP) has advocated for people with mental health concerns involved in the criminal legal system. We are deeply familiar with the difficulties people with mental health concerns who are involved in the criminal legal system have in accessing essential mental health services in the community, during incarceration, and upon release. We represent the *Brad H.* Class, all incarcerated individuals who receive mental health treatment while in New York City jails. Currently the *Brad H.* Class comprises about 59% of the City jail population.

The *Brad H.* settlement agreement requires New York City to provide discharge planning services to people in City jails who are assessed as needing mental health treatment. Monitoring the City's compliance with the settlement, we annually meet with approximately 1200 people in custody to inform them of their rights to discharge planning services and advocate for them to receive any services not provided. During this process, we regularly meet with people in jail at Rikers Island who are eager to participate in judicial diversion, but often they are either not given the opportunity to do so or are forced to languish in jail, as their condition worsens, until a disposition is negotiated.

Recognizing that people with mental health concerns are especially vulnerable to the harms of incarceration, our work includes advocating for an end to the use of solitary confinement in New York prisons and jails and for improved mental health treatment. In December 2023, MHP issued *Reimagining Paths to Healing Injustice: Perspectives on Community Diversion*, which outlines ten recommendations for diverting people with mental health concerns from the criminal legal system.¹ The recommendations outlined in the report were developed from interviews we conducted with those directly impacted by the systems and those who serve them, and supplemented by research, empirical data, and MHP's expertise.

I. The Treatment Court Expansion Act is an important reform for preventing people with mental health disabilities from being subjected to the harms of New York jails and prisons.

The TCEA is critical for diverting people from incarceration which is particularly harmful to people with mental health challenges as mental health treatment behind bars is inconsistent at best and almost nonexistent at times and is generally limited to medication and brief clinical encounters. Moreover, the environment in jails and prisons is chaotic and often dangerous, and people with mental health challenges are frequently victimized in these settings and subjected to solitary confinement. Suicide is the leading cause of death in jails. These conditions exacerbate mental health symptoms and further traumatize those who most likely already have a significant trauma history. In addition, many people with mental health challenges are released from incarceration without benefits, treatment, and housing, often even more destabilized than when they entered. Even in New York City where discharge planning services are mandated by the *Brad H.* settlement agreement, people with mental health concerns continue to be released to the community without appropriate services in place.

¹ *Reimagining Paths to Healing Injustice: Perspectives on Community Diversion*, Urban Justice Center Mental Health Project, December 2023, https://mhp.urbanjustice.org/wp-content/uploads/sites/10/2023/12/MHP_Report_Final_Web-12.04.2023.pdf

A. New York City Jails

Over the last two decades, the NYC jail population has decreased dramatically. However, the percentage of people receiving mental health treatment has not decreased at the same rate. For instance, in 2010 when the average daily jail population was slightly more than 13,000, people identified as needing mental health treatment constituted 29% of the jail population; currently the jail population is around 7,100, yet about 59% are assessed as needing mental health treatment. Moreover, since the onset of the pandemic, the number of people diagnosed with a Serious Mental Illness (SMI)² incarcerated in city jails has increased dramatically. This group now constitutes 22% of the City jail population – that means that more than one of every five people in City jails have a diagnosis of schizophrenia, schizoaffective disorder, major depression, bipolar disorder, post-traumatic stress disorder, or another mental illness that results in severe functional impairment or clinical distress.

Unavailable or Inadequate Mental Health Care

Providing mental health treatment to this population is crucial *and* constitutionally required. Yet, mental health care in City jails is often unavailable or inadequate.

In fact, despite a December 2021 court order mandating that the NYC Department of Correction (DOC) comply with its statutory duty to provide every person in its custody with access to health care without delay,³ in August 2024, the Legal Aid Society and Brooklyn Defender Services documented that “the crisis of inaccessible health care in its jails continues unabated.”⁴ In its motion to hold DOC in contempt for its failure to comply with its obligation, Petitioners asserted that “incarcerated people continue to miss thousands of health care appointments every month, delaying or outright denying their care. Ripple effects abound; delays and denials beget more infections, more sickness, and more pain for Petitioners, resulting in chronic illness, permanent

² In the City jails, Serious Mental Illness (SMI) is a diagnosis-based categorization consisting of the following disorders: schizophrenia spectrum and other psychotic disorders, bipolar and related disorders, depressive disorders, and post-traumatic stress disorder. Diagnoses resulting from a substance use or medical condition are excluded. Individuals who do not meet the preceding diagnostic criteria but experience severe functional impairment or clinical distress are also designated as having a SMI. See *Brad H. Settlement*, Addendum A, <https://mhp.urbanjustice.org/wp-content/uploads/sites/10/2023/07/Brad-H.-Settlement-July-2022.pdf>.

³ See *Matter of Joseph Agnew et al v. New York City Department of Correction*, Index No. 813431/2021E, Bronx County Supreme Court,

<https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=24nE52CUbEKkhIMuT7ptuA==>

⁴ See Petitioners’ Memorandum Of Law In Support Of Their Motion For Contempt And For Further Equitable Relief, August 8, 2024, https://legalaidnyc.org/wp-content/uploads/2024/08/323_Ps_MOL_in_support_of_contempt_motion.pdf

disability, and, in some cases, death.”⁵ One example documented an individual missing 13 appointments to complete his comprehensive mental health treatment plan.⁶

Examples of DOC’s failure to provide access to mental health care abound in New York State Commission of Correction (SCOC) reports regarding deaths in DOC custody. For example, in its investigation of Erik Tavira’s death in October 2022, SCOC’s Medical Review Board found that Mr. Tavira “had an excessive number of medical and mental health callouts that he was not produced for during his incarceration and had inconsistent access to medication.” In fact, in a six-month period, Mr. Tavira did not receive 51 doses of medication and was not produced for eight mental health appointments.⁷

In its review of Mr. Tavira’s death, the Medical Review Board found that “the repeated failures to produce Tavira for medical and mental health appointments, a chronic issue the Medical Review Board has previously identified in multiple mortality reviews, is unacceptable and constitutes a failure to provide adequate care.”⁸ In the death of Elijah Muhammad, in addition to a repeated pattern of failing to produce Mr. Muhammad for scheduled appointments and medication, the Medical Review Board found that the correction officer assigned to the housing area failed to obtain medical care for Mr. Muhammad when he exhibited “an altered mental status.”⁹

The SCOC Medical Review Board has also found that Correctional Health Services (CHS) failed to provide adequate mental health care to some of the people who died in DOC custody:

- CHS “failed to recognize [Michael] Nieves’ profound psychiatric decomposition and failed to refer him for forensic hospitalization which eventually led to his suicide;”¹⁰
- CHS mental health providers did not provide a proper psychiatric diagnosis to Ryan

⁵ *Id.*

⁶ Carl Henegain’s affidavit, August 2, 2023, https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=EvsKBx0YP_PLUS_T1xPT_PLUS_odOc_PLUS_g==

⁷ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Erick Tavira, an incarcerated individual of the George R. Vierno Center*, June 25, 2024, <https://scoc.ny.gov/system/files/documents/2024/08/tavira-erick-grvc.pdf>

⁸ *Id.*

⁹ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Elijah Muhammad, an incarcerated individual of the George R. Vierno Center*, June 25, 2025, <https://scoc.ny.gov/system/files/documents/2025/09/muhammad-elijah-grvc.pdf>

¹⁰ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Michael Nieves, an incarcerated individual of the Anna M. Kross Center*, June 25, 2025, <https://scoc.ny.gov/system/files/documents/2025/09/nieves-michael-amkc.pdf>

Wilson who died on November 2, 2022;¹¹

- CHS failed to “recognize and treat Wilson Diaz-Guzman’s acute suicidal ideation;”¹²
- CHS failed to refer Javier Velasco for psychiatric hospitalization after a serious suicide attempt and then removed suicide watch measures prematurely without proper psychiatric consultation;¹³ and
- CHS failed to provide Antonio Bradley with acceptable levels of medical, mental health, and psychiatric treatment during his incarceration.¹⁴

Significantly, the Medical Review Board determined that the deaths of Nieves, Diaz-Guzman, Velasco, and Bradley may have been prevented had these individuals received proper mental health care.

Unsafe Jail Environment

The Department of Correction is incapable of keeping people in its custody safe. In fact, in the class action lawsuit *Nunez v. NYC Department of Correction*, the federal district court has determined that a remediation manager must be appointed to remedy the constitutional violations that have persisted over the last decade.¹⁵

Moreover, recent SCOC reports about deaths by suicide in NYC jails document the DOC’s dysfunction and its impact on people with mental health treatment needs. The SCOC Medical Review Board identified the following:

- Failure to supervise the facility – There was no officer assigned to supervise Kevin Bryan’s housing area at the time of his suicidal hanging.¹⁶ No officer was assigned to

¹¹ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Ryan Wilson, an incarcerated individual of the Manhattan Detention Center*, December 20, 2023, https://scoc.ny.gov/system/files/documents/2024/02/wilson-ryan-mdc_redacted.pdf

¹² *Final Report of the New York State Commission of Correction: In the Matter of the Death of Wilson Diaz-Guzman, an incarcerated individual of the Otis Bantum Correctional Center*, June 28, 2022, https://scoc.ny.gov/system/files/documents/2023/09/diaz_guzman_wilson_obcc.pdf

¹³ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Javier Velasco, an incarcerated individual of the Anna M. Kross Center*, June 28, 2022, https://scoc.ny.gov/system/files/documents/2023/09/velasco_javier_amkc.pdf

¹⁴ *Final Report of the New York State Commission of Correction: In the Matter of the Special Investigation into the Care and Treatment Provided to Antonio Bradley, an incarcerated individual of the Anna M. Kross Center*, March 26, 2025, <https://scoc.ny.gov/system/files/documents/2025/05/bradley-antonio-amkc.pdf>

¹⁵ “Outside Official Will Take Over Deadly Rikers Island Jail, Judge Orders,” *The New York Times*, Hurubie Meko, May 13, 2025, <https://www.nytimes.com/2025/05/13/nyregion/rikers-island-receiver-ny.html>

¹⁶ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Kevin Bryan, an incarcerated individual of the Eric M. Taylor Center*, March 27, 2024, <https://scoc.ny.gov/system/files/documents/2024/05/bryan-kevin-emptc.pdf>

supervise Ricardo Cruciani’s housing area at the time of his terminal event.¹⁷ In Dashawn Carter’s death, DOC jeopardized the safety of incarcerated individuals.¹⁸ Antonio Bradley had numerous instances of needing to be on suicide watch but had no staff supervising him.¹⁹

- Failure to conduct adequate supervisory tours of the housing area where Javier Velasco was detained²⁰
- Failure to protect from self-harm – DOC officers failed to intercede and respond timely when Michael Nieves was fatally hemorrhaging from a self-inflicted wound.²¹ DOC captain failed to intervene when she observed Ryan Wilson place a sheet around his neck and attempt to hang himself.²²
- Failure to comport with requirements for supervision and deprivation of essential services²³
- Failure to refer Wilson Diaz-Guzman to mental health services despite signs of severe agitation”²⁴
- Chronic and repeated staffing issues and the failure of the DOC administration to assure adequate supervision and safety of the incarcerated individuals in their custody resulted in the opportunity for Brandon Rodriguez to successfully take his own life.²⁵

¹⁷ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Ricardo Cruciani, an incarcerated individual of the Eric M. Taylor Center*, September 25, 2024, <https://scoc.ny.gov/system/files/documents/2024/11/cruciani-ricardo-emtcc.pdf>

¹⁸ *Final Report of the New York State Commission of Correction: In the Matter of the Death of DeShaun Carter, an incarcerated individual of the Anna M. Kross Center*, December 20, 2023, https://scoc.ny.gov/system/files/documents/2024/02/carter-deshawn-amkc_redacted.pdf

¹⁹ *Final Report of the New York State Commission of Correction: In the Matter of the Special Investigation into the Care and Treatment Provided to Antonio Bradley, an incarcerated individual of the Anna M. Kross Center*, March 26, 2025, <https://scoc.ny.gov/system/files/documents/2025/05/bradley-antonio-amkc.pdf>

²⁰ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Javier Velasco, an incarcerated individual of the Anna M. Kross Center*, June 28, 2022, https://scoc.ny.gov/system/files/documents/2023/09/velasco_javier_amkc.pdf

²¹ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Michael Nieves, an incarcerated individual of the Anna M. Kross Center*, June 25, 2025, <https://scoc.ny.gov/system/files/documents/2025/09/nieves-michael-amkc.pdf>

²² *Final Report of the New York State Commission of Correction: In the Matter of the Death of Ryan Wilson, an incarcerated individual of the Manhattan Detention Center*, December 20, 2023, https://scoc.ny.gov/system/files/documents/2024/02/wilson-ryan-mdc_redacted.pdf

²³ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Wilson Diaz-Guzman, an incarcerated individual of the Otis Bantum Correctional Center*, June 28, 2022, https://scoc.ny.gov/system/files/documents/2023/09/diaz_guzman_wilson_obcc.pdf

²⁴ *Id.*

²⁵ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Brandon Rodriguez, an incarcerated individual of the Otis B Bantum Center*, June 28, 2023, https://scoc.ny.gov/system/files/documents/2023/09/brandon_rodriguez_nyc_doc_obcc.pdf

- Failure by NYC DOC staff to respond to communication from the court that Ricardo Cruciani was a suicide risk and in need of protective custody status²⁶

Immediate action is needed to divert people with serious mental health challenges from NYC jails. It is unconscionable that New York City holds so many people with significant mental health needs in the inhumane conditions of Rikers Island. This environment is detrimental to the health and safety of this population.

Continued Use of Solitary Confinement

Despite the Humane Alternatives to Long-Term Solitary Confinement Law (HALT Law) prohibiting the placement of people with mental health disabilities in solitary confinement, this population continues to be subjected to this inhumane practice.

In October 2024 former CHS social worker Justyna Rzewinski reported solitary confinement being used in the most egregious way, notably in the specialized mental health units where people with the most serious mental health treatment needs are housed. She documented, and CHS leadership confirmed, a practice referred to as deadlocking in which correction officers lock people with mental health concerns – people with schizophrenia, bipolar disorder, and schizoaffective disorder – in their cells 24 hours a day for weeks or even months on end. Correction officers engaged in this practice despite CHS staff advocating for these individuals to be released, despite it resulting in these individuals not receiving medication, and despite them becoming more symptomatic as they mentally decompensated in the torturous environment of solitary confinement.²⁷

On June 23, 2025, the NYC Board of Correction issued a report documenting that DOC staff continued to lock people in custody in their cells during regular lock-out hours over an extended period and infrequently document these lock-ins as required.²⁸ The Board observed that the practice was still in place months after Ms. Rzewinski’s reported the extensive use of “deadlocking” in mental observation and PACE units and after the Board approved a resolution condemning the use of involuntary lock-ins.

²⁶ *Final Report of the New York State Commission of Correction: In the Matter of the Death of Ricardo Cruciani, an incarcerated individual of the Eric M. Taylor Center, September 25, 2024*, <https://scoc.ny.gov/system/files/documents/2024/11/cruciani-ricardo-emtc.pdf>

²⁷ “Mentally ill at Rikers often locked in cells for weeks, denied treatment: Exclusive,” *Daily News*, Graham Rayman, October 8, 2024, <https://www.nydailynews.com/2024/10/08/mentally-ill-at-rikers-often-locked-in-cells-for-weeks-denied-treatment-exclusive/>

²⁸ *Assessment of NYC Department of Correction’s Lock-In and Lock-out Procedures*, NYC Board of Correction, June 23, 2025, https://www.nyc.gov/assets/boc/downloads/pdf/assessment_of_docs_lock_in_and_lock_out_procedures.pdf

The Department's failure to end this practice is yet another example of its complete disregard for laws and regulations governing jail operations and for the health and safety of people incarcerated on Rikers Island. It is particularly devastating that people with significant mental health concerns who require specialized mental health housing are most frequently subjected to this unlawful isolation, and it is one more reason that people with mental health concerns should not be placed in DOC custody in the first place. Rather than providing these individuals with mental health treatment and support, the Department inflicts grave harm that exacerbates their mental illness.

B. New York State Prisons

The atrocities described above exist and are perhaps even worse in the state prison system where 29% of the prison population are on the Office of Mental Health (OMH) caseload.²⁹ Brutality is common, mental health treatment is inadequate, and reentry supports are limited. In fact, in the last year, Robert Brooks and Messiah Nantwi were killed by correction officers in NYS prisons,³⁰ and correction officers engaged in an illegal work stoppage that resulted in imprisoned people being in de facto solitary confinement and denied mental health treatment.³¹ Even before the strike, state prisons offered limited mental health treatment consisting primarily of psychiatric medication without much therapeutic group programming or one-on-one therapy.³² The rate of suicide in NYS prisons is regularly higher than the national rate, and in 2024, 25 people died by suicide, more than double the previous year and the highest number since at least 2000.³³

One recent egregious example of how some people with the most severe mental health concerns are treated was documented in *Dunn v. NYS Department of Corrections and Community Supervision*. This class action lawsuit alleges violations of the Eighth Amendment of the U.S. Constitution, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act in DOCCS and OMH operation of the Residential Mental Health Unit

²⁹ Correctional Association of New York Mental Health Caseload Dashboard, February 2025, <https://www.correctionalassociation.org/data/dashboard-omh-census-data>

³⁰ "In Some New York Prisons, Infirmaries Are Dens of Hidden Violence," Alysia Santo and Joseph Neff, April 30, 2025, <https://www.themarshallproject.org/2025/04/30/new-york-prisons-abuse-infirmaries>

³¹ "I'm Just Collateral Damage": The Human Cost of an Illegal Prison Strike, The Legal Aid Society Prisoners' Rights Project, March 2025, https://legalaidnyc.org/wp-content/uploads/2025/03/LAS-PrisonersRightsProject_ClientStoriesReport_Final.pdf

³² "Unjust Punishment: The Impact of Incarceration on Mental Health," Patricia Warth, December 5, 2022, https://nysba.org/unjust-punishment-the-impact-of-incarceration-on-mental-health/?srsltid=AfmBOopVT5hgT0TP0AfmPW0B3X_iella_vWlnnrsjgyNHCzLVtWfSd2

³³ *Death by Illegal Solitary Confinement: Suicides and Self-Harm in New York State Prisons*, HALT Solitary Campaign and Mental Health Alternatives to Solitary Confinement, August 2025, <https://nycaic.org/wp-content/uploads/2025/09/Report-on-Deaths-by-Suicide-in-Solitary-Confinement-in-NY-Prisons-2025.pdf>

(RMHU) at Marcy Correctional Facility.³⁴ Although the RMHU was intended to provide a more therapeutic setting for incarcerated individuals with serious mental illnesses, people in the RMHU are confined to their cells for up to twenty-four hours a day, deprived of all therapeutic programming and out-of-cell mental health treatment. One named plaintiff diagnosed with bipolar disorder, depression, and attention-deficit/hyperactivity disorder (ADHD), classified by OMH as requiring the highest level of mental health services offered in DOCCS facilities, and serving a sentence of one to three years reported feeling as if he is “losing [his] mind” because he cannot leave his cell. He described his fear that further isolation in the RMHU would lead to him harming himself and the continued deterioration of his mental health.³⁵

C. Incarceration Is Ineffective

Moreover, incarceration does not create public safety.³⁶ In fact, it makes people more likely to have future involvement in the criminal legal system. Not only do jails and prisons fail to provide rehabilitation, but they are also far more likely to release people further traumatized and disconnected from family, housing, and services. In 2024 New York had a three-year reincarceration rate of 31.6%.³⁷ Providing housing, treatment, and social supports in the community is a far better way to promote public safety.

II. The Treatment Court Expansion Act Expands and Improves Diversion from the Criminal Legal System

The Treatment Court Expansion Act will greatly expand and enhance judicial diversion and result in more individuals with mental health concerns avoiding the harms of incarceration.

The TCEA amends the current judicial diversion law, Criminal Procedure Law Article 216, which in 2009 created drug courts in every county in New York, to enable people with mental health, developmental, and cognitive disabilities to participate. TCEA also shifts the approach of the current diversion court model to one grounded in evidence-based practices, removes other arbitrary barriers to participation, and creates more efficient and fairer processes.

³⁴ “PLS and DRNY file a lawsuit in NDNY challenging inhumane conditions at Marcy CF RMHU,” September 9, 2025, <https://plsny.org/litigation/pls-and-drny-file-a-lawsuit-in-ndny-challenging-inhumane-conditions-at-marcy-cf-rmhu/>

³⁵ See *Dunn v. NYS DOCCS* Complaint at <https://plsny.org/wp-content/uploads/2025/09/complaint.pdf>

³⁶ See *A New Paradigm for Sentencing in the United States*, Vera Institute of Justice, February 2023, available at <https://www.vera.org/downloads/publications/Vera-Sentencing-Report-2023.pdf>.

³⁷ *Recidivism Rates by State 2025*, World Population Review, <https://worldpopulationreview.com/state-rankings/recidivism-rates-by-state>

A. Expanding Eligibility

By broadening eligibility for diversion to include people with mental health, developmental, and cognitive disabilities, people who can benefit from diversion in all counties in New York will have the opportunity to participate in treatment courts. Rather than the current patchwork system of ad hoc mental health courts, diversion will be statutorily authorized. The court will have the authority to determine who is admitted into judicial diversion based on eligibility criteria set forth in the law. Except in the most serious offenses (Class A felonies and Class B felony sex offenses), prosecutors will no longer function as gatekeepers but argue and present evidence about whether a person should be admitted to the court based on statutory criteria.

TCEA also removes automatic exclusions based on charges and criminal history. Research – and the experience of existing mental health courts – establishes that diversion promotes public safety across all levels of charges, even serious violent felonies. The TCEA empowers judges to make admissions decisions by evaluating all circumstances in the case to determine whether an applicant meets the criteria to participate in treatment court. The criteria enumerated in the law require the court to consider how the applicant’s disability contributed to their involvement in the criminal legal system and whether it can be treated by existing treatment providers as well as how participation in judicial diversion would impact public safety.

B. Embracing clinical best practices

Following the data and research of over a decade, the TCEA incorporates innovations in intervention strategies proven successful, including harm reduction and the use of qualified peers. In accordance with best practices, the TCEA clarifies that a licensed clinician, not judges or lawyers, develops an appropriate treatment plan to target the individual’s qualifying diagnosis. Treatment decisions should be made by qualified treatment professionals. In fact, the commentary to the best practice standard in treatment courts regarding treatment decision making states that “under no circumstances should non-clinically trained members of the treatment court team impose, deny, or alter treatment conditions if such decisions are not based on clinical recommendations.”³⁸

This bill also allows individuals charged with non-violent felonies and misdemeanors the chance to participate without requiring them to plead guilty to access treatment. This “pre-plea” model is already used in many of New York’s most successful treatment court programs. This reduces the amount of time that a person may have to wait prior to starting treatment, which in many

³⁸ *Adult Treatment Court Best Practice Standards, Second Edition*, Volume 1, Standard V: Substance Use, Mental Health, and Trauma Treatment and Recovery Management, All Rise, 2024, https://allrise.org/wp-content/uploads/2024/05/Adult-Treatment-Court-Best-Practice-Standards-I-VI_VIII_X-final.pdf

counties can be months or even more than a year, bridges the racial justice gap, and eliminates other barriers to these programs.

The pre-plea model opens access particularly to people who may face immigration consequences, who are not guilty, or who are apprehensive about treatment. A pre-plea model is also more effective.³⁹ In a comparative study of 18 drug courts nationwide, researchers concluded that the pre-plea model both increased graduation rates and lowered costs.⁴⁰ 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.⁴¹

Currently these pre-plea benefits are not afforded equally across the state, and there exists a glaring racial divide between courts in which participants 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.”⁴² 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. Across the state all people charged with non-violent felonies and misdemeanors should be entitled to receive the accessibility, efficiency, and medical benefits of a pre-plea model.

³⁹ “Readiness to change among involuntarily and voluntarily admitted patients with substance use disorders,” *Substance Abuse Treatment, Prevention, and Policy*, 14(1), Anne Opsal, Øistein Kristensen, and Thomas Clausen, 2019, <https://doi.org/10.1186/s13011-019-0237-y>; *The effectiveness of compulsory drug treatment: A systematic review*, Intl. J. of Drug Policy, D. Werb, A. Kamarulzaman, M.C. Meacham, C. Rafful, B. Fischer, S.A. Strathdee, E. Wood, February 2016, <https://pubmed.ncbi.nlm.nih.gov/26790691/>

⁴⁰ “Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs,” *NPC Research*, Shannon M. Carey, Michael W. Finigan, and Kimberly Pukstas, August 2008, <https://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>

⁴¹ *Opioid Courts*, New York State Unified Court System, https://ww2.nycourts.gov/COURTS/problem_solving/opioid-courts-overview.shtml#:~:text=The%20Opioid%20Court%20model%20holds,at%20high%20risk%20of%20overdose

⁴² *Criminal Justice Standards on Diversion*, American Bar Association, https://www.americanbar.org/groups/criminal_justice/standards/diversion-standards/

C. Appropriately Assessing Eligibility for Treatment Court

Clinical assessments of individuals' mental health condition are essential to make appropriate determinations about suitability for treatment court. Documents in the court file provide information about the person's criminal history or current charges, but they cannot reveal the underlying circumstances or inherent complexity of a person in crisis. Without a mental health assessment, courts lack the expertise needed to determine eligibility, and subjective impressions introduce the possibility of implicit bias and can lead to discrimination.

At the same time, overloading the court's calendar with frivolous applications would be detrimental to everyone involved. TCEA strikes the right 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 the initial onus on the defense to make a prima facie showing that the applicant has one or more qualifying diagnoses. Ultimately, these measures aim to consider the root cause of criminal legal involvement while trying to make court operations more efficient.

D. Bolstering due process protections

The TCEA shores up the process and rights afforded to diversion participants to ensure a more fair and effective treatment model and provide clarity and transparency for those enrolled. The legislation ensures that judicial diversion participants are not jailed without due process.

E. Requiring training and transparency

The TCEA also promotes continued quality improvement by providing judges and diversion court personnel with annual training on best practices for mental health treatment within the judicial system. In addition, courts will be required to track and report data so that these programs can be continuously measured and improved year over year.

Conclusion

The TCEA should be enacted right away so that New York can improve public health and public safety by diverting more people with mental health concerns from the criminal legal system into supportive services and treatment that will aid their recovery and provide long-term stability.