



**Testimony of the Legal Aid Society
in Support of the Treatment Court Expansion Act (S4547/A4869)**

**Submitted to the Senate Standing Committee
On Alcoholism & Substance Use Disorders
Chair Sen. Nathalia Fernandez**

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The Criminal Defense Practice of the Legal Aid Society writes in support of the Treatment Court Expansion Act (TCEA), S4547/A4869. We support TCEA because it will provide off-ramps from the revolving door of jail and prison for the New Yorkers we represent who are brought into the criminal legal system due to underlying mental health and substance use issues. TCEA will create a fair and equally accessible system of judicial diversion for all New Yorkers while modernizing the way in which courts administer and oversee individualized treatment plans. TCEA gives courts the tools and resources to address root causes rather than relying solely on incarceration to address public safety concerns, allowing people to return to their communities healthier and more resilient.

I. 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. We must end the revolving door of incarceration for New Yorkers with mental health and substance use disorders, and other disabilities.

The Treatment Court Expansion Act (TCEA) modernizes and expands an existing state law, CPL Article 216, which in 2009 created limited drug diversion courts in every county. TCEA enables these drug diversion courts to expand their reach and accept people with mental health concerns or dual diagnoses. TCEA 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 which best realize the promise of problem-solving courts.

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 every-day New Yorkers and experts in the fields of mental health treatment, drug policy advocates, and criminal legal system reform. Indeed, Chief Judge Rowan Wilson, in his first State of the Judiciary remarks in 2024 embraced treatment courts as an example of the problem-solving courts most needed in our legal system. TCEA is transformative legislation that addresses the intersection of our state’s mental health crisis and the criminal legal system with a common-sense, compassionate, and cost-saving approach.

II. Improved Public Safety and Fiscal Outcomes

TCEA will make communities safer and more resilient, and in doing so will 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 arrest and incarceration. 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.¹

Once enacted, this legislation will also create cost savings. The New York Office of Court Administration estimates that for every \$1 spent, the state will get \$2.21² and when taking into account collateral impacts, like child welfare and improved healthcare, that number skyrockets to \$10 dollars for every \$1 invested.³

¹ Recidiviz, *Increasing Diversion Opportunities in New York* (Dec 2023), available at <https://www.treatmentnotjail.com/files/ugd/d807c6e2fa0e67f9294649bdf7bcc6bb20a2c0.pdf>

² 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

³ 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

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.⁴ Just 18 months after these courts were rolled out, the state reported a savings of \$1M each month.”⁵ 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 and we owe it to our communities.

III. Improving Medical Treatment Plans

In the current CPL Art. 216, prosecutors and judges evaluate a person’s mental health state and, more dangerously, set the contours of their treatment plan. This is not an effective or appropriate role. It’s critical that law enforcement act as law enforcement and clinicians as clinicians. TCEA clarifies that a licensed clinician, not judges or prosecutors, 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 as to the contours an individual treatment plan is a state licensed healthcare professional in constant consultation with the individual undertaking treatment.

IV. Importance of Clinical Assessments

A person’s mental health condition must be known 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 in-court “appearance” of a person accused of a crime 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 treatment courtroom with applications on behalf of people accused of crimes who do not have a mental health diagnosis or substance use disorder . 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

⁴ 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.

⁵ 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’re 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.

person they represent has one or more qualifying diagnoses. Ultimately, these measures aim to investigate and address the root cause of criminal legal system involvement while rendering court operations more efficient.

V. Importance of Pre-plea model

One of the cornerstones of TCEA is that it embraces modern best-practices and 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, protects immigrant New Yorkers and eliminates other barriers to these programs.

A pre-plea model opens access to those who may face immigration consequences⁶, who may not be guilty (including factual innocence as to the highest charge),⁷ and those who are naturally apprehensive about treatment. A pre-plea model is also proven to be more effective in encouraging successful participation in treatment.⁸ In a comparative study of 18 drug courts nationwide, researchers concluded that the pre-plea model both increased graduation rates and lowered costs.⁹ 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.¹⁰

However, these pre-plea benefits are not afforded equally in treatment courts across the state, and there exists a glaring racial divide in the population served by courts that center the no-upfront-plea model (Opioid Courts) and the remainder that do not. Both the American Bar Association and the New York State Bar Association have urged 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

⁶ 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>

⁷ 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>.

⁸ 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>.

⁹ 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>

¹⁰ *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

color.”¹¹ 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. In this example, the opioid court is much more public health oriented and embraces the modernized pre-plea model while the drug court remains overly punitive and reflects archaic views on treatment. One’s race should not be dispositive on the course of treatment, case resolution and successful reentry. Across the state all non-violent felonies and misdemeanors should be entitled to receive the accessibility, efficiency and medical benefits of the modernized pre-plea model.

VI. Anecdotal Support from our Criminal Practice MICA project

While TCEA will bring much needed modernization and uniform accessibility to our courts, as practitioners in New York City, we at The Legal Aid Society are lucky to advocate for those we represent to access the *ad hoc* mental health treatment courts established here in NYC. To that end we share some recent examples of the efficacy of those *ad hoc* courts and the way in which allowing people to access them stops cycles of arrest and incarceration. It is important to relate that our success in these treatment courts is in large part to our groundbreaking “[MICA Project](#)” – an initiative launched in 2002 that embodies a unique collaboration between mental health attorneys and forensic social worker mitigation specialists. This interdisciplinary team advocates for treatment-based dispositions for clients with a range of behavioral health disabilities, including serious mental health conditions, substance use disorders, neurocognitive and intellectual disabilities, traumatic brain injuries, and autism. We also note that the below, anonymized, anecdotes tell the stories of people charged with violent felonies and repeated misdemeanor charges. We hope the brief recounting of these success stories from NYC treatment court, serves as a lodestar for the importance of a system that does not require charge-based exclusions.

HB

When we were first assigned the case of “H.B.”, he was forty-five-years old and had recently immigrated to the United States from Central America to seek asylum. He was arrested and charged with Rob 1 (a “B” violent felony carrying a mandatory minimum sentence of 5 years and a maximum of 25 years) and lesser included charges. At the time of his arrest, H.B. was paranoid and likely experiencing substance induced psychosis. He was unhoused. Our team of attorneys, mitigation specialists and social workers were quickly able to get him into treatment court, with the consent of the District Attorney and an immigration-safe plea agreement. The MICA project

¹¹ *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.”).

and the court clinic supported H.B. in his recovery. Due to his immigration status and lack of insurance, finding program placement for H.B. presented a challenge. However, because he was in the treatment court, our MICA team was able to work with clinic staff to successfully support H.B. in obtaining clinically appropriate and available services. He graduated from residential treatment. Throughout his tenure in treatment court, he was a model participant. Upon graduation, his supports included outpatient programming and transitional housing. His success combined with this continued support led him to obtain a job as a barber, which had been a career goal for H.B.

RD

Our MICA team came to represent R.D, a thirty-six-year-old male with legal permanent resident status, during the pandemic. At that time R.D had more than thirty misdemeanor cases, as well as felony charges. He was living with schizophrenia and was not doing well and was referred for a mental capacity evaluation under CPL §730 to determine whether he was “fit to proceed”. His clinical evaluation found that under the standards, he was not “fit to proceed” and by function of the law, the misdemeanor cases were dismissed and R.D. was transferred to in-patient restoration treatment. He spent approximately a year and a half at Mid -Hudson Forensic Psychiatric Center, a secure adult facility. Upon his return, he was deemed “fit” to stand trial and the felony charge proceeded. We quickly worked to secure an evaluation in the mental health treatment court. Unfortunately, the treatment provider assigned to work with the court, TASC, did not want to work with him due to the large number of cases he had accrued. Thankfully, the judge gave our MICA project the opportunity to present a treatment plan individually tailored to R.D.’s needs. While he was incarcerated awaiting the court’s decision, we helped R.D. submit a [Single Point of Access](#) application and [2010E Supportive Housing Application](#). He was assigned to an [Intensive Mobile Treatment](#) (IMT) team and accepted a congregate housing offer. Our attorney negotiated an immigration safe plea agreement, and he embarked on a treatment plan overseen by the mental health treatment court. R.D. took his recovery very seriously and was a model participant in mental health court, eventually graduating and returning to his community with the tools to succeed.

RB

RB had no criminal record and was living with untreated schizophrenia diagnosis and struggling with substances when he was arrested for a felony-level sex offense. Despite our advocacy showing that RB’s untreated behavioral health challenges clearly contributed to the incident, the prosecutors rejected our request for treatment court instead offered state prison, post-release supervision and mandatory registration under the Sex Offender Registration Act (SORA). RB faced a pivotal decision. He could plead guilty to the charge, experience prison and face an uncertain discharge back into the community all without having received any treatment, or he could choose the tougher path: participate in treatment court over the prosecutor’s objection but with no promise from the judge as to the length of his sentence, no matter how he did in treatment, and still need to register under SORA. The results tell the story. RB successfully completed long-term residential treatment for his dual diagnosis and participated in targeted therapy treating inappropriate sexual behaviors. Following residential treatment, he found a home in mental health

supportive housing with continued treatment. RB never once had a negative report. In fact, every court report indicated strong medication compliance, insight into his mental health and substance use challenges, heartfelt remorse and an understanding of how his actions impacted the victim. He maintained perfect medication compliance and slowly built a plan to maintain stability and sobriety.

Following his transition into supportive housing, RB. met with the prosecutors who had strongly objected to a treatment court mandate. Inspired by RB's transformation, insight and remorse, and with the victim's blessing, prosecutors allowed A.B. to vacate his felony plea requiring mandatory SORA and re-plead to a misdemeanor sex charge with probation with having to register.

RB's journey shows that recovery works even in the most serious and violent criminal cases. It also demonstrates how public safety is enhanced through successful participation in a problem-solving court. Had RB accepted state prison, he would have eventually been released into the shelter system, lacking the tools to remain stable and sober and away from the criminal legal system. Such a result would have likely perpetuated further involvement in the criminal legal system and ongoing psychiatric hospitalizations, to the detriment of RB's and the public's safety. RB's story illustrates that trained treatment court judges are capable of weighing risk and seeing someone's potential to succeed in their court. RB's story underscores the imperative truth that treatment courts must be expanded and modernized to ensure that prosecutorial gatekeeping should not impede eligible candidates from the chance to change.

VII. Conclusion

We are grateful to the chair, the committee and our sponsors, Senator Ramos and Assembly Member Souffrant-Forrest for the opportunity to provide this supportive testimony for the Treatment Court Expansion Act. At the Legal Aid Society, we have long recognized the crucial importance of ending cycles of arrest and incarceration and have innovated team models to respond to the needs of clients with mental health diagnosis and substance use disorders. We need the courts and the legislature to embrace this problem-solving ethos as well.

We turn to the call from Chief Justice Rowan Wilson in his 2024 state of the Judiciary to reimagine our criminal legal system and we embrace his call to “..think of our courts as problem solvers, not solely as adjudicators of which party is right.”¹² We are grateful for this leadership and to that of Chief Administrative Judge Zayas for the work already underway to shift resources to expand treatment courts and yes, solve underlying problems that stop cycles of arrest, punishment-only and incarceration. We call on the legislature to also heed this call and send the Treatment Court Expansion Act to the desk of Governor Hochul. We end with Chief Judge Wilson's words from his same 2024 State of the Judiciary:

¹² See “The State of the Judiciary 2024” Chief Judge Rowan Wilson, February 27, 2024, available at <https://www.nycourts.gov/ctapps/news/soj2024.pdf> at page 4.

“It is time to expand that approach—in which courts, parties and other participants work to achieve results superior to those that can be obtained by merely deciding who is right or applying a stock response to problems that superficially seem identical. When one takes enough time and care to understand the human beings enmeshed in those problems, we see that each case is different and calls for a highly tailored, careful and compassionate response. If that seems heretical, so be it: as Helen Keller observed, “The heresy of one age becomes the orthodoxy of the next.”¹³

With Judge Wilson’s words as our lodestar, we call on the legislature and the Governor to make the Treatment Court Expansion Act our new orthodoxy and carry us into the modern age of individualized consideration, compassion, and truly achievable community safety.

¹³ *Id.*