



Testimony of

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My name is Stan Germán and I am the current President of the Chief Defenders Association of New York and the Executive Director of the New York County Defender Services (“NYCDS”). NYCDS is a public defender office based in Manhattan that serves more than 10,000 clients in criminal cases every year and over half a million people since we opened our doors over 25 years ago.

Thank you Senator Fernandez and Senator Ramos for holding this important hearing on the urgent need to pass the Treatment Court Expansion Act (S.4547).

1. Background

When Drug Law Reform went into effect over fifteen years ago, it was revolutionary: the legislation created the judicial drug diversion courts in every county through CPL Article 216. In Manhattan, where my office practices, prosecutor-controlled drug courts already existed, but they were tightly managed by the Manhattan District Attorney’s office, with nearly insurmountable barriers to entry: exceedingly narrow eligibility criteria, overwrought admissions processes, and excessively punitive practices. Drug Law Reform ushered New York into a new

era: where judges controlled the admissions process, and removed the role of prosecutors as gatekeepers and pseudo-clinicians.

This sort of sweeping, landmark reform was not easy, and took unyielding political resolve to accomplish. At the time, prosecutors and law enforcement across the state strongly opposed the legislation. They prophesied “floodgates” and increased crime.¹ Of course, none of this came to bear. Courts across the state did not become inundated with frivolous applications, but did experience modest, albeit significant, increases in their diversion populations.² Crime, already on a downward trend across the state, continued to drop. Meanwhile, these programs were able to save the state a lot of money at a time when (during the Great Recession) our state critically needed a financially efficient criminal legal system.³

The new drug courts were not perfect, and left much room for improvement, which TCEA promises to address. Most notably, CPL article 216 ignores individuals suffering from mental health disorders, and many courts have interpreted the statute to also exclude those who suffer dual diagnoses. This constitutes a substantial swath of people in need of treatment. In response to this glaring oversight, many jurisdictions took it upon themselves to fashion their own mental health diversion programs, typically operating in parallel to the Article 216 drug courts in the same county. Today, there are 40 such programs in operation in 29 counties in NY, a testament to the good will, resourcefulness and collaboration of the stakeholders in jurisdictions across the state. But the resulting treatment court landscape has grown increasingly fragmented, silo-ed, and duplicative, and has sown racially and regionally disparate treatment.

¹ Mancuso, P. A. (2008). Resentencing after the “fall” of Rockefeller: The failure of the Drug Law Reform Acts of 2004 and 2005 to remedy the injustices of New York’s Rockefeller drug laws and the compromise of 2009. *Albany Law* at 1561-163
<https://www.albanylawreview.org/api/v1/articles/69531-resentencing-after-the-fall-of-rockefeller-the-failure-of-the-drug-law-reform-acts-of-2004-and-2005-to-remedy-the-injustices-of-new-york-s-rockefeller.pdf>; Jeremy W. Peters, “Albany Reaches Deal to Repeal ‘70s Drug Laws,” *The New York Times*, March 26, 2009, <https://www.nytimes.com/2009/03/26/nyregion/26rockefeller.html>; Jeremy W. Peters, “Legislation to Overhaul Rockefeller Drug Laws Moves Ahead Swiftly,” *The New York Times*, March 1, 2009, <https://www.nytimes.com/2009/03/01/nyregion/01rockefeller.html>; Bridget Brennan, “The Rockefeller Drug Laws: A Prosecutor’s Perspective,” *Gotham Gazette*, March 27, 2006, <https://www.gothamgazette.com/criminal-justice/3196-the-rockefeller-drug-laws-a-prosecutors-perspective..>

² A later study by the Vera Institute of Justice examined the impact of the reforms in New York City and found that there was a 35% increase in the rate of eligible defendants diverted to treatment in the first year of operation. Rather than jeopardizing public safety, diversion to treatment was linked to reduced recidivism rates. The reforms were also associated with cutting racial disparities in half for those charged with felony drug offenses. Vera Institute of Justice, *End of an Era? The Impact of Drug Law Reform in New York City* (New York: Vera Institute of Justice, January 2015), PDF, 28 pp., <https://vera-institute.files.svdcn.com/production/downloads/publications/drug-law-reform-new-york-city-summary-01.pdf>

³ Jeremy W. Peters, “Legislation to Overhaul Rockefeller Drug Laws Moves Ahead Swiftly,” *The New York Times*, March 1, 2009, <https://www.nytimes.com/2009/03/01/nyregion/01rockefeller.html> (“The deal comes as the state is facing a \$16 billion budget deficit for the coming fiscal year. And finding the money needed to pay for drug addiction programs, which could reach near \$80 million, will prove difficult, those involved in the negotiations said. But in the long run, the changes are expected to save money because sending offenders to treatment is less expensive than spending \$45,000 a year to keep them confined.”)

While crime across the state is declining, the proportion of those who become arrested who are in crisis is surging, and concerns about mental health are on every New Yorker's mind. In NYC jails, over half of those incarcerated are flagged for needing mental health treatment, and the proportion of those suffering from "serious mental illness" doubled in the last decade. Jail is traumatic for anyone, but these individuals are especially vulnerable to abuse. Last year, a mental health care worker exposed the widespread practice of "deadlocking," in which correction staff locked individuals suffering from acute mental illnesses in their cells to decompensate for days, weeks, and even months, withholding showers and necessary medications. Our prisons are even less humane places for people with mental health disorders. The brutal murder of Robert Brooks one year ago, and the unsanctioned corrections officer strike that followed in February this year, pulled back the curtain on an inherently rotten system.

Meanwhile, from an operations perspective, our jail and prison systems are collapsing. The state has resorted to recruiting untrained 18-year olds to fill their ranks, and Rikers Island's authority has been usurped by the federal government.

2. New York State needs TCEA to bring efficiency and uniformity to what is an increasingly fragmented and inefficient system.

In the absence of statewide statutory guidance, over the last two decades, our treatment court landscape has grown into a sprawling, complex patchwork network that is as inefficient as it is underinclusive. TCEA promises to bring uniformity and guidance to the entire system.

Nowhere is this reform needed more than in New York County. In Manhattan, in addition to our Article 216 judicial diversion program (which we call Manhattan Drug Court), our court system offers the following diversion opportunities to individuals with mental health disorders:

- Manhattan Drug Court - Mental Health Track: for individuals with both a substance use and mental health disorder, who would otherwise qualify for Art 216 diversion.
- Manhattan Mental Health Court: for individuals charged with felony offenses who suffer from a serious mental illness.
- Manhattan Misdemeanor Mental Health Court: for individuals charged with misdemeanors, or on a case by case basis, and contrary to what the title suggests, lower-level felonies, who suffer from a mental health challenge where a "lighter touch" connection to treatment and services is appropriate.
- Manhattan Felony ATI Court: for individuals charged with felony offenses who suffer from any behavioral health diagnosis.
- Manhattan Misdemeanor ATI Court: for individuals charged with misdemeanors and some reduced felony charges, who need more intensive treatment than individuals would receive in Manhattan Misdemeanor Mental Health Court.

All of these programs operate outside of any statutory authority, and thus, are ultimately under the control of the Manhattan District Attorney's Office. Yet, each of these six diversion programs operate distinctly from each other, with completely separate stakeholders, eligibility criteria, screening and admissions processes and judges overseeing the programs.

To be clear, these programs achieve incredible results, and NYCDS has seen hundreds of clients change their lives as they work through these holistic treatment mandates, reach graduation and beyond. But the process of gaining admission to one of these offerings is nothing short of Kafkaesque. Individuals who pursue acceptance into diversion programs can expect to undergo multiple clinical screenings from various sources, which are overlapping yet somehow still underinclusive.

Because the Manhattan District Attorneys ultimately control admissions for these programs, they impose their own additional application requirements. They usually demand the applicant personally meet staff from their office, which is both logistically difficult and often re-traumatizing. The DA's office also routinely requires that each applicant provide unredacted copies of medical records often going back years, sometimes dating back decades. This is often a significant expenditure and effort that takes defense providers many months to prepare. Thus, not only are these requirements unnecessarily intrusive, they significantly stall the application process. By our office's estimates, the Manhattan DA's specific requirements add many months to the entire admissions process.

The Manhattan DA's office justifies this demand by asserting that these voluminous and unredacted medical records contain clues about a person's "dangerousness" that only its staff, not impartial clinicians, would be able to detect. To our knowledge, nowhere else in the state's many successful diversion programs does a prosecutor's office make such a demand or anything comparable.

Simply by bringing all the disparate diversion programs under the Article 216 umbrella, this legislation promises to provide the uniformity and clarity our county has desperately needed for years. In addition, by removing the gatekeeping role of prosecutors beyond their realms of expertise, this legislation will significantly expedite the screening and admissions process.

To be clear, prosecutors still have an important role to play in these diversion programs, and we respect the unique perspective and expertise they bring to the table. TCEA simply refocuses and right-sizes their role in the treatment court enterprise so that these programs can run efficiently and expansively.

3. TCEA promises to correct a longstanding racial disparity in the treatment court model.

Like most aspects of the criminal legal system that are long overdue for reform, this legislation is also a matter of racial equity. In 2009, a driving goal of Drug Law Reform was to correct a longstanding racial disparity in the treatment of Black and Brown defendants suffering from substance use disorders. Here, too, we see parallels with today's landscape, especially in the disparate treatment between Opioid Intervention Courts (OICs), which serve a largely white population, and traditional drug courts, that serve a far more racially diverse demographic.

The first OIC opened in Buffalo in 2017 as a derivative of drug courts that was specially tailored to the population impacted by opioid use disorder. The model departed from the model outlined in CPL Art 216 in several significant ways. First, the OIC dispensed with the requirement that participants plead guilty at the outset of the case. The court and stakeholders recognized that this requirement unnecessarily stalled the admissions process and deterred many eligible candidates who were concerned about such a high-stakes gamble. They instead adopted a “pre-plea” approach, which encouraged participation from individuals who are apprehensive about the promise of treatment, the fairness of the court system, and their own ability to navigate both. This also allowed these programs to swiftly intervene when they identified someone in crisis. As Justice Craig Hannah, who designed and launched the first OIC explains “We’re a pre-disposition court, meaning you didn’t take any plea at all. The second you come through our court we give you the help and assistance that you need....It works wonders[.]”⁴

In addition, the OIC, informed by harm reduction principles, prioritizes an incentives based system, rather than the punitive, sanction-oriented model traditionally operated by drug courts.

In the years since this pioneering court launched, the OIC has been widely hailed as the next frontier of treatment court practice, and has since been replicated across the state and the country. But traditional drug courts have resisted adopting its core tenets, specifically the pre-plea approach and the harm reduction principles, and the trench between these two models reveals a glaring racial disparity.

The Opioid Intervention Court is overwhelmingly white, while drug courts traditionally serve a far more racially diverse demographic. In Buffalo, for example, white people make up a staggering 83% of the total enrollment in the OIC. The Buffalo drug court counterpart, which follows a far more punitive, post-plea model, is more racially diverse, with white people making up only 46% of the entire population.

⁴ Judge Craig D. Hannah, “*A Courthouse of Compassion*,” TEDxBuffalo (video), YouTube, October 2018, <https://www.youtube.com/watch?v=OxSHFpQ3ny0>.

The New York State Bar Association noted similar concerns regarding Syracuse County Treatment Court, “a court that serves a majority white population, [which] allows some individuals to participate pre-plea. Since participants must live in Onondaga County, the population of which is 80% white (as compared to the population of NYC, which is 42.7% white) we see a more open and accepting model benefitting the majority white residents in Onondaga County, whereas a similar model has been rejected in other courts serving Black and Brown populations.”⁵

The pioneering, by-all-accounts successful practices embodied in OICs should be available to all defendants, regardless of the substance they are addicted to, or their race. Thus, as a matter of fairness and racial equity, these pre-plea practices and harm reduction principles should be incorporated into statewide legislation, and become part of the practice in all treatment courts.

TCEA accomplishes this. While more serious, violent felonies would follow a traditional, post-plea model, individuals charged with nonviolent felonies and misdemeanors cases, like the population that comprises OICs, would proceed on a pre-plea basis. As we have seen in the OIC model, this will facilitate early intervention, encourage more participation, and ultimately, lead to better outcomes overall.

4. TCEA promises to bring more regional equity to our treatment court landscape.

There is currently a wide discrepancy in participation rates among the mental health courts across the state, leaving the fate of too many struggling New Yorkers to the chance of their geographical location.

Access to mental health courts varies significantly by location, even among the 29 counties that actually have them. For example, in 2023, Brooklyn admitted nearly 200 new participants into its mental health courts. The same year, Queens, which saw a similar number of adults arrested, admitted only 27 individuals to mental health court. This stark disparity shows how access to treatment courts can hinge more on county lines than on need.

Again, we can look at the impact of Drug Law Reform to anticipate the leveling potential of TCEA. Pre-reform statistics showed a wide county-by-county disparity in admissions and participation rates of the prosecutor-led drug court programs. In NYC for example, prior to Article 216, New York County’s DA-led drug court programs reported abysmally low

⁵ New York State Bar Association. (2022). *Memorandum in Support*. <https://nysba.org/app/uploads/2022/05/NYSBA-Support-Memo-S2881-B-A8524-A-.pdf>. (“For example, Syracuse County Treatment Court, a court that serves a majority white population, allows some individuals to participate pre-plea. Since participants must live in Onondaga County, the population of which is 80% white (as compared to the population of NYC, which is 42.7% white) we see a more open and accepting model benefitting the majority white residents in Onondaga County, whereas a similar model has been rejected in other courts serving Black and Brown populations.”).

admissions rates, especially compared to neighboring counties.⁶ The years following implementation of Article 216 saw a surge in diversion participants in the county, which ultimately constituted most of the overall increase in the city-wide diversion population. Legislating judicial drug diversion therefore proved to substantially level the playing field for NYC defendants, making sure that all city residents, regardless of where they happened to be arrested, were given the same opportunities to receive treatment for their substance use issues. Legislating mental health courts through TCEA will offer the same geographic equality for those struggling with mental health issues.

5. Conclusion

As in 2009, we again call upon the legislature, in partnership with the courts, to lead. In addition to streamlining and creating more efficiencies in our state's treatment court landscape, we also have an opportunity to shed the harmful, counterproductive practices and vestiges of old models and replace them with current best practices. TCEA does both, and is the reform our criminal legal system has needed for decades.

⁶ Jim Parsons et al., *A Natural Experiment in Reform: Analyzing Drug Policy Change in New York City: Final Report* (Vera Institute of Justice, January 2015), https://vera-institute.files.svdcdn.com/production/downloads/publications/drug-law-reform-new-york-city-technical-report_03.pdf.