

STATE OF NEW YORK

1263--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. FORREST, WEPRIN, HEVESI, GALLAGHER, JACKSON, BURGOS, ANDERSON, GONZALEZ-ROJAS, BURDICK, EPSTEIN, MAMDANI, KELLES, MITAYNES, BICHOTTE HERMELYN, DICKENS, PRETLOW, DARLING, SIMON, MEEKS, GLICK, CUNNINGHAM, L. ROSENTHAL, CRUZ, REYES, WALKER, VANEL, DE LOS SANTOS, DAVILA, TAYLOR, AUBRY, CARROLL, COOK, SEAWRIGHT, RAGA, SHRESTHA, BORES, McDONALD, ARDILA, OTIS, KIM, CLARK, TAPIA, GIBBS, CHANDLER-WATERMAN, SEPTIMO, K. BROWN, JOYNER, O'DONNELL, LEVENBERG -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law and the judiciary law, in relation to judicial diversion programs; and to repeal certain provisions of the criminal procedure law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The article heading of article 216 of the criminal procedure law, as added by section 4 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

JUDICIAL DIVERSION [~~PROGRAM FOR CERTAIN FELONY OFFENDERS~~]
PROGRAMS

§ 2. The opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law, as amended by section 1 of chapter 435 of the laws of 2021, is amended to read as follows:

"Eligible defendant" means any person who stands charged in an indictment [~~or a~~], superior court information [~~with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-two of the penal law, an offense defined in sections 105.10 and 105.13 of the penal law provided that the underlying crime for the conspiracy charge is a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-two of the penal law, auto stripping in the second degree~~]

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~as defined in section 165.10 of the penal law, auto stripping in the first degree as defined in section 165.11 of the penal law, identity theft in the second degree as defined in section 190.79 of the penal law, identity theft in the first degree as defined in section 190.80 of the penal law, or any other specified offense as defined in subdivision five of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she~~, misdemeanor complaint or felony complaint with any offense and has a functional impairment.

§ 3. The opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law, as amended by section 2 of chapter 435 of the laws of 2021, is amended to read as follows:

"Eligible defendant" means any person who stands charged in an indictment ~~[or a]~~, superior court information ~~[with a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-two of the penal law, an offense defined in sections 105.10 and 105.13 of the penal law provided that the underlying crime for the conspiracy charge is a class B, C, D or E felony offense defined in article two hundred twenty or two hundred twenty-two of the penal law, auto stripping in the second degree as defined in section 165.10 of the penal law, auto stripping in the first degree as defined in section 165.11 of the penal law, identity theft in the second degree as defined in section 190.79 of the penal law, identity theft in the first degree as defined in section 190.80 of the penal law, or any other specified offense as defined in subdivision five of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she]~~, misdemeanor complaint or felony complaint with any offense and has a functional impairment.

§ 4. Paragraphs (a) and (b) and the closing paragraph of subdivision 1 of section 216.00 of the criminal procedure law are REPEALED.

§ 5. Subdivision 2 of section 216.00 of the criminal procedure law, as amended by chapter 435 of the laws of 2021, is amended and six new subdivisions 3, 4, 6, 7, 8 and 9 are added to read as follows:

2. ~~["Alcohol and substance use evaluation"]~~ "Participant" means an eligible defendant who has been admitted into judicial diversion pursuant to this article.

3. "Licensed mental health care professional" means a clinician with professional experience, training and licensure who is qualified to diagnose or treat people with mental health disorders, including: substance-related and addictive disorders, neurodevelopmental disorders, neurocognitive disorders, or other disorders as defined in the most recent version of the diagnostic and statistical manual of mental disorders.

4. "Functional impairment" means a condition that involves clinically significant distress or disability in social, occupational or other areas of functioning due to a mental health disorder, including: substance-related and addictive disorders, neurodevelopmental disorders, neurocognitive disorders, or other disorders as defined in the most recent version of the diagnostic and statistical manual of mental disorders. The court shall defer to licensed mental health care professionals in determining whether a person has a functional impairment. A person may have more than one functional impairment.

5. "Clinical evaluation" means a written assessment and report by a [court-approved entity or] licensed mental health care professional [experienced in the treatment of alcohol and substance use disorder, or] as defined in subdivision three of this section or an evaluation conducted by an addiction and substance [abuse] use disorder counselor

1 credentialed by the office of addiction services and supports pursuant
2 to section 19.07 of the mental hygiene law, which shall include:

3 (a) an evaluation as to whether the defendant currently has ~~[a history~~
4 ~~of alcohol or substance use disorder]~~ one or more functional impairments
5 that may include but not be limited to a mental health disorder, as
6 ~~[such terms are]~~ defined in the most recent edition of the diagnostic
7 and statistical manual of mental disorders, ~~[fifth edition, and a co-oc-~~
8 ~~curing mental disorder or mental illness and the relationship between~~
9 ~~such use and mental disorder or mental illness,~~] if any;

10 (b) a recommendation as to whether the defendant's ~~[alcohol or~~
11 ~~substance use]~~ functional impairments, if any, could be effectively
12 addressed by judicial diversion in accordance with this article;

13 (c) a recommendation as to the treatment modality, level of care and
14 length of any proposed treatment to effectively address the defendant's
15 ~~[alcohol or substance use and any co-occurring mental disorder or~~
16 ~~illness]~~ functional impairments; and

17 (d) any other information, factor, circumstance, or recommendation
18 deemed relevant by the assessing entity or specifically requested by the
19 court.

20 6. "Treatment" means one or more evidence-based interventions includ-
21 ing, but not limited to, counseling, psychotherapy, psychotropic medica-
22 tion, health promotion, and overdose prevention education. Treatment
23 for the purposes of this article does not include treatment in a carcer-
24 al setting or in a forensic hospital pursuant to article seven hundred
25 thirty of this chapter. For substance use disorders, treatment includes
26 any clinical service or intervention that assists individuals to achieve
27 harm reduction.

28 7. "Treatment provider" means a person or organization qualified to
29 provide interventions responsive to the needs identified by the defend-
30 ant and clinician during the clinical evaluation.

31 8. "Harm reduction" means a set of interventions to reduce the nega-
32 tive consequences of substance use and does not require abstinence.

33 9. "Certified peers" means professionals who have the lived experience
34 of successfully navigating recovery-oriented systems of care who are
35 certified by the office of mental health or by the office of addiction
36 services and supports to provide peer support services. The peer model
37 should be integrated into every stage of the judicial diversion process.

38 § 6. Section 216.05 of the criminal procedure law, as amended by chap-
39 ter 435 of the laws of 2021, is amended to read as follows:

40 § 216.05 Judicial diversion program; court procedures.

41 1. At any time after the local criminal court arraignment of an eligi-
42 ble defendant, but prior to the entry of a plea of guilty or the
43 commencement of trial, the court at the request of the ~~[eligible]~~
44 defendant, ~~[may]~~ shall order ~~[an alcohol and substance use]~~ a clinical
45 evaluation for all known functional impairments. Such evaluations shall
46 take place without undue delay.

47 (a) The possibility of being evaluated shall not be contingent on a
48 waiver of any other sections of this chapter except subdivision one of
49 section 30.30 of this chapter.

50 ~~[An eligible]~~ (b) A defendant may decline to ~~[participate in]~~ undergo
51 such an evaluation at any time.

52 (c) The defendant shall provide a written authorization, in compliance
53 with the requirements of any applicable state or federal laws, rules or
54 regulations authorizing disclosure of the results of the assessment to
55 the defendant's attorney, the prosecutor, the local probation depart-
56 ment, the court, authorized court personnel and other individuals speci-

1 fied in such authorization for the sole purpose of determining whether
2 the defendant should be offered judicial diversion for treatment for
3 ~~[substance use, alcohol use and any co-occurring mental disorder or~~
4 ~~mental illness]~~ a functional impairment.

5 (d) No statement or other disclosure, written or otherwise, made by a
6 defendant to a licensed mental health care professional or treatment
7 provider may be used by the prosecution to prove any crime or offense
8 alleged in the pending case. All such statements shall be used only for
9 the purposes of making recommendations as defined in subdivision two of
10 this section and shall otherwise remain confidential.

11 2. Upon receipt of the completed ~~[alcohol and substance use]~~ clinical
12 evaluation [report], the court shall provide a copy of the report to the
13 [eligible] defendant and the [prosecutor] defendant's counsel. The
14 court and the prosecutor shall receive a copy of the clinical evaluation
15 only if the defendant decides to proceed in requesting judicial diver-
16 sion.

17 3. (a) Upon ~~[receipt]~~ review of the clinical evaluation ~~[report], the~~
18 prosecutor and defendant can agree to diversion based on the recommenda-
19 tions in the evaluation report. If the parties disagree, either party
20 may request a hearing on the issue of whether the ~~[eligible]~~ defendant
21 is an eligible defendant and should be offered ~~[alcohol or substance~~
22 ~~use]~~ treatment pursuant to this article. At such a proceeding, which
23 shall be held as soon as practicable so as to facilitate early inter-
24 vention in the event that the defendant is found to need ~~[alcohol or~~
25 ~~substance use]~~ treatment, the court may consider oral and written argu-
26 ments, ~~[may]~~ take testimony from witnesses offered by either party, and
27 ~~[may]~~ consider any relevant evidence ~~[including, but not limited to,~~
28 ~~evidence that:~~

29 ~~(i) the defendant had within the preceding ten years (excluding any~~
30 ~~time during which the offender was incarcerated for any reason between~~
31 ~~the time of the acts that led to the youthful offender adjudication and~~
32 ~~the time of commission of the present offense) been adjudicated a youth-~~
33 ~~ful offender for: (A) a violent felony offense as defined in section~~
34 ~~70.02 of the penal law; or (B) any offense for which a merit time allow-~~
35 ~~ance is not available pursuant to subparagraph (ii) of paragraph (d) of~~
36 ~~subdivision one of section eight hundred three of the correction law;~~
37 ~~and~~

38 ~~(ii) in the case of a felony offense defined in subdivision five of~~
39 ~~section 410.91 of this chapter, or section 165.10, 165.11, 190.79 or~~
40 ~~190.80 of the penal law, any statement of or submitted by the victim, as~~
41 ~~defined in paragraph (a) of subdivision two of section 380.50 of this~~
42 ~~chapter]~~ except sealed cases defined in section 160.50 or 160.55 of this
43 chapter.

44 (b) Upon completion of such a proceeding, the court shall consider and
45 make findings of fact with respect to whether:

46 (i) the defendant is an eligible defendant as defined in subdivision
47 one of section 216.00 of this article;

48 (ii) ~~[the defendant has a history of alcohol or substance use;~~

49 ~~(iii) such alcohol or substance use]~~ the defendant's functional
50 impairment is likely a contributing factor to [the defendant's criminal
51 behavior] their current or future involvement in the criminal legal
52 system;

53 ~~[(iv)]~~ (iii) the defendant's participation in judicial diversion could
54 effectively address such ~~[use]~~ functional impairment; and

55 ~~[(v) institutional confinement of the defendant is or may not be~~
56 ~~necessary for the protection of the public]~~ (iv) the defendant's access

1 to treatment through this article would benefit the public and the
2 defendant.

3 (c) Where there has been a finding in the clinical evaluation that the
4 defendant has a mental disorder, as defined in the most recent edition
5 of the diagnostic and statistical manual of mental disorders, or a clin-
6 ical diagnosis of another serious functional impairment there shall be a
7 presumption that the defendant is an eligible defendant.

8 4. (a) When an authorized court determines, pursuant to paragraph (b)
9 of subdivision three of this section, that an eligible defendant should
10 be offered [~~alcohol or substance use~~] treatment, or when the parties and
11 the court agree to [~~an eligible defendant's participation in alcohol or~~
12 ~~substance use~~] treatment, an eligible defendant [~~may~~] shall be allowed
13 to participate in the judicial diversion program offered by this arti-
14 cle. [~~Prior to the court's issuing an order granting judicial diver-~~
15 ~~sion, the eligible defendant shall be required to enter a plea of guilty~~
16 ~~to the charge or charges, provided, however, that no such guilty plea~~
17 ~~shall be required when:~~

18 ~~(a) the people and the court consent to the entry of such an order~~
19 ~~without a plea of guilty; or~~

20 ~~(b) based on a finding of exceptional circumstances, the court deter-~~
21 ~~mines that a plea of guilty shall not be required. For purposes of this~~
22 ~~subdivision, exceptional circumstances exist when, regardless of the~~
23 ~~ultimate disposition of the case, the entry of a plea of guilty is like-~~
24 ~~ly to result in severe collateral consequences.]~~

25 (b) Eligible defendants shall not be required to submit a plea of
26 guilty to participate in judicial diversion.

27 (c) Prior participation in treatment or court-mandated treatment shall
28 not preclude future treatment participation.

29 (d) Eligible defendants shall not be precluded from diversion because
30 of a lack of resources in the community.

31 (e) An eligible defendant shall not be precluded from diversion
32 because of their gender identity.

33 5. The [~~defendant~~] participant shall agree on the record or in writing
34 to abide by the [~~release~~] judicial diversion program conditions set by
35 the court, which[~~r~~] shall include[+] participation in a specified period
36 of [~~alcohol or substance use~~] treatment at a specified program or
37 programs [~~identified by the court, which may include periods of detoxi-~~
38 ~~fication,~~]. In setting the program conditions, the court shall consider
39 the participant's assessment and treatment plan, as agreed upon by the
40 participant and treatment provider, in addition to the clinical evalu-
41 ation. Judicial diversion program conditions may include:

42 (a) limited or intensive outpatient treatment in which the participant
43 may reside in the community, regardless of whether they have permanent
44 housing or not;

45 (b) limited periods of detoxification or inpatient rehabilitation for
46 participants with substance use disorders as preparation for a treatment
47 admission or medication induction;

48 (c) residential [~~or outpatient~~] treatment[~~, or both~~]. If ordering
49 residential treatment, placement shall be in the most integrated setting
50 appropriate for the participant's needs to avoid discrimination on the
51 basis of disability, in accordance with federal law, as determined after
52 taking into account the views of the health care professional who
53 conducted the mental health assessment or alcohol and substance use
54 evaluation and any health care professionals responsible for providing
55 such treatment or monitoring the [~~defendant's~~] participant's progress in
56 such treatment; [~~and may include: (i)~~]

(d) periodic court appearances, which may ~~[include periodic urinalysis, (ii)]~~ be an electronic appearance pursuant to section 182.20 of this part upon consent of the participant. The court shall consider the participant's service engagement and treatment needs when scheduling periodic court appearances and shall attempt to minimize treatment disruption;

(e) periodic drug screening as needed, when recommended by the treatment provider as part of a participant's treatment plan. Drug screening methods shall only include oral swabs, sweat patches, or non-observed urinalysis;

(f) other treatment as recommended by the treatment provider; and

(g) a requirement that the ~~[defendant]~~ participant refrain from engaging in criminal behaviors~~[, (iii) if the defendant needs treatment for opioid use, that he or she]~~.

5-a. The court shall not require a participant to consent to share, or authorize the treatment provider to share, protected health information in accordance with the Health Insurance Portability and Accountability Act Privacy Rule (45 CFR Parts 160 and 164), with the court. Exceptions include:

(a) record of attendance and relevant barriers to attendance;

(b) treatment plan and any recommended changes to the plan during participation in judicial diversion; and

(c) drug toxicology results, when part of the treatment plan.

5-b. If the participant has one or more conditions requiring prescription medication they may participate in and receive medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice~~[, provided that no]~~.

(a) No court shall limit the medications that a licensed mental health care professional recommends prescribing for the participant;

(b) No court shall require the use of any specified type or brand of drug during the course of medically prescribed ~~[drug]~~ treatments~~[,]~~; and

(c) No court shall penalize or sanction a participant for periods of voluntary hospitalization, respite care, or other forms of supportive care.

5-c. Treatment providers shall collaborate with the participant and clinical court staff to create a discharge plan prior to completion of diversion to incorporate peer support, housing and employment support, and how to access other community-based health services. If a participant finishes their treatment plan, they shall be considered to have successfully completed their obligation to the court, regardless of their ability to secure permanent housing, employment, or other personal goals identified by the participant.

5-d. Upon request by the defense, the court shall allow participants to consult a different mental health care professional for a second opinion and propose an alternative treatment plan. Any alternative opinion or alternative treatment plan shall be considered by the court when determining the treatment plan.

6. Upon ~~[an eligible defendant's]~~ a participant's agreement to abide by the conditions set by the court, the court shall issue a securing order providing for bail or release on the ~~[defendant's]~~ participant's own recognizance and conditioning any release upon the agreed upon conditions pursuant to article five hundred ten of this chapter. The period of ~~[alcohol or substance use]~~ treatment shall begin as specified by the court and as soon as practicable after the ~~[defendant's]~~ participant's release, taking into account the availability of treatment, so

1 as to facilitate early intervention with respect to the [~~defendant's~~
2 ~~substance use or condition~~] participant's functional impairment and the
3 effectiveness of the treatment program. In the event that a treatment
4 program is not immediately available or becomes unavailable during the
5 course of the [~~defendant's participation~~] participant's involvement in
6 the judicial diversion program, the court may release the [~~defendant~~]
7 participant pursuant to the securing order.

8 7. When participating in judicial diversion treatment pursuant to this
9 article, any resident of this state who is covered under a private
10 health insurance policy or contract issued for delivery in this state
11 pursuant to article thirty-two, forty-three or forty-seven of the insur-
12 ance law or article forty-four of the public health law, or who is
13 covered by a self-funded plan which provides coverage for the diagnosis
14 and treatment of [~~chemical abuse and chemical dependence~~] functional
15 impairment however defined in such policy; shall first seek reimburse-
16 ment for such treatment in accordance with the provisions of such policy
17 or contract. The court in its discretion may order the participant to
18 apply for public insurance if they so qualify. The court shall not deny
19 access to treatment for inability to pay.

20 8. (a) During the period of a [~~defendant's participation~~] partic-
21 ipant's involvement in the judicial diversion program, the treatment
22 court shall retain jurisdiction of the [~~defendant~~] participant,
23 provided, however, that the court [~~may~~] shall allow such [~~defendant~~]
24 participant to (i) reside in another jurisdiction, [~~ex~~] and/or (ii)
25 participate in [~~alcohol and substance use~~] treatment and other programs
26 in the jurisdiction where the [~~defendant~~] participant resides or in any
27 other jurisdiction, while participating in a judicial diversion program
28 under conditions set by the court and agreed to by the [~~defendant~~]
29 participant pursuant to subdivisions five and six of this section. The
30 court may transfer the participant's case to the judicial diversion
31 court in the county in which the participant resides pursuant to subdi-
32 vision five of section 170.15 of this part, subdivision four of section
33 180.20 of this part, or section 230.21 of this part to ensure continuity
34 of treatment.

35 (b) The court may require the [~~defendant~~] participant to appear in
36 court [~~at any time~~] or remotely to enable the court to monitor the
37 [~~defendant's~~] participant's progress in [~~alcohol or substance use~~]
38 treatment. The frequency of appearances shall take into account a
39 person's individual circumstances and treatment progress in accordance
40 with best practices. The court shall provide notice, reasonable under
41 the circumstances, to the people, the treatment provider, the [~~defend-~~
42 ~~ant~~] participant and the [~~defendant's~~] participant's counsel whenever it
43 orders or otherwise requires the appearance of the [~~defendant-in~~]
44 participation for court appearances. Failure to appear as required with-
45 out reasonable cause therefor shall constitute a violation of the condi-
46 tions of the court's agreement with the [~~defendant~~] participant.

47 9. (a) If at any time during the [~~defendant's participation~~] partic-
48 ipant's engagement in the judicial diversion program, the court has
49 reasonable grounds to believe that the [~~defendant~~] participant has
50 violated a [~~release~~] program condition in an important respect or has
51 willfully failed to appear before the court as requested, the court
52 except as provided in subdivision two of section 510.50 of this chapter
53 regarding a failure to appear, shall direct the [~~defendant~~] participant
54 to appear [~~or issue a bench warrant to a police officer or an appropri-~~
55 ~~ate peace officer directing him or her to take the defendant into custo-~~
56 ~~dy and bring the defendant before the court without unnecessary delay,~~

~~provided, however, that under no circumstances shall a defendant who requires treatment for opioid use be deemed to have violated a release condition on the basis of his or her participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice]~~ for a hearing on the violation pursuant to paragraph (b) of this subdivision with at least forty-eight hours notice to the participant or the participant's counsel, unless notice is waived by the participant. The court may not modify the participant's securing order until such time as the hearing's conclusion. The relevant provisions of section 530.60 of this chapter relating to issuance of securing orders shall apply to such proceedings under this subdivision. There is a presumption that a bench warrant shall not be issued for participants in judicial diversion.

(b) In determining whether a [~~defendant~~] participant violated a condition of [~~his or her release under~~] the judicial diversion program or willfully failed to appear in court, the court [~~may~~] shall conduct a [~~summary~~] hearing consistent with due process [~~and sufficient~~] to satisfy the court that the [~~defendant~~] participant has, in fact, violated the condition or willfully failed to appear.

(i) The court shall provide reasonable notice to the participant and the participant's counsel, but in no circumstance less than forty-eight hours notice, unless notice is waived by the participant.

(ii) The people shall bear the burden of proving by clear and convincing evidence that the participant has violated a condition of the judicial diversion program in an important respect. The participant may cross-examine witnesses and may present relevant, admissible evidence on their own behalf. The court shall consider all factors relating to the participant's current mental health or cognitive status, their engagement with judicial diversion prior to this time, as well as any other factors that may have impacted their participation or alleged violation.

(iii) A bench warrant shall not be issued absent a finding by the court that the alleged violation or failure to appear was willful. In determining willfulness, the court shall consider: the nexus between the participant's violation or failure to appear and their functional impairment; whether an appropriate treatment plan is currently in place; the participant's history of making court appearances in the instant matter; and a history of positive engagement with treatment staff or the court.

(iv) Under no circumstances shall a participant who requires treatment for a functional impairment be deemed to have violated a program condition on the participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice.

(v) If the court finds a reasonable explanation or mitigation for any alleged violation or alleged willful failure to appear, the securing order shall not be modified.

(vi) The court may seal portions of the proceeding related to collateral consequences at the request of the participant and participant's counsel.

(c) If the court determines by clear and convincing evidence that the [~~defendant~~] participant has violated a condition of his or her release under the judicial diversion program, the court may permit the participant to continue their treatment mandate as previously ordered; modify the [~~conditions thereof, reconsider the order of recognizance or bail~~]

~~pursuant to subdivision two of section 510.30 of this chapter,~~ treatment plan per the recommendation of the treatment provider; hold treatment in abeyance until the underlying matter that caused the violation is resolved; or terminate the ~~[defendant's]~~ participant's participation in the judicial diversion program~~[, and when applicable proceed with the defendant's sentencing in accordance with the agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivision two of section 70.70 of the penal law taking into account]~~ if no other treatment option is available. The court shall consider:

(i) the length of time the [defendant] participant spent in residential treatment and how best to continue treatment [while the defendant is serving that sentence. In determining what action to take for a violation of a release condition, the court shall consider];

(ii) all relevant circumstances, including the views of the prosecutor, the defense and the [alcohol or substance use] participant's interest in continuing treatment [provider, and the extent to which persons who ultimately successfully complete a drug treatment regimen sometimes] or the program; and

(iii) the role of relapse [by not abstaining from alcohol or substance use or by failing to comply fully with all requirements imposed by a treatment program] in recovery and treatment.

(d) The court shall ~~[also consider using]~~ use a system of graduated and appropriate responses ~~[or sanctions]~~ designed to address such inappropriate behaviors~~[, protect public safety]~~ and facilitate, where possible, successful completion of the ~~[alcohol or substance use]~~ treatment program.

~~[(d)]~~ (e) Nothing in this subdivision shall be construed ~~[as preventing a court from terminating a defendant's participation in the judicial diversion program for violating a release condition when such a termination is necessary to preserve public safety. Nor shall anything in this subdivision be construed]~~ as precluding the prosecution of a ~~[defendant] participant~~ for the commission of a different offense while participating in the judicial diversion program. Prior to such termination, the participant shall be entitled to a hearing at which clear and convincing evidence shall be offered to support that there exists a substantial risk to an identifiable person. In the absence of such a hearing and such a finding, there can be no termination.

~~[(e)]~~ (f) A ~~[defendant] participant~~ may at any time advise the court that ~~[he or she wishes]~~ they wish to terminate participation in the judicial diversion program, at which time the court shall ~~[proceed with the case and, where applicable, shall impose sentence in accordance with the plea agreement. Notwithstanding any provision of law to the contrary, the court may impose any sentence authorized for the crime of conviction in accordance with the plea agreement, or any lesser sentence authorized to be imposed on a felony drug offender pursuant to paragraph (b) or (c) of subdivision two of section 70.70 of the penal law taking into account the length of time the defendant spent in residential treatment and how best to continue treatment while the defendant is serving that sentence]~~ transfer the case back to the appropriate trial part.

10. Upon the court's determination that the ~~[defendant] participant~~ has successfully completed the required period of ~~[alcohol or substance use]~~ treatment and has otherwise satisfied the conditions required for

1 successful completion of the judicial diversion program, the court shall
2 ~~[comply with the terms and conditions it set for final disposition when~~
3 ~~it accepted the defendant's agreement to participate in the judicial~~
4 ~~diversion program. Such disposition may include, but is not limited to:~~
5 ~~(a) requiring the defendant to undergo a period of interim probation~~
6 ~~supervision and, upon the defendant's successful completion of the~~
7 ~~interim probation supervision term, notwithstanding the provision of any~~
8 ~~other law, permitting the defendant to withdraw his or her guilty plea~~
9 ~~and dismissing the indictment; or (b) requiring the defendant to undergo~~
10 ~~a period of interim probation supervision and, upon successful~~
11 ~~completion of the interim probation supervision term, notwithstanding~~
12 ~~the provision of any other law, permitting the defendant to withdraw his~~
13 ~~or her guilty plea, enter a guilty plea to a misdemeanor offense and~~
14 ~~sentencing the defendant as promised in the plea agreement, which may~~
15 ~~include a period of probation supervision pursuant to section 65.00 of~~
16 ~~the penal law; or (c) allowing the defendant to withdraw his or her~~
17 ~~guilty plea and dismissing]~~ dismiss the indictment or superior court
18 information, felony complaint, misdemeanor complaint, information,
19 simplified information, or prosecutor's information and seal the case
20 pursuant to section 160.50 of this chapter.

21 11. Nothing in this article shall be construed as restricting or
22 prohibiting courts or district attorneys from using other lawful proce-
23 dures or models for placing appropriate persons into ~~[alcohol or~~
24 ~~substance use]~~ treatment.

25 § 7. The criminal procedure law is amended by adding a new section
26 216.10 to read as follows:

27 § 216.10 Diversion part established.

28 1. The chief administrator of the courts is hereby directed to estab-
29 lish, in each county of the state, a part of the court to be known as
30 the diversion part for the county in which such court presides. To aid
31 in their work, such judges and diversion court personnel shall receive
32 annual training in specialized areas, including, but not limited to
33 disability, mental illness, and substance use disorder needs, including
34 co-occurring disorders, evidence-based practices, trauma-informed care,
35 certified peer programs, and harm reduction principles, as well as
36 training in procedural justice and cultural competency and medicaid or
37 medicare eligibility. The chief administrator of the courts shall ensure
38 that all employees who staff the diversion parts receive specialized
39 training in procedural justice and working with people with complex
40 needs.

41 2. Each chief administrator of the courts shall at the end of each
42 year prepare and file an annual report, which the office shall compile,
43 publish on its website and make available upon request to members of the
44 public. Such reports shall not include any personal identifying informa-
45 tion for any individual participants. Each such report, in addition to
46 other relevant information, shall set forth, disaggregated by each coun-
47 ty served:

48 (a) the number of people with cases in the diversion part for each of
49 the following categories, broken down by gender, race and ethnicity:

50 (i) the number of people who make an application for evaluation;

51 (ii) the number of people who are accepted into judicial diversion;
52 and

53 (iii) the number of people who successfully complete the program;

54 (b) the length of time, in months, each case remained in the diversion
55 part prior to acquittal, dismissal, release on recognizance, revocation
56 of release on conditions, and sentencing;

1 (c) the demographic makeup of participants in the diversion part,
2 broken down by race, ethnicity, age and sex of participants;
3 (d) the crimes with which each participant was charged;
4 (e) whether the treatment obtained was for substance use, mental
5 health, co-occurring or other;
6 (f) the court disposition in each supervised case, including sentenc-
7 ing information;
8 (g) the costs saved to the county by avoiding pre-trial or post-con-
9 viction detention in a county jail or state prison; and
10 (h) a list of service providers, including contact information, that
11 the diversion part in the superior court of the county partners with to
12 serve participants.

13 § 8. Subdivision 5 of section 170.15 of the criminal procedure law, as
14 amended by chapter 91 of the laws of 2021, is amended to read as
15 follows:

16 5. (a) Notwithstanding any provision of this section to the contrary,
17 in any county [~~outside a city having a population of one million or~~
18 ~~more~~], upon or after arraignment of a defendant on an information, a
19 simplified information, a prosecutor's information or a misdemeanor
20 complaint pending in a local criminal court, such court [~~may~~] shall,
21 upon motion of the defendant and after giving the district attorney an
22 opportunity to be heard, order that the action be removed from the court
23 in which the matter is pending to another local criminal court in the
24 same county, or with consent of the district attorney and the district
25 attorney of the adjoining county to another court in [~~such~~] an adjoining
26 county, or to a court in the county in which the defendant resides that
27 has been designated as a judicial diversion, human trafficking [~~court~~],
28 or veterans treatment court by the chief administrator of the courts,
29 and such judicial diversion, human trafficking [~~court~~], or veterans
30 treatment court [~~may~~] shall then conduct such action to judgment or
31 other final deposition; provided, however, that no court may order
32 removal pursuant to this subdivision to a veterans treatment court of a
33 family offense charge described in subdivision one of section 530.11 of
34 this chapter where the accused and the person alleged to be the victim
35 of such offense charged are members of the same family or household as
36 defined in such subdivision one of section 530.11; and provided further
37 that an order of removal issued under this subdivision shall not take
38 effect until five days after the date the order is issued unless, prior
39 to such effective date, the human trafficking court or veterans treat-
40 ment court notifies the court that issued the order that:

41 i. it will not accept the action, in which event the order shall not
42 take effect; or

43 ii. it will accept the action on a date prior to such effective date,
44 in which event the order shall take effect upon such prior date.

45 (b) Upon providing notification pursuant to subparagraph i or ii of
46 paragraph (a) of this subdivision, the human trafficking court or veter-
47 ans treatment court shall promptly give notice to the defendant, his or
48 her counsel, and the district attorney.

49 § 9. Subdivision 4 of section 180.20 of the criminal procedure law, as
50 amended by chapter 91 of the laws of 2021, is amended to read as
51 follows:

52 4. (a) Notwithstanding any provision of this section to the contrary,
53 [~~in any county outside a city having a population of one million or~~
54 ~~more~~], upon or after arraignment of a defendant on a felony complaint
55 pending in a local criminal court having preliminary jurisdiction there-
56 of, such court [~~may~~] shall, upon motion of the defendant and after

1 giving the district attorney an opportunity to be heard, order that the
2 action be removed from the court in which the matter is pending to
3 another local criminal court in the same county, or with consent of the
4 district attorney and the district attorney of the adjoining county to
5 another court in such adjoining county, or to a court in the county in
6 which the defendant resides, that has been designated as a judicial
7 diversion, human trafficking ~~[court]~~, or veterans treatment court by the
8 chief administrator of the courts, and such judicial diversion, human
9 trafficking ~~[court]~~, or veterans treatment court may then conduct such
10 action to judgment or other final disposition; provided, however, that
11 no court may order removal pursuant to this subdivision to a veterans
12 treatment court of a family offense charge described in subdivision one
13 of section 530.11 of this chapter where the accused and the person
14 alleged to be the victim of such offense charged are members of the same
15 family or household as defined in such subdivision one of section
16 530.11; and provided further an order of removal issued under this
17 subdivision shall not take effect until five days after the date the
18 order is issued unless, prior to such effective date, the human traf-
19 ficking court or veterans treatment court notifies the court that issued
20 the order that:

21 i. it will not accept the action, in which event the order shall not
22 take effect; or

23 ii. it will accept the action on a date prior to such effective date,
24 in which event the order shall take effect upon such prior date.

25 (b) Upon providing notification pursuant to subparagraph i or ii of
26 paragraph (a) of this subdivision, the human trafficking court or veter-
27 ans treatment court shall promptly give notice to the defendant, his or
28 her counsel and the district attorney.

29 § 10. Section 230.21 of the criminal procedure law, as added by chap-
30 ter 91 of the laws of 2021, is amended to read as follows:

31 § 230.21 Removal of action to certain courts in an adjoining county or
32 county in which the defendant resides.

33 1. In any county ~~[outside a city having a population of one million or~~
34 ~~more], [the] upon or after arraignment of a defendant on an indictment~~
35 pending in a superior court having jurisdiction thereof, such court
36 ~~[may] shall,~~ upon motion of the defendant and with consent of the
37 district attorney and the district attorney of the adjoining county that
38 has a superior court designated a human trafficking court or veterans
39 treatment court by the chief administrator of the courts, order that the
40 indictment and action be removed from the court in which the matter is
41 pending to ~~[such] a superior court in an adjoining county or in the~~
42 county in which the defendant resides that has been designated a judi-
43 cial diversion, human trafficking ~~[court]~~, or veterans treatment court,
44 whereupon such court may then conduct such action to judgment or other
45 final disposition; provided, however, that no court may order removal to
46 a veterans treatment court of a family offense charge described in
47 subdivision one of section 530.11 of this chapter pursuant to this
48 section where the accused and the person alleged to be the victim of
49 such offense charged are members of the same family or household as
50 defined in such subdivision one of section 530.11; and provided further
51 that an order of removal issued under this subdivision shall not take
52 effect until five days after the date the order is issued unless, prior
53 to such effective date, the human trafficking court or veterans treat-
54 ment court notifies the court that issued the order that:

55 (a) it will not accept the action, in which event the order shall not
56 take effect, or

1 (b) it will accept the action on a date prior to such effective date,
2 in which event the order shall take effect upon such prior date.

3 2. Upon providing notification pursuant to paragraph (a) or (b) of
4 subdivision one of this section, the human trafficking court or veterans
5 treatment court shall promptly give notice to the defendant, his or her
6 counsel and the district attorney of both counties.

7 § 11. Paragraph (r) of subdivision 2 of section 212 of the judiciary
8 law, as added by section 15 of part AAA of chapter 56 of the laws of
9 2009, is amended to read as follows:

10 (r) Ensure that cases eligible for judicial diversion pursuant to
11 article two hundred sixteen of the criminal procedure law shall be
12 assigned to court parts in the manner provided by the chief administra-
13 tor and that, to the extent practicable, such cases are presided over by
14 judges who, by virtue of the structure, caseload and resources of the
15 parts and the judges' training, are in the best position to provide
16 effective supervision over such cases, such as the [drug] treatment
17 courts. In compliance with these provisions, the chief administrator
18 shall [~~give due weight to~~] individually assess the need for diverted
19 defendants to make regular court appearances, and be closely supervised
20 by the court, for the duration of [drug] treatment and the pendency of
21 the criminal charge.

22 § 12. This act shall take effect on the one hundred eightieth day
23 after it shall have become a law; provided, however that the amendments
24 to the opening paragraph of subdivision 1 of section 216.00 of the
25 criminal procedure law made by section two of this act shall be subject
26 to the expiration and reversion of such paragraph pursuant to
27 section 12 of chapter 90 of the laws of 2014, as amended, when upon
28 such date the provisions of section three of this act shall take
29 effect.