

# STATE OF NEW YORK

10866

## IN ASSEMBLY

July 24, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Finch, Barclay, Palmesano, Ashby, Blankenbush, Brabenec, Byrne, Byrnes, Crouch, DeStefano, DiPietro, Fitzpatrick, Friend, Garbarino, Giglio, Goodell, Hawley, Johns, Kolb, Lalor, Lawrence, LiPetri, Malliotakis, Manktelow, McDonough, Mikulin, B. Miller, M. L. Miller, Montesano, Morinello, Norris, Palumbo, Ra, Reilly, Salka, Schmitt, Smith, Smullen, Stec, Tague, Walczyk, Walsh) -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, in relation to the establishment and operations of a dedicated opioid rehabilitation facility and the personal needs allowance for residents of a dedicated opioid rehabilitation facility; to amend the criminal procedure law, in relation to the diversion of certain defendants to a mandatory opioid rehabilitation facility; and to amend the correction law, in relation to the establishment of a dedicated opioid rehabilitation facility and the provision of corrections officers to such facilities

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

1 Section 1. This act shall be known and may be cited as "the Jessica  
2 Nicole Gentile law".

3 § 2. Legislative intent. (a) Opioid addiction is a chronic disease  
4 that can cause major health, social and economic problems. Opioids are a  
5 class of drugs that act in the nervous system to produce feelings of  
6 pleasure and pain relief. Some opioids are legally prescribed by health  
7 care providers to manage severe and chronic pain. Commonly prescribed  
8 opioids include oxycodone, fentanyl, buprenorphine, methadone, oxymor-  
9 phone, hydrocodone, codeine, and morphine. Other opioids, such as  
10 heroin, are illegal drugs of abuse.

11 Opioid addiction is characterized by a powerful, compulsive urge to  
12 use opioid drugs, even if or when they are no longer required medically.  
13 Opioids have a high potential for causing addiction in some people, even  
14 when the medications are prescribed appropriately and taken as directed.  
15 Many prescription opioids are misused or diverted to others. Individ-  
16 uals who become addicted may prioritize getting and using these drugs

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

LBD16281-02-0

1 over other activities in their lives, often negatively impacting their  
2 professional and personal relationships. It is unknown why some people  
3 are more likely to become addicted than others.

4 Opioids change the chemistry of the brain and lead to drug tolerance,  
5 which means that over time the dose needs to be increased to achieve the  
6 same effect. Taking opioids over a long period of time produces depend-  
7 ence, such that when people stop taking the drug, they have physical and  
8 psychological symptoms of withdrawal (such as muscle cramping, diarrhea  
9 and anxiety). Dependence is not the same thing as addiction; although  
10 everyone who takes opioids for an extended period will become dependent,  
11 only a small percentage also experience the compulsive, continuing need  
12 for the drug that characterizes addiction.

13 Opioid addiction can cause life-threatening health problems, including  
14 the risk of overdose. Overdose occurs when high doses of opioids cause  
15 breathing to slow or stop, leading to unconsciousness and death if the  
16 overdose is not treated immediately. Both legal and illegal opioids  
17 carry a risk of overdose if a person takes too much of the drug, or if  
18 opioids are combined with other drugs (particularly tranquilizers called  
19 benzodiazepines).

20 In many cases, addiction requires a gateway drug. Gateway drugs are  
21 substances that, when consumed, give way to harder, more dangerous  
22 drugs. These milder substances, such as nicotine or alcohol, are  
23 believed to open the door to the use of drugs such as meth, heroin and  
24 cocaine, which can lead to addiction. Opioid abuse does not always  
25 entail prior use of a gateway drug as opioids themselves are gateway  
26 drugs.

27 Opioid abuse, along with the resulting overdose deaths, has risen to  
28 the point of being one of the worst drug epidemics in the history of the  
29 United States. According to the Centers for Disease Control and  
30 Prevention (CDC) more than 750,000 people have died since 1999 from a  
31 drug overdose. Two out of three drug overdose deaths in 2018 involved an  
32 opioid. The CDC reports that opioids were involved in more than 47,600  
33 overdose deaths in 2017 alone.

34 Rarely do people abusing or addicted to opioids seek treatment for  
35 their addiction problems until they run into problems with the law.  
36 According to research, opioid abusers do not believe that quitting is  
37 even an option, as the addiction is so powerful, they cannot even  
38 comprehend being free of it. For the most part, there are no volunteers  
39 in current opioid recovery programs, just forced participants ordered  
40 into the programs by the court. This makes the legal system, in partic-  
41 ular the drug courts, an important part of this societal mental health  
42 crisis.

43 (b) New York state leads the nation in the expansion and implementa-  
44 tion of drug courts into daily court operations.

45 Drug courts use a collaborative approach to treatment involving  
46 defense attorneys, prosecutors, treatment and education providers, and  
47 law enforcement officials. Article 216 of the criminal procedure law  
48 authorizes a criminal drug court to divert eligible felony offenders  
49 into substance abuse treatment programs in lieu of incarceration in a  
50 correctional facility. Non-violent offenders voluntarily enter the  
51 program in which rules are clearly defined and a contract between the  
52 offender, attorneys, the district attorney and the court is signed.

53 There are 141 drug courts in operation statewide. Defendants facing  
54 certain felony or misdemeanor charges where drug addiction is a compo-  
55 nent of their offense may be eligible to participate in a criminal drug  
56 treatment court program. Those who successfully complete their drug

1 treatment court program may have their charges dismissed or reduced or  
2 may receive a reduction in their sentence.

3 Young adult drug treatment courts are operational in several of the  
4 criminal courts. These courts target defendants in the 16- to  
5 21-year-old population.

6 In 2017, New York state opened the first opioid court in the nation.  
7 The Buffalo Opioid Intervention Court provides immediate intervention,  
8 treatment and medication for defendants who screen positive for opioids  
9 and who staff feel are at risk of overdose or addiction. The University  
10 of Buffalo School of Family Medicine (UBFM), a grant partner, contrib-  
11 utes key staff positions. Those staff members provide daily case manage-  
12 ment for program participants and link those participants to medication  
13 assisted treatment (MAT) within 48 hours of arraignment when indicated.

14 In the Bronx, which has one of the highest number of opioid-related  
15 overdoses and deaths in the state, the Bronx Opioid Avoidance and Recov-  
16 ery Court is a collaboration between the court, prosecutors, and the  
17 defense bar. Defendants charged with misdemeanor drug possession are  
18 diverted to existing treatment services. Because only misdemeanor offen-  
19 ders are eligible, charges are generally dismissed upon completion of  
20 the recommended intervention.

21 Results from these diversion treatment programs have been positive. A  
22 2003 study of six drug courts conducted by the Center for Court Inno-  
23 vation demonstrated that the rates at which drug court graduates re-of-  
24 fend were significantly reduced as compared to rates at which incarcer-  
25 ated individuals re-offended. Notwithstanding the foregoing, an  
26 additional treatment option is required.

27 Unfortunately, a percentage of defendants passing through drug courts  
28 and their treatment options have a difficult time remaining free of  
29 drugs after completing treatment, particularly those individuals who  
30 abuse or are addicted to opioids. As the American Medical Association  
31 has declared substance abuse a disease, it can be assumed some people  
32 are sicker than others. After completing treatment in a rehabilitation  
33 program and returning into society, usually in the same town where their  
34 drug contacts were, these individuals have a difficult time remaining  
35 drug-free.

36 The current model of drug court will tolerate relapse after relapse,  
37 to a certain point. When judges get weary of these chronically addicted  
38 defendants, they place them directly into the criminal system of the  
39 court to serve prison time. There is no middle ground between "drug  
40 court" rehabilitation referral and "criminal court system" carcera-  
41 tion. Once in the criminal court system, each opioid abuser or addict  
42 will cost the state approximately \$65,000 to \$80,000 a year (the average  
43 cost of maintaining a prisoner). The recidivism rate for those sentenced  
44 to prison is approximately 45%.

45 The cost of maintaining long-term or even lifelong inmates in prison  
46 and the destruction of many lives could be reduced by adding an option  
47 to the system between drug court and the criminal system: a mandatory  
48 state-run opioid rehabilitation center, where people could voluntarily  
49 sign away their right to leave for one year or longer in exchange for  
50 not being put into the prison system. In other words, a lock-up treat-  
51 ment center.

52 This approach stands in contrast to current rehabilitation referral  
53 measures which entail outpatient treatment or residential treatment for  
54 limited periods of time. For some individuals, rehabilitation options  
55 are determined by their insurance plan, not their actual needs.

1 A state-run residential rehabilitation center would provide drug court  
2 judges with another alternative to criminal court. It would provide  
3 ongoing treatment over an extended period of time; participants would  
4 not be released until health care providers believed they could success-  
5 fully refrain from drug use. Drug court judges would have another alter-  
6 native to criminal court. They would no longer have to tolerate relapse  
7 after relapse. Participants would benefit from an environment where  
8 recovery would be easier for them.

9 (c) The legislature finds and declares that it is in the best interest  
10 of the people of the state of New York to reduce the burden on the drug  
11 courts, the cost to the state and the amount of time needed by the judi-  
12 cial system to handle drug cases by referring opioid-abusing or opioid-  
13 addicted criminal defendants to a facility under the supervision of the  
14 Office of Addiction Services and Supports, while at the same time  
15 providing desperately needed treatment to such individuals. As opposed  
16 to incarceration, a mental health response is more likely to reduce  
17 recidivism, saving both lives and taxpayer money.

18 § 3. The mental hygiene law is amended by adding a new article 23 to  
19 read as follows:

#### 20 ARTICLE 23

#### 21 DEDICATED OPIOID REHABILITATION TREATMENT FACILITY

#### 22 Section 23.01 Definitions.

#### 23 23.02 Establishment of a dedicated opioid rehabilitation facili- 24 ty.

#### 25 23.03 Dedicated opioid rehabilitation facility.

#### 26 23.04 Admission to a dedicated opioid rehabilitation treatment 27 facility.

#### 28 23.05 Referral to a dedicated opioid rehabilitation facility by 29 an opioid court.

#### 30 23.06 Sentencing agreement.

#### 31 23.07 Minors.

#### 32 23.08 Discharge from a dedicated opioid rehabilitation facility.

#### 33 23.09 Treatment following discharge from a dedicated opioid 34 rehabilitation facility.

#### 35 23.10 Court appearances.

#### 36 23.11 Records.

#### 37 23.12 Limitations.

#### 38 23.13 Study.

#### 39 § 23.01 Definitions.

#### 40 As used in this article:

41 1. "commissioner" means the commissioner of the office of addiction  
42 services and supports;

43 2. "correctional institution" includes state, county and federal  
44 institutions or facilities of corrections and juvenile facilities;

45 3. "court" or "drug court" means a state drug court, a young adult  
46 drug treatment court, the Buffalo Opioid Intervention Court and the  
47 Bronx Opioid Avoidance and Recovery Court;

48 4. "dedicated opioid rehabilitation facility" or "facility" means a  
49 dedicated opioid rehabilitation facility established pursuant to section  
50 23.02 of this article;

51 5. "defendant" means an individual referred to a dedicated opioid  
52 rehabilitation facility pursuant to an agreement entered into in drug  
53 court;

54 6. "eligible defendant" means a defendant who qualifies as an eligible  
55 defendant as defined in section 216.00 of the criminal procedure law;

1 7. "licensed health care provider" means an individual licensed pursu-  
2 ant to title eight of the education law;

3 8. "minor" means a defendant at least sixteen years of age, but under  
4 eighteen years of age, but does not include a person who is the parent  
5 of a child or has married or who is emancipated; and

6 9. "office" means the office of addiction services and supports.

7 § 23.02 Establishment of a dedicated opioid rehabilitation facility.

8 1. The commissioner of addiction services and supports, in consulta-  
9 tion with the commissioner of health, the commissioner of corrections  
10 and community supervision, the chief administrator of the courts and the  
11 commissioner of the office of general services, shall establish a dedi-  
12 cated opioid rehabilitation facility for the purpose of providing long-  
13 term residential treatment of opioid abusing or addicted defendants  
14 referred to such facility from a drug court.

15 2. Such facility shall be operated and supervised by the office of  
16 addiction services and supports, with support from the department of  
17 corrections and community supervision.

18 3. Such facility shall be a secured (locked) facility established for  
19 the purpose of providing long-term residential treatment of opioid abuse  
20 and opioid addiction as an alternative to incarceration.

21 4. In selecting the location of the facility, preference shall be  
22 given to a site near the Buffalo Opioid Intervention Court or the Bronx  
23 Opioid Avoidance and Recovery Court and to facilities previously  
24 utilized as part of the corrections system or the mental health system.  
25 Consideration shall be given to the mental health resources available in  
26 the area of the site.

27 § 23.03 Dedicated opioid rehabilitation facility.

28 1. A dedicated opioid rehabilitation treatment facility shall be a  
29 secure (locked) facility.

30 2. Staff at the facility shall include, but not be limited to:

31 (a) qualified and licensed health care providers, counselors and  
32 support staff as determined by the office;

33 (b) administrative, maintenance, custodial and other staff as deter-  
34 mined by the office; and

35 (c) corrections officers, in a number as agreed upon by the office and  
36 the department of corrections and community supervision sufficient to  
37 maintain order and remove the temptation of defendants residing at the  
38 facility to flee.

39 3. Living quarters for defendants referred to the facility shall be  
40 arranged in dormitories housing between four and six defendants.

41 (a) Dormitory facilities for men and women admitted to the facility  
42 shall be maintained separately.

43 (b) Dormitory facilities for minors shall be maintained separately  
44 from dormitory facilities for adults.

45 § 23.04 Admission to a dedicated opioid rehabilitation treatment facili-  
46 ty.

47 1. Admission to a dedicated opioid rehabilitation treatment facility  
48 shall be allowed only upon referral by a drug court to the facility  
49 pursuant to the provisions of a sentencing agreement as provided in  
50 section 23.06 of this article.

51 2. Admission shall be made solely for the purpose of long-term,  
52 secured residential treatment of opioid abuse and addiction.

53 3. A defendant who has been charged with a class A or class B felony  
54 or of a violent felony offense as described in section 70.02 of the  
55 penal law shall not be a candidate for admission to a dedicated opioid  
56 rehabilitation facility.

1 4. A defendant shall not be a candidate for admission to the facility  
2 if, in the discretion of the sentencing court, such person is deemed to  
3 be a danger to himself or herself or to other people, or to be a high  
4 flight risk.

5 5. A minor who meets the criteria for admission as described in this  
6 section may be admitted to the facility, subject to the provisions of  
7 section 23.07 of this article.

8 6. A dedicated opioid rehabilitation facility shall have the right to  
9 refuse admission to a defendant whom the facility does not deem a suit-  
10 able candidate for successful completion of the programs offered by the  
11 facility.

12 § 23.05 Referral to a dedicated opioid rehabilitation facility by an  
13 opioid court.

14 1. In his or her discretion, and in accordance with the provisions of  
15 section 216.05 of the criminal procedure law and of this article, a  
16 judge of a drug court may order a defendant to enter treatment at a  
17 dedicated opioid rehabilitation facility. Any such order shall be  
18 dependent upon approval by the court of a sentencing agreement as  
19 provided in section 23.06 of this article.

20 2. Notwithstanding the provisions of subdivision one of this section,  
21 a judge shall not be required to approve a sentencing agreement for  
22 referral to a dedicated opioid rehabilitation facility, if, in his or  
23 her discretion, the judge determines that such defendant is not a suit-  
24 able candidate for admission to such facility because:

25 (a) the defendant is deemed to be a danger to himself or herself or to  
26 other people;

27 (b) the defendant is deemed to be a high flight risk;

28 (c) the defendant suffers from substantial mental illness which is not  
29 related to the defendant's opioid abuse or addiction, excluding mental  
30 illness such as depression which may be related to the opioid use;

31 (d) the defendant's past history indicates that the defendant would  
32 not successfully complete the facility program;

33 (e) of the nature and severity of the crime which with the defendant  
34 is charged; or

35 (f) of such other reason as the judge, in his or her sole discretion  
36 may determine.

37 3. (a) Prior relapse in an alternate drug court treatment program or a  
38 private or public treatment program shall not be a prerequisite to  
39 admission to a dedicated opioid rehabilitation facility.

40 (b) A defendant who has relapsed two or more times in an alternate  
41 drug court treatment program shall be referred for admission to a dedi-  
42 cated opioid rehabilitation facility or ordered to be incarcerated.

43 4. (a) An opioid addicted or opioid abusing defendant who has been  
44 sentenced to incarceration in a correctional facility by a drug court  
45 shall be eligible to petition the sentencing court for reconsideration  
46 of sentencing and consideration for an order of the court directing  
47 admission of the defendant to a dedicated opioid rehabilitation facility  
48 in accordance with the provisions of this article, provided that:

49 (i) at least one year remains on such defendant's sentence of incar-  
50 ceration; or

51 (ii) if less than one year remains on such defendant's sentence of  
52 incarceration, such defendant agrees to remain at the dedicated opioid  
53 rehabilitation facility for a period of not less than one year.

54 (b) The granting of a petition described in this subdivision shall be  
55 in the sole discretion of the court.

1     5. Nothing in this article shall prohibit a sentencing judge from  
2 sentencing a defendant to incarceration in lieu of admission to a dedi-  
3 cated opioid rehabilitation facility.

4 § 23.06 Sentencing agreement.

5     1. Prior to the issuance of an order directing entry into treatment at  
6 a dedicated opioid rehabilitation facility as provided in section 23.05  
7 of this article, the defendant, the defendant's attorney and the  
8 district attorney, or his or her designee, shall enter into a written  
9 sentencing agreement as provided in this section and in section 216.05  
10 of the criminal procedure law. Such agreement shall be incorporated into  
11 the record and shall be approved by the court prior to the issuance of  
12 an order; provided, however, that the court is not required to approve  
13 any agreement which the sentencing judge finds deficient or inappropri-  
14 ate given the circumstances of the case. A copy of such agreement shall  
15 be provided to the defendant, to the defendant's attorney and to the  
16 dedicated opioid rehabilitation facility the defendant is ordered to  
17 attend.

18     2. In the case of a defendant who is a minor, such defendant's parent  
19 or guardian shall also be required to consent to the agreement on behalf  
20 of the minor unless the court determines that parental or guardian  
21 involvement would have a detrimental effect on the course of treatment  
22 of the minor or is not in the best interests of the minor. In the case  
23 of a minor who is in the care and custody of the state, consent to the  
24 agreement shall be obtained from the appropriate representative of the  
25 department of social services or agency with which the minor was placed.

26     3. In addition to any requirements specified in section 216.05 of the  
27 criminal procedure law, a sentencing agreement recommending diversion to  
28 an opioid rehabilitation facility shall include the following  
29 provisions:

30         (a) the defendant's agreement to reside at the facility for a period  
31 of not less than one year nor more than two years, with the length of  
32 time being determined by the rehabilitation progress the defendant  
33 makes;

34         (b) the defendant's agreement to be physically incarcerated at the  
35 facility in lieu of being incarcerated at a correctional facility;

36         (c) a statement by the defendant that he or she understands that the  
37 determination of the defendant's readiness to leave the facility shall  
38 be made by staff at the facility; and

39         (d) a statement by the defendant that the defendant understands and  
40 agrees that if he or she does not comply with the treatment program at  
41 the facility, any time spent at the facility shall not be credited  
42 toward the defendant's sentence.

43 § 23.07 Minors.

44     1. In treating a minor at a dedicated opioid rehabilitation treatment  
45 facility, the important role of the parents or guardians shall be recog-  
46 nized. Steps shall be taken to involve the parents or guardians in the  
47 course of treatment, unless in the judgment of a licensed health care  
48 provider treating the minor, parental or guardian involvement would have  
49 a detrimental effect on the course of treatment of the minor or is not  
50 in the best interests of the minor.

51     2. Treatment of a minor may be provided to the minor by a licensed  
52 health care provider operating through the facility, or a person operat-  
53 ing under such health care provider's supervision, without the consent  
54 or involvement of the minor's parent or guardian. In the case of the  
55 treatment of a minor who is in the care and custody of the state, treat-  
56 ment of a minor may be provided to the minor by a licensed health care



1 provider operating through the facility, or a person operating under  
2 such health care provider's supervision, without the consent or involve-  
3 ment of the department of social services or agency with which the minor  
4 was placed.

5 § 23.08 Discharge from a dedicated opioid rehabilitation facility.

6 1. A defendant shall be discharged from a dedicated opioid rehabili-  
7 tation facility upon the occurrence of the first of:

8 (a) a determination by the facility health care providers or by a  
9 licensed health care provider designated by the sentencing drug court,  
10 or by the opioid court if the defendant's case has been transferred to  
11 an opioid court, that the defendant has made sufficient progress in his  
12 or her rehabilitation to leave the facility program, provided that such  
13 determination shall not be made until the defendant has completed at  
14 least one year of successful treatment at the facility;

15 (b) the expiration of two years at the facility, regardless of whether  
16 the defendant has successfully completed the facility rehabilitation  
17 program;

18 (c) the defendant's refusal to cooperate with his or her facility  
19 rehabilitation program requirements or to continue in the facility reha-  
20 bilitation program;

21 (d) the defendant's medical or psychological inability to continue in  
22 the facility rehabilitation program due to a medical or psychological  
23 condition or event clinically unrelated to the defendant's opioid  
24 addiction; or

25 (e) at the request of the facility to the court for removal of the  
26 defendant from the facility.

27 2. A defendant who is discharged from the facility pursuant to para-  
28 graph (a) of subdivision one of this section shall be referred by the  
29 facility, upon approval by the sentencing court, to a halfway house and  
30 support program pursuant to section 23.09 of this article.

31 3. A defendant who is discharged from the facility pursuant to para-  
32 graph (b) of subdivision one of this section shall be re-sentenced by  
33 the sentencing court, or by the nearest opioid court if such defendant's  
34 case has been transferred to the opioid court, to serve the remaining  
35 balance of such defendant's sentence at an alternative rehabilitation  
36 program or at a correctional institution, in the court's discretion.  
37 The facility health care provider or providers who treated the defendant  
38 during the facility rehabilitation program shall provide the sentencing  
39 court with a written report or reports detailing the defendant's  
40 progress or lack of progress in the program. If, in the opinion of the  
41 facility health care providers, the defendant has evidenced a desire to  
42 overcome his or her addiction or abuse issues, and made substantive  
43 progress toward doing so, the defendant shall receive credit toward time  
44 served for his or her time at the dedicated opioid rehabilitation facil-  
45 ity. If, in the opinion of the facility health care providers, the  
46 defendant has not evidenced a desire to overcome his or her addiction or  
47 abuse issues, or not made substantive progress toward doing so, the  
48 defendant shall not receive credit toward time served for his or her  
49 time at the dedicated opioid rehabilitation facility.

50 4. A defendant who is discharged from the facility pursuant to para-  
51 graph (c) of subdivision one of this section shall be re-sentenced by  
52 the sentencing court, or by the nearest opioid court if such defendant's  
53 case has been transferred to the opioid court, to serve the remaining  
54 balance of such defendant's sentence at a correctional institution. The  
55 facility health care provider or providers who treated the defendant  
56 during the facility rehabilitation program shall provide the court with



1 a written report or reports detailing the defendant's progress or lack  
2 of progress in the program. If, in the opinion of the facility health  
3 care providers, the defendant has not evidenced a desire to overcome his  
4 or her addiction or abuse issues, or made substantive progress toward  
5 doing so, the defendant shall not receive credit toward time served for  
6 his or her time at the dedicated opioid rehabilitation facility. Such  
7 defendant shall not be eligible for diversion to any other rehabili-  
8 tation program in lieu of incarceration for a period of at least one  
9 year; provided, however, that nothing in this subdivision shall prevent  
10 a defendant from participating in a rehabilitation program while at the  
11 correctional institution.

12 5. (a) A defendant who is discharged from a dedicated opioid rehabili-  
13 tation facility pursuant to paragraph (d) of subdivision one of this  
14 section shall be eligible to return to the opioid rehabilitation facili-  
15 ty upon completion of any necessary medical or psychological treatment,  
16 if the defendant is medically and psychologically capable of return to  
17 the facility and continued participation in the facility's rehabili-  
18 tation program. Such return to the facility, or alternative sentencing,  
19 shall be in the discretion of the court, or the nearest opioid court if  
20 such defendant's case has been transferred to the opioid court.

21 (b) The facility health care provider or providers who treated the  
22 defendant during the facility rehabilitation program shall provide the  
23 court with a written report or reports detailing the defendant's  
24 progress or lack of progress in the program prior to the onset of the  
25 defendant's inability to continue in the facility rehabilitation  
26 program.

27 (i) If, in the opinion of the facility health care providers, the  
28 defendant has evidenced a desire to overcome his or her addiction or  
29 abuse issues, or has made substantive progress toward doing so, the  
30 defendant shall be allowed to return to the dedicated opioid rehabili-  
31 tation facility.

32 (ii) If, in the opinion of the facility health care providers, the  
33 defendant has not evidenced a desire to overcome his or her addiction or  
34 abuse issues or has not made substantive progress toward doing so, the  
35 defendant shall not be allowed to return to the facility and shall not  
36 receive credit toward time served for his or her time at the dedicated  
37 opioid rehabilitation facility.

38 (c) If during the period of the defendant's treatment for the medical  
39 or psychological condition that gave rise to the inability to continue  
40 in the facility rehabilitation program, the provisions of paragraph (a)  
41 or (b) of subdivision one of this section apply, the provisions of  
42 subdivisions two or three of this section, as applicable, shall be  
43 controlling.

44 6. A defendant who is discharged from the facility pursuant to para-  
45 graph (e) of subdivision one of this section shall not be eligible to  
46 return to the facility.

47 § 23.09 Treatment following discharge from a dedicated opioid rehabili-  
48 tation facility.

49 1. A defendant who is discharged from a dedicated opioid rehabili-  
50 tation facility pursuant to paragraph (a) of subdivision one of section  
51 23.08 of this article shall be required by the court to reside at a  
52 halfway house to reintegrate the defendant into society for a minimum  
53 period of two months up to a maximum period of two years.

54 2. A defendant who is discharged from a dedicated opioid rehabili-  
55 tation facility pursuant to paragraph (b) of subdivision one of section  
56 23.08 of this article and subsequently sentenced to serve the remaining

1 balance of or a portion of such defendant's sentence at an alternative  
2 rehabilitation program shall be required by the court to reside at a  
3 halfway house to reintegrate the defendant into society for a minimum  
4 period of two months up to a maximum period of two years following  
5 successful completion of the alternative rehabilitation program.

6 3. In the discretion of the counselors at the halfway house, a defend-  
7 ant may be required to attend one year of relapse prevention counseling  
8 subsequent to leaving the halfway house.

9 4. (a) In the discretion of the sentencing court, or the nearest  
10 opioid court if such defendant's case has been transferred to the opioid  
11 court, a defendant who has been in compliance with the programs at the  
12 dedicated opioid rehabilitation facility program and the halfway house  
13 and with all alternative rehabilitation and support programs shall be  
14 eligible for probation or other disposition of his or her case in  
15 accordance with the provisions of subdivision ten of section 216.05 of  
16 the criminal procedure law. Time served in the dedicated opioid rehabil-  
17 itation facility program, the halfway house and other alternative reha-  
18 bilitation and support programs shall be credited toward the time  
19 remaining on the defendant's sentence.

20 (b) If a defendant relapses into opioid addiction or abuse while on  
21 probation, the court may revoke the sentence of probation in accordance  
22 with article four hundred ten of the criminal procedure law. In such  
23 case, the defendant will lose credit for time served in the dedicated  
24 opioid rehabilitation facility program, the halfway house and with all  
25 alternative rehabilitation and support programs.

26 (c) Notwithstanding the provisions of paragraph (b) of this subdivi-  
27 sion, a defendant who has been discharged from the halfway house and is  
28 on probation may voluntarily seek additional treatment through the  
29 court, including a return to the mandatory rehabilitation program or an  
30 alternative rehabilitation or support program, or seek additional treat-  
31 ment at a private or public facility, without loss of credit for time  
32 served in the dedicated opioid rehabilitation facility program, the  
33 halfway house and with all alternative rehabilitation and support  
34 programs.

35 § 23.10 Court appearances.

36 1. While residing at a dedicated opioid rehabilitation facility, a  
37 defendant shall attend requisite appearances before the sentencing  
38 court, provided such court is located within thirty miles of the facili-  
39 ty. Transportation to the court shall be provided by the department of  
40 corrections. With the permission of the sentencing court, and in accord-  
41 ance with guidelines promulgated by the chief administrator of the  
42 court, the defendant may make an appearance at such hearing by electron-  
43 ic means in lieu of in-person attendance.

44 2. If the sentencing drug court is located more than thirty miles from  
45 the dedicated opioid rehabilitation facility, the sentencing court shall  
46 transfer the defendant's case to the nearest opioid court, in accordance  
47 with guidelines promulgated by the chief administrator of the court.

48 § 23.11 Records.

49 1. After the admission of any defendant, the director of a dedicated  
50 opioid rehabilitation facility shall, within five days excluding Sunday  
51 and holidays, forward to the office such information from the record in  
52 such time and manner as the commissioner shall require by regulation.  
53 Such information from the record in the office shall be accessible only  
54 in the manner set forth in sections 33.13 and 33.16 of this chapter.

55 2. All records of identity, diagnosis, prognosis, or treatment in  
56 connection with a person's receipt of chemical dependence services shall

1 be confidential and shall be released only in accordance with applicable  
2 provisions of the public health law, any other state law, federal law  
3 and duly executed court orders.

4 § 23.12 Limitations.

5 1. A defendant shall not be eligible for referral to a dedicated  
6 opioid rehabilitation facility more than two times, regardless of wheth-  
7 er the defendant completes the program offered by the facility. Notwith-  
8 standing the foregoing, if a defendant is unable to complete the course  
9 of treatment at a dedicated opioid rehabilitation facility due to a  
10 medical or psychological condition or event clinically unrelated to the  
11 defendant's opioid addiction, in the discretion of the sentencing court,  
12 or the opioid court if the defendant's case has been transferred to the  
13 opioid court, the defendant shall be eligible to return to the dedicated  
14 opioid rehabilitation facility upon completion of any necessary medical  
15 or psychological treatment, in accordance with subdivision five of  
16 section 23.08 of this article.

17 2. Referral to a dedicated opioid rehabilitation facility shall only  
18 be made in the case of a defendant whose primary addiction is to  
19 opioids. A defendant who is not addicted to opioids does not qualify for  
20 referral to a dedicated opioid rehabilitation facility, regardless of  
21 any other addictions or abuse issues the defendant has.

22 § 23.13 Study.

23 Five years after the dedicated opioid rehabilitation facility  
24 commences operations, the commissioner shall provide the governor, the  
25 temporary president of the senate, the speaker of the assembly and the  
26 minority leaders of the senate and the assembly with a report evaluating  
27 whether the facility programs have resulted in a reduction of opioid use  
28 in the general population, the effect of treatment in helping reduce  
29 recidivism and whether there has been a cost savings to the state  
30 through treatment through the facility in lieu of incarceration, togeth-  
31 er with such other matters as the commissioner deems relevant.

32 § 4. The opening paragraph of subdivision (b) of section 33.08 of the  
33 mental hygiene law, as added by chapter 709 of the laws of 1986, is  
34 amended to read as follows:

35 Any inpatient of a hospital operated by the office of mental health, a  
36 dedicated opioid rehabilitation facility or a state operated alcoholism  
37 facility shall be entitled to receive a monthly state payment for  
38 personal needs for each full calendar month commencing on or after the  
39 effective date of this section, in which the patient is in such hospital  
40 or alcoholism facility, if such patient also:

41 § 5. Subdivision (f) of section 19.17 of the mental hygiene law, as  
42 amended by section 1 of part K of chapter 58 of the laws of 2009, is  
43 amended to read as follows:

44 (f) There shall be in the office the facilities named below for the  
45 care, treatment and rehabilitation of the mentally disabled and for  
46 clinical research and teaching in the science and skills required for  
47 the care, treatment and rehabilitation of such mentally disabled.

48 R.E. Blaisdell Addiction Treatment Center

49 Bronx Addiction Treatment Center

50 C.K. Post Addiction Treatment Center

51 Creedmoor Addiction Treatment Center

52 Dick Van Dyke Addiction Treatment Center

53 Kingsboro Addiction Treatment Center

54 McPike Addiction Treatment Center

55 Richard C. Ward Addiction Treatment Center

56 J.L. Norris Addiction Treatment Center

1 South Beach Addiction Treatment Center  
2 St. Lawrence Addiction Treatment Center  
3 Stutzman Addiction Treatment Center

4 A dedicated opioid rehabilitation facility established pursuant to  
5 article twenty-three of this title

6 § 6. Subdivisions 4, 5, 6, 7 and 8 of section 216.05 of the criminal  
7 procedure law, subdivisions 4, 6 and 7 as added by section 4 of part AAA  
8 of chapter 56 of the laws of 2009, subdivision 5 as amended by chapter  
9 67 of the laws of 2016 and subdivision 8 as amended by chapter 315 of  
10 the laws of 2016, are amended to read as follows:

11 4. When an authorized court determines, pursuant to paragraph (b) of  
12 subdivision three of this section, that an eligible defendant should be  
13 offered alcohol or substance abuse treatment, or when the parties and  
14 the court agree to an eligible defendant's participation in alcohol or  
15 substance abuse treatment, an eligible defendant may be allowed to  
16 participate in the judicial diversion program offered by this article.  
17 Prior to the court's issuing an order granting judicial diversion, the  
18 eligible defendant shall be required to enter a plea of guilty to the  
19 charge or charges; provided, however, that no such guilty plea shall be  
20 required when:

21 (a) the people and the court consent to the entry of such an order  
22 without a plea of guilty; or

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

28 (c) the defendant is ordered to enter a dedicated opioid rehabili-  
29 tation program pursuant to article twenty-three of the mental hygiene  
30 law.

31 5. The defendant shall agree on the record or in writing to abide by  
32 the release conditions set by the court, which, shall include: partic-  
33 ipation in a specified period of alcohol or substance abuse treatment at  
34 a specified program or programs identified by the court, which may  
35 include periods of detoxification, residential or outpatient treatment,  
36 or both, as determined after taking into account the views of the health  
37 care professional who conducted the alcohol and substance abuse evalu-  
38 ation and any health care professionals responsible for providing such  
39 treatment or monitoring the defendant's progress in such treatment; and  
40 may include: (i) periodic court appearances, which may include periodic  
41 urinalysis; (ii) a requirement that the defendant refrain from engaging  
42 in criminal behaviors; (iii) if the defendant needs treatment for opioid  
43 abuse or dependence, that he or she may participate in and receive  
44 medically prescribed drug treatments under the care of a health care  
45 professional licensed or certified under title eight of the education  
46 law, acting within his or her lawful scope of practice, provided that no  
47 court shall require the use of any specified type or brand of drug  
48 during the course of medically prescribed drug treatments; and (iv) if a  
49 defendant in a case brought in an opioid court needs treatment for  
50 opioid abuse or dependence, that he or she may be referred to a dedi-  
51 cated opioid rehabilitation facility in accordance with the provisions  
52 of article twenty-three of the mental hygiene law.

53 6. (a) Upon an eligible defendant's agreement to abide by the condi-  
54 tions set by the court, the court shall issue a securing order providing  
55 for bail or release on the defendant's own recognizance and conditioning  
56 any release upon the agreed upon conditions. The period of alcohol or

1 substance abuse treatment shall begin as specified by the court and as  
2 soon as practicable after the defendant's release, taking into account  
3 the availability of treatment, so as to facilitate early intervention  
4 with respect to the defendant's abuse or condition and the effectiveness  
5 of the treatment program. In the event that a treatment program is not  
6 immediately available or becomes unavailable during the course of the  
7 defendant's participation in the judicial diversion program, the court  
8 may release the defendant pursuant to the securing order.

9 (b) Upon the agreement of an eligible defendant in a case brought in  
10 an opioid court to abide by the conditions set by the court, the court  
11 shall issue an order directing the commitment of such defendant to a  
12 dedicated opioid rehabilitation facility in accordance with the  
13 provisions of article twenty-three of the mental hygiene law.

14 7. (a) When participating in judicial diversion treatment pursuant to  
15 this article, any resident of this state who is covered under a private  
16 health insurance policy or contract issued for delivery in this state  
17 pursuant to article thirty-two, forty-three or forty-seven of the insur-  
18 ance law or article forty-four of the public health law, or who is  
19 covered by a self-funded plan which provides coverage for the diagnosis  
20 and treatment of chemical abuse and chemical dependence however defined  
21 in such policy; shall first seek reimbursement for such treatment in  
22 accordance with the provisions of such policy or contract.

23 (b) In the case of a defendant ordered to enter a dedicated opioid  
24 rehabilitation facility in accordance with the provisions of article  
25 twenty-three of the mental hygiene law, who is covered under a private  
26 health insurance policy or contract issued for delivery in this state  
27 pursuant to article thirty-two, forty-three or forty-seven of the insur-  
28 ance law or article forty-four of the public health law, or who is  
29 covered by a self-funded plan which provides coverage for the diagnosis  
30 and treatment of chemical abuse and chemical dependence however defined  
31 in such policy, such defendant shall first seek reimbursement for such  
32 treatment in accordance with the provisions of such policy or contract  
33 at the time of admission to the dedicated opioid rehabilitation center  
34 and again upon discharge from such facility and resumption of treatment  
35 through any alternative in-patient or outpatient program.

36 8. During the period of a defendant's participation in the judicial  
37 diversion program, the court shall retain jurisdiction of the defendant,  
38 provided, however, that, unless the defendant has been ordered to enter  
39 a dedicated opioid rehabilitation facility in accordance with the  
40 provisions of article twenty-three of the mental hygiene law, the court  
41 may allow such defendant to (i) reside in another jurisdiction, or (ii)  
42 participate in alcohol and substance abuse treatment and other programs  
43 in the jurisdiction where the defendant resides or in any other juris-  
44 diction, while participating in a judicial diversion program under  
45 conditions set by the court and agreed to by the defendant pursuant to  
46 subdivisions five and six of this section. The court may require the  
47 defendant to appear in court at any time to enable the court to monitor  
48 the defendant's progress in alcohol or substance abuse treatment. The  
49 court shall provide notice, reasonable under the circumstances, to the  
50 people, the treatment provider, the defendant and the defendant's coun-  
51 sel whenever it orders or otherwise requires the appearance of the  
52 defendant in court. Failure to appear as required without reasonable  
53 cause therefor shall constitute a violation of the conditions of the  
54 court's agreement with the defendant.

55 § 7. Section 5 of the correction law is amended by adding a new subdi-  
56 vision 7 to read as follows:

1     7. The commissioner shall consult with the commissioner of addiction  
2 services and supports with respect to establishing a dedicated opioid  
3 rehabilitation facility for the purpose of providing long-term residen-  
4 tial treatment of defendants referred to such facility from the Buffalo  
5 Opioid Intervention Court and the Bronx Opioid Avoidance and Recovery  
6 Court, as provided in article twenty-three of the mental hygiene law,  
7 and shall enter into agreements with the commissioner of addiction  
8 services and supports for the provision of security services at such  
9 facility or facilities.

10     § 8. This act shall take effect on January 1, 2021. Effective imme-  
11 diately, the addition, amendment, and/or repeal of any rule or regu-  
12 lation necessary for the implementation of this act on its effective  
13 date are authorized to be made and completed on or before such effective  
14 date.