

# STATE OF NEW YORK

2881--A

2021-2022 Regular Sessions

## IN SENATE

January 26, 2021

Introduced by Sens. RAMOS, BIAGGI, MAY, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Substance Abuse -- 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:

1 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:

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

6 § 2. The opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law, as amended by chapter 90 of the laws of 2014, is amended to read as follows:

9 "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 one of the penal law or any other specified offense as defined in subdivision four 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.

17 § 3. The opening paragraph of subdivision 1 of section 216.00 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:

20 "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~~

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

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~~ny offense defined in article two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four 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 added by section 4 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

2. [~~"Alcohol and substance abuse evaluation"~~] "Participant" means an eligible defendant who has been admitted into the treatment court.

3. "Functional impairment" means a condition that impairs the eligible defendant's functioning. A functional impairment may include, but is not limited to, substance abuse or alcohol dependence, mental illness, developmental disability, intellectual disability, traumatic brain injury or other neurological disease, personality disorder, cognitive dysfunction, dementia, emotional disturbance or any other disability. The court shall defer to licensed health care professionals and the broader medical community consensus in determining whether a person is disabled or functionally impaired. A person may have more than one functional impairment.

4. "Clinical evaluation" means a written assessment and report by a [~~court approved entity or~~] licensed [~~health care professional experienced in the treatment of alcohol and substance abuse, or~~] clinician qualified to identify functional impairments as defined in subdivision three of this section or an evaluation conducted by an addiction and substance [~~abuse~~] use disorder counselor credentialed by the office of [~~alcoholism and substance abuse services~~] addiction services and supports pursuant to section 19.07 of the mental hygiene law, which shall include:

(a) an evaluation as to whether the defendant currently has [~~a history of alcohol or substance abuse or alcohol or substance dependence~~] one or more functional impairments that may include but not be limited to a mental disorder, as [~~such terms are~~] defined in the most recent edition of the diagnostic and statistical manual of mental disorders, [~~fourth edition, and a co-occurring mental disorder or mental illness and the relationship between such abuse or dependence and mental disorder or mental illness,~~] if any;

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

(c) a recommendation as to the treatment modality, level of care and length of any proposed treatment to effectively address the defendant's [~~alcohol or substance abuse or dependence and any co-occurring mental disorder or illness~~] functional impairments in accordance with federal law requiring the most integrated setting appropriate to the needs of individuals with disabilities; and

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

5. "Treatment" means one or more evidence-based interventions including, but not limited to, counseling, psychotherapy, pharmacotherapy, psychiatric medication, health promotion, and overdose prevention educa-

1 tion. For substance use disorders, treatment includes any clinical  
2 service or intervention that assists individuals to achieve recovery in  
3 the form of: (a) abstinence from all or certain psychoactive substances;  
4 (b) a change or reduction in use; or (c) improved well-being, social  
5 stability and the alleviation of associated harms.

6 6. "Treatment provider" means a person or organization qualified to  
7 provide interventions responsive to the needs identified by the partic-  
8 ipant and clinician during the clinical evaluation.

9 § 6. Section 216.05 of the criminal procedure law, as added by section  
10 4 of part AAA of chapter 56 of the laws of 2009, subdivision 5 as  
11 amended by chapter 67 of the laws of 2016, subdivision 8 as amended by  
12 chapter 315 of the laws of 2016 and paragraph (a) of subdivision 9 as  
13 amended by section 21 of part JJJ of chapter 59 of the laws of 2019, is  
14 amended to read as follows:

15 § 216.05 Judicial diversion program; court procedures.

16 1. At any time after the local criminal court arraignment of an eligi-  
17 ble defendant, but prior to the entry of a plea of guilty or the  
18 commencement of trial, the court at the request of the eligible defend-  
19 ant, [~~may~~] shall order [~~an alcohol and substance abuse~~] a clinical eval-  
20 uation for all known functional impairments. Such evaluations shall take  
21 place without undue delay.

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

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

27 (c) The defendant shall provide a written authorization, in compliance  
28 with the requirements of any applicable state or federal laws, rules or  
29 regulations authorizing disclosure of the results of the assessment to  
30 the defendant's attorney, the prosecutor, the local probation depart-  
31 ment, the court, authorized court personnel and other individuals speci-  
32 fied in such authorization for the sole purpose of determining whether  
33 the defendant should be offered judicial diversion for treatment for  
34 [~~substance abuse or dependence, alcohol abuse or dependence and any~~  
35 ~~co-occurring mental disorder or mental illness~~] a functional impairment.

36 (d) No statement or other disclosure, written or otherwise, made by a  
37 defendant to a professional completing the clinical evaluation may be  
38 used by the prosecution to prove any crime or offense alleged in the  
39 pending case. All such statements shall be used only for the purposes of  
40 making recommendations as defined in subdivision two of this section and  
41 shall otherwise remain confidential.

42 2. Upon receipt of the completed [~~alcohol and substance abuse~~] clin-  
43 ical evaluation report, the court shall provide a copy of the report to  
44 the eligible defendant and the [~~prosecutor~~] defendant's counsel.

45 3. (a) Upon [~~receipt~~] review of the evaluation report [~~either party~~]  
46 the defendant may request a hearing on the issue of whether the [~~eligi-~~  
47 ~~ble~~] defendant is an eligible defendant and should be offered [~~alcohol~~  
48 ~~or substance abuse~~] treatment pursuant to this article. At the time that  
49 the defendant requests a hearing, the defendant shall turn over a  
50 complete copy of the evaluation report to the prosecutor and the court.

51 At such a proceeding, which shall be held as soon as practicable so as  
52 to facilitate early intervention in the event that the [~~defendant~~]  
53 participant is found to need [~~alcohol or substance abuse~~] treatment, the  
54 court may consider oral and written arguments, [~~may~~] take testimony from  
55 witnesses offered by either party, and [~~may~~] consider any relevant  
56 evidence [~~including, but not limited to, evidence that:~~

1 ~~(i) the defendant had within the preceding ten years (excluding any~~  
2 ~~time during which the offender was incarcerated for any reason between~~  
3 ~~the time of the acts that led to the youthful offender adjudication and~~  
4 ~~the time of commission of the present offense) been adjudicated a youth-~~  
5 ~~ful offender for: (A) a violent felony offense as defined in section~~  
6 ~~70.02 of the penal law; or (B) any offense for which a merit time allow-~~  
7 ~~ance is not available pursuant to subparagraph (ii) of paragraph (d) of~~  
8 ~~subdivision one of section eight hundred three of the correction law;~~  
9 ~~and~~

10 ~~(ii) in the case of a felony offense defined in subdivision four of~~  
11 ~~section 410.91 of this chapter, any statement of or submitted by the~~  
12 ~~victim, as defined in paragraph (a) of subdivision two of section 380.50~~  
13 ~~of this chapter;] except sealed cases defined in section 160.50 of this~~  
14 ~~chapter.~~

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

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

19 ~~(ii) [the defendant has a history of alcohol or substance abuse or~~  
20 ~~dependence;~~

21 ~~(iii) such alcohol or substance abuse or dependence] the defendant's~~  
22 ~~functional impairment is likely a contributing factor to [the defend-~~  
23 ~~ant's criminal behavior] their current or future involvement in the~~  
24 ~~criminal legal system;~~

25 ~~[(iv)] (iii) the defendant's participation in judicial diversion could~~  
26 ~~effectively address such [abuse or dependence] functional impairment;~~  
27 ~~and~~

28 ~~[(v) institutional confinement of the defendant is or may not be~~  
29 ~~necessary for the protection of the public]~~

30 ~~(iv) the defendant's access to treatment through this article would~~  
31 ~~benefit the public and the defendant.~~

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

37 4. ~~(a)~~ When an authorized court determines, pursuant to paragraph (b)  
38 of subdivision three of this section, that an eligible defendant should  
39 be offered [~~alcohol or substance abuse~~] treatment, or when the parties  
40 and the court agree to [~~an eligible defendant's participation in alcohol~~  
41 ~~or substance abuse~~] treatment, an eligible defendant [~~may~~] shall be  
42 allowed to participate in the judicial diversion program offered by this  
43 article. [~~Prior to the court's issuing an order granting judicial~~  
44 ~~diversion, the eligible defendant shall be required to enter a plea of~~  
45 ~~guilty to the charge or charges; provided, however, that no such guilty~~  
46 ~~plea shall be required when:~~

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

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

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

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

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

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

7 (f) There shall be a presumption that participants shall be afforded  
8 the opportunity to remain at liberty while awaiting clinical evaluation  
9 or treatment placement.

10 5. The [~~defendant~~] participant shall agree on the record or in writing  
11 to abide by the [~~release~~] judicial diversion program conditions set by  
12 the court, which[~~7~~] shall include[+] participation in a specified period  
13 of [~~alcohol or substance abuse~~] treatment at a specified program or  
14 programs [~~identified by the court, which may include periods of detoxi-~~  
15 ~~fication,~~]. In setting the program conditions, the court shall consider  
16 the participant's assessment and treatment plan, as agreed upon by the  
17 participant and treatment provider, in addition to the clinical evalu-  
18 ation. The court shall not consider the nature of a participant's charg-  
19 es. Judicial diversion program conditions may include:

20 (a) limited or intensive outpatient treatment in which the partic-  
21 ipant, regardless of whether they have permanent housing or not, may  
22 reside in the community;

23 (b) limited periods of detoxification or inpatient rehabilitation for  
24 participants with substance use disorders, except that detoxification  
25 shall not be used as a sanction and detoxification shall only be  
26 required as preparation for a treatment admission or medication  
27 induction;

28 (c) residential [~~or outpatient~~] treatment[~~, or both,~~]. If ordering  
29 residential treatment, placement shall be in the most integrated setting  
30 appropriate for the participant's needs to avoid discrimination on the  
31 basis of disability, in accordance with federal law, as determined after  
32 taking into account the views of the health care professional who  
33 conducted the mental health assessment or alcohol and substance abuse  
34 evaluation and any health care professionals responsible for providing  
35 such treatment or monitoring the defendant's progress in such treatment;

36 [~~and may include:~~

37 (i)] (d) periodic court appearances, which may [~~include periodic~~  
38 urinalysis; (ii)] be an electronic appearance pursuant to section 182.20  
39 of this chapter upon consent of the participant. The court shall consid-  
40 er the participant's service engagement and treatment needs when sched-  
41 uling periodic court appearances and shall attempt to minimize treatment  
42 disruption;

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

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

48 (g) a requirement that the [~~defendant~~] participant refrain from engag-  
49 ing in criminal behaviors[+;

50 (iii) ~~if the defendant needs treatment for opioid abuse or~~  
51 ~~dependence~~].

52 5-a. The court shall not require a participant to consent to share, or  
53 authorize the treatment provider to share, protected health information  
54 in accordance with the Health Insurance Portability and Accountability  
55 Act Privacy Rule (45 CFR Parts 160 and 164), with the court. Exceptions  
56 include:

1 (a) record of attendance and relevant barriers to attendance;  
2 (b) treatment plan and any recommended changes to the plan during  
3 participation in judicial diversion; and

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

5 5-b. If the participant has a condition requiring prescription medica-  
6 tion, or has another condition requiring prescription medication, [~~that~~  
7 he or she] they may participate in and receive medically prescribed drug  
8 treatments under the care of a health care professional licensed or  
9 certified under title eight of the education law, acting within his or  
10 her lawful scope of practice[~~, provided that no~~].

11 (a) No court shall require the use of any specified type or brand of  
12 drug during the course of medically prescribed [~~drug~~] treatments.

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

16 5-c. Treatment providers shall collaborate with the participant and  
17 clinical court staff to create a discharge plan prior to completion of  
18 diversion to incorporate peer support, housing and employment support,  
19 and how to access other community-based health services. If a partic-  
20 ipant finishes their inpatient or outpatient treatment course, they  
21 shall be considered to have successfully completed their obligation to  
22 the court, regardless of their ability to secure permanent housing,  
23 employment, or other personal goals identified by the participant.

24 6. Upon [~~an eligible defendant's~~] a participant's agreement to abide  
25 by the conditions set by the court, the court shall issue a securing  
26 order providing for bail or release on the [~~defendant's~~] participant's  
27 own recognizance and conditioning any release upon the agreed upon  
28 conditions pursuant to article five hundred ten of this chapter. The  
29 period of [~~alcohol or substance abuse~~] treatment shall begin as speci-  
30 fied by the court and as soon as practicable after the [~~defendant's~~]  
31 participant's release, taking into account the availability of treat-  
32 ment, so as to facilitate early intervention with respect to the  
33 [~~defendant's abuse or condition~~] participant's functional impairment and  
34 the effectiveness of the treatment program. In the event that a treat-  
35 ment program is not immediately available or becomes unavailable during  
36 the course of the [~~defendant's participation~~] participant's involvement  
37 in the judicial diversion program, the court may release the [~~defendant~~]  
38 participant pursuant to the securing order.

39 7. When participating in judicial diversion treatment pursuant to this  
40 article, any resident of this state who is covered under a private  
41 health insurance policy or contract issued for delivery in this state  
42 pursuant to article thirty-two, forty-three or forty-seven of the insur-  
43 ance law or article forty-four of the public health law, or who is  
44 covered by a self-funded plan which provides coverage for the diagnosis  
45 and treatment of [~~chemical abuse and chemical dependence~~] functional  
46 impairment however defined in such policy; shall first seek reimburse-  
47 ment for such treatment in accordance with the provisions of such policy  
48 or contract. The court in its discretion may order the participant to  
49 obtain public insurance such as Medicaid or Medicare if they so qualify.  
50 However, the participant shall not be required to pay for any part of  
51 the cost of treatment required by the court that is not covered by  
52 private or public health insurance.

53 8. (a) During the period of a [~~defendant's participation~~] partic-  
54 ipant's involvement in the judicial diversion program, the treatment  
55 court shall retain jurisdiction of the [~~defendant~~] participant,  
56 provided, however, that the court [~~may~~] shall allow such [~~defendant~~]

1 participant to (i) reside in another jurisdiction, [~~or~~] and/or (ii)  
2 participate in [~~alcohol and substance abuse~~] treatment and other  
3 programs in the jurisdiction where the defendant resides or in any other  
4 jurisdiction, while participating in a judicial diversion program under  
5 conditions set by the court and agreed to by the defendant pursuant to  
6 subdivisions five and six of this section. The court may transfer the  
7 participant's case to the judicial diversion court in the county in  
8 which the participant resides pursuant to subdivision five of section  
9 170.15 of this chapter, subdivision four of section 180.20 of this chap-  
10 ter, or section 230.21 of this chapter to ensure continuity of treat-  
11 ment.

12 (b) The court may require the [~~defendant~~] participant to appear in  
13 court or remotely at any time to enable the court to monitor the  
14 [~~defendant's~~] progress in [~~alcohol or substance abuse~~] treatment. The  
15 court shall provide notice, reasonable under the circumstances, to the  
16 people, the treatment provider, the [~~defendant~~] participant and the  
17 [~~defendant's~~] participant's counsel whenever it orders or otherwise  
18 requires the appearance of the [~~defendant~~] participant in court. Failure  
19 to appear as required without reasonable cause therefor shall constitute  
20 a violation of the conditions of the court's agreement with the [~~defend-~~  
21 ~~ant~~] participant.

22 9. (a) If at any time during the [~~defendant's participation~~] partic-  
23 ipant's engagement in the judicial diversion program, the court has  
24 reasonable grounds to believe that the [~~defendant~~] participant has  
25 violated a [~~release~~] program condition in an important respect or has  
26 willfully failed to appear before the court as requested, the court  
27 except as provided in subdivision two of section 510.50 of this chapter  
28 regarding a failure to appear, shall direct the [~~defendant~~] participant  
29 to appear [~~or issue a bench warrant to a police officer or an appropri-~~  
30 ~~ate peace officer directing him or her to take the defendant into custo-~~  
31 ~~dy and bring the defendant before the court without unnecessary delay,~~  
32 ~~provided, however, that under no circumstances shall a defendant who~~  
33 ~~requires treatment for opioid abuse or dependence be deemed to have~~  
34 ~~violated a release condition on the basis of his or her participation in~~  
35 ~~medically prescribed drug treatments under the care of a health care~~  
36 ~~professional licensed or certified under title eight of the education~~  
37 ~~law, acting within his or her lawful scope of practice] for a hearing on  
38 the violation pursuant to paragraph (b) of this subdivision with at  
39 least forty-eight hours notice to the participant or the participant's  
40 counsel, unless notice is waived by the participant. The court may not  
41 modify the participant's securing order until such time as the hearing's  
42 conclusion. The relevant provisions of section 530.60 of this chapter  
43 relating to issuance of securing orders shall apply to such proceedings  
44 under this subdivision. There is a presumption that a bench warrant  
45 shall not be issued for participants in judicial diversion.~~

46 (b) In determining whether a [~~defendant~~] participant violated a condi-  
47 tion of [~~his or her release under~~] the judicial diversion program or  
48 willfully failed to appear in court, the court [~~may~~] shall conduct a  
49 [~~summary~~] hearing consistent with due process [~~and sufficient~~] to satis-  
50 fy the court that the [~~defendant~~] participant has, in fact, violated the  
51 condition or willfully failed to appear.

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

55 (ii) The people shall bear the burden of proving by clear and convinc-  
56 ing evidence that the participant has violated a condition of the judi-

1 cial diversion program in an important respect. The participant may  
2 cross-examine witnesses and may present relevant, admissible evidence on  
3 their own behalf. The court shall consider all factors relating to the  
4 participant's current mental health or cognitive status, their engage-  
5 ment with judicial diversion prior to this time, as well as any other  
6 factors that may have impacted their participation or alleged violation.

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

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

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

24 (vi) The court may seal portions of the proceeding related to collat-  
25 eral consequences at the request of the participant and participant's  
26 counsel.

27 (c) If the court determines by clear and convincing evidence that the  
28 [~~defendant~~ participant] has violated a condition of his or her release  
29 under the judicial diversion program, the court may permit the partic-  
30 ipant to continue their treatment mandate as previously ordered; modify  
31 the [~~conditions thereof, reconsider the order of recognizance or bail~~  
32 ~~pursuant to subdivision two of section 510.30 of this chapter,~~] treat-  
33 ment plan per the recommendation of the treatment provider; hold treat-  
34 ment in abeyance until the underlying matter that caused the violation  
35 is resolved; or terminate the [~~defendant's~~ participant's] participation  
36 in the judicial diversion program[, ~~and when applicable proceed with the~~  
37 ~~defendant's sentencing in accordance with the agreement. Notwithstanding~~  
38 ~~any provision of law to the contrary, the court may impose any sentence~~  
39 ~~authorized for the crime of conviction in accordance with the plea~~  
40 ~~agreement, or any lesser sentence authorized to be imposed on a felony~~  
41 ~~drug offender pursuant to paragraph (b) or (c) of subdivision two of~~  
42 ~~section 70.70 of the penal law taking into account] if no other treat-  
43 ment option is available. The court shall consider:~~

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

48 (ii) all relevant circumstances, including the views of the prosecu-  
49 tor, the defense and the [~~alcohol or substance abuse~~ participant's  
50 interest in continuing treatment [~~provider, and the extent to which~~  
51 ~~persons who ultimately successfully complete a drug treatment regimen~~  
52 ~~sometimes] or the program; and~~

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



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

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

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

29 10. Upon the court's determination that the [~~defendant~~] participant  
30 has successfully completed the required period of [~~alcohol or substance~~  
31 ~~abuse~~] treatment and has otherwise satisfied the conditions required for  
32 successful completion of the judicial diversion program, the court shall  
33 [~~comply with the terms and conditions it set for final disposition when~~  
34 ~~it accepted the defendant's agreement to participate in the judicial~~  
35 ~~diversion program. Such disposition may include, but is not limited to:~~

36 (a) ~~requiring the defendant to undergo a period of interim probation~~  
37 ~~supervision and, upon the defendant's successful completion of the~~  
38 ~~interim probation supervision term, notwithstanding the provision of any~~  
39 ~~other law, permitting the defendant to withdraw his or her guilty plea~~  
40 ~~and dismissing the indictment; or~~

41 (b) ~~requiring the defendant to undergo a period of interim probation~~  
42 ~~supervision and, upon successful completion of the interim probation~~  
43 ~~supervision term, notwithstanding the provision of any other law,~~  
44 ~~permitting the defendant to withdraw his or her guilty plea, enter a~~  
45 ~~guilty plea to a misdemeanor offense and sentencing the defendant as~~  
46 ~~promised in the plea agreement, which may include a period of probation~~  
47 ~~supervision pursuant to section 65.00 of the penal law; or~~

48 (c) ~~allowing the defendant to withdraw his or her guilty plea and~~  
49 ~~dismissing]~~ dismiss the indictment or superior court information, felony  
50 complaint, misdemeanor complaint, information, simplified information,  
51 or prosecutor's information and seal the case pursuant to section 160.50  
52 of this chapter.

53 11. Nothing in this article shall be construed as restricting or  
54 prohibiting courts or district attorneys from using other lawful proce-  
55 dures or models for placing appropriate persons into [~~alcohol or~~  
56 ~~substance abuse~~] treatment.

1 § 7. The criminal procedure law is amended by adding a new section  
2 216.10 to read as follows:

3 § 216.10 Diversion part established.

4 1. The chief administrator of the courts is hereby directed to estab-  
5 lish, in each county of the state, a part of the court to be known as  
6 the diversion part for the county in which such court presides. To aid  
7 in their work, such judges and diversion court personnel shall receive  
8 annual training in specialized areas, including, but not limited to  
9 disability, mental illness, and substance use disorder needs, including  
10 co-occurring disorders, evidence based practices, and trauma-informed  
11 care, as well as training in procedural justice and cultural competency  
12 and medicaid or medicare eligibility. The chief administrator of the  
13 courts shall ensure that all employees who staff the diversion parts  
14 receive specialized training in procedural justice and working with  
15 people with complex needs.

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

23 (a) the number of participants with cases in the diversion part for  
24 each of the following categories, broken down by gender, race and  
25 ethnicity:

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

27 (ii) the number of people who are accepted into judicial diversion;  
28 and

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

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

33 (c) the demographic makeup of participants in the diversion part,  
34 broken down by race, ethnicity, age and sex of participants;

35 (d) the crimes with which each participant was charged;

36 (e) whether the treatment obtained was for substance use, mental  
37 health, co-occurring or other;

38 (f) the court disposition in each supervised case, including sentenc-  
39 ing information;

40 (g) the costs saved to the county by avoiding pre-trial or post-con-  
41 viction detention in a county jail or state prison; and

42 (h) a list of service providers, including contact information, that  
43 the diversion part in the superior court of the county partners with to  
44 serve participants.

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

48 5. [~~(a)~~] Notwithstanding any provision of this section to the contra-  
49 ry, in any county [~~outside a city having a population of one million or~~  
50 ~~more~~], upon or after arraignment of a defendant on an information, a  
51 simplified information, a prosecutor's information or a misdemeanor  
52 complaint pending in a local criminal court, such court [~~may~~] shall,  
53 upon motion of the defendant [~~and after giving the district attorney an~~  
54 ~~opportunity to be heard~~], order that the action be removed from the  
55 court in which the matter is pending to another local criminal court in  
56 the same county, or [~~with consent of the district attorney and the~~

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

17 ~~i. it will not accept the action, in which event the order shall not~~  
 18 ~~take effect; or~~

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

21 ~~(b) Upon providing notification pursuant to subparagraph i or ii of~~  
 22 ~~paragraph (a) of this subdivision, the human trafficking court or veter-~~  
 23 ~~ans treatment court shall promptly give notice to the defendant, his or~~  
 24 ~~her counsel, and the district attorney].~~

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

28 4. [~~(a)~~] Notwithstanding any provision of this section to the contra-  
 29 ry, [~~in any county outside a city having a population of one million or~~  
 30 ~~more,~~] upon or after arraignment of a defendant on a felony complaint  
 31 pending in a local criminal court having preliminary jurisdiction there-  
 32 of, such court [~~may~~] shall, upon motion of the defendant [~~and after~~  
 33 ~~giving the district attorney an opportunity to be heard~~], order that the  
 34 action be removed from the court in which the matter is pending to  
 35 another local criminal court in the same county, or [~~with consent of the~~  
 36 ~~district attorney and the district attorney of the adjoining county~~] to  
 37 another court in such adjoining county, or to a court in the county in  
 38 which the defendant resides, that has been designated as a judicial  
 39 diversion, human trafficking [~~court~~], or veterans treatment court by the  
 40 chief administrator of the courts, and such judicial diversion, human  
 41 trafficking [~~court~~], or veterans treatment court may then conduct such  
 42 action to judgment or other final disposition; provided, however, that  
 43 no court may order removal pursuant to this subdivision to a veterans  
 44 treatment court of a family offense charge described in subdivision one  
 45 of section 530.11 of this chapter where the accused and the person  
 46 alleged to be the victim of such offense charged are members of the same  
 47 family or household as defined in such subdivision one of section  
 48 530.11; and provided further an order of removal issued under this  
 49 subdivision shall not take effect until five days after the date the  
 50 order is issued [~~unless, prior to such effective date, the human traf-~~  
 51 ~~ficking court or veterans treatment court notifies the court that issued~~  
 52 ~~the order that:~~

53 ~~i. it will not accept the action, in which event the order shall not~~  
 54 ~~take effect; or~~

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

~~(b) Upon providing notification pursuant to subparagraph i or ii of paragraph (a) of this subdivision, the human trafficking court or veterans treatment court shall promptly give notice to the defendant, his or her counsel and the district attorney].~~

§ 10. Section 230.21 of the criminal procedure law, as added by chapter 91 of the laws of 2021, is amended to read as follows:

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

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

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

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

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

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

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

§ 12. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that the amendments to the opening paragraph of subdivision 1 of section 216.00 of the

1 criminal procedure law made by section two of this act shall be subject  
2 to the expiration and reversion of such paragraph pursuant to  
3 section 12 of chapter 90 of the laws of 2014, as amended, when upon  
4 such date the provisions of section three of this act shall take  
5 effect.