

STATE OF NEW YORK

8524--A

2021-2022 Regular Sessions

IN ASSEMBLY

December 13, 2021

Introduced by M. of A. FORREST, WEPRIN, HEVESI, GALLAGHER, JACKSON, BURGOS, ANDERSON, GONZALEZ-ROJAS, BURDICK, EPSTEIN, MAMDANI, KELLES, QUART, MITAYNES, BICHOTTE HERMELYN -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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
2 2009, is amended to read as follows:

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

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

9 "Eligible defendant" means any person who stands charged in an indict-
10 ment [~~or a~~], superior court information [~~with a class B, C, D or E felony~~
11 ~~offense defined in article one hundred seventy nine, two hundred~~
12 ~~twenty or two hundred twenty two of the penal law, an offense defined in~~
13 ~~sections 105.10 and 105.13 of the penal law provided that the underlying~~
14 ~~crime for the conspiracy charge is a class B, C, D or E felony offense~~
15 ~~defined in article one hundred seventy nine, two hundred twenty or two~~
16 ~~hundred twenty two of the penal law, auto stripping in the second degree~~
17 ~~as defined in section 165.10 of the penal law, auto stripping in the~~
18 ~~first degree as defined in section 165.11 of the penal law, identity~~
19 ~~theft in the second degree as defined in section 190.79 of the penal~~

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

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

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

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

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

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

2. ~~["Alcohol and substance use 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 use disorder, 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 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 use disorder]~~ 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, ~~[fifth edition, and a co-occurring mental disorder or mental illness and the relationship between such use and mental disorder or mental illness,]~~ if any;

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

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

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

13 5. "Treatment" means one or more evidence-based interventions includ-
14 ing, but not limited to, counseling, psychotherapy, pharmacotherapy,
15 psychiatric medication, health promotion, and overdose prevention educa-
16 tion. For substance use disorders, treatment includes any clinical
17 service or intervention that assists individuals to achieve recovery in
18 the form of: (a) abstinence from all or certain psychoactive substances;
19 (b) a change or reduction in use; or (c) improved well-being, social
20 stability and the alleviation of associated harms.

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

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

26 § 216.05 Judicial diversion program; court procedures.

27 1. At any time after the local criminal court arraignment of an eligi-
28 ble defendant, but prior to the entry of a plea of guilty or the
29 commencement of trial, the court at the request of the eligible defend-
30 ant, [~~may~~] shall order [~~an alcohol and substance use~~] a clinical evalu-
31 ation for all known functional impairments. Such evaluations shall take
32 place without undue delay.

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

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

38 (c) The defendant shall provide a written authorization, in compliance
39 with the requirements of any applicable state or federal laws, rules or
40 regulations authorizing disclosure of the results of the assessment to
41 the defendant's attorney, the prosecutor, the local probation depart-
42 ment, the court, authorized court personnel and other individuals speci-
43 fied in such authorization for the sole purpose of determining whether
44 the defendant should be offered judicial diversion for treatment for
45 [~~substance use, alcohol use and any co-occurring mental disorder or~~
46 mental illness] a functional impairment.

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

53 2. Upon receipt of the completed [~~alcohol and substance use~~] clinical
54 evaluation report, the court shall provide a copy of the report to the
55 eligible defendant and the [~~prosecutor~~] defendant's counsel.

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

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

13 ~~(i) the defendant had within the preceding ten years (excluding any~~
14 ~~time during which the offender was incarcerated for any reason between~~
15 ~~the time of the acts that led to the youthful offender adjudication and~~
16 ~~the time of commission of the present offense) been adjudicated a youth-~~
17 ~~ful offender for: (A) a violent felony offense as defined in section~~
18 ~~70.02 of the penal law, or (B) any offense for which a merit time allow-~~
19 ~~ance is not available pursuant to subparagraph (ii) of paragraph (d) of~~
20 ~~subdivision one of section eight hundred three of the correction law,~~
21 ~~and~~

22 ~~(ii) in the case of a felony offense defined in subdivision five of~~
23 ~~section 410.91 of this chapter, or section 165.10, 165.11, 190.79 or~~
24 ~~190.80 of the penal law, any statement of or submitted by the victim, as~~
25 ~~defined in paragraph (a) of subdivision two of section 380.50 of this~~
26 ~~chapter] except sealed cases defined in section 160.50 of this chapter.~~

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

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

31 (ii) ~~[the defendant has a history of alcohol or substance use,~~

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

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

38 ~~[(v) institutional confinement of the defendant is or may not be~~
39 ~~necessary for the protection of the public] (iv) the defendant's access~~
40 to treatment through this article would benefit the public and the
41 defendant.

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

47 4. (a) When an authorized court determines, pursuant to paragraph (b)
48 of subdivision three of this section, that an eligible defendant should
49 be offered ~~[alcohol or substance use]~~ treatment, or when the parties and
50 the court agree to ~~[an eligible defendant's participation in alcohol or~~
51 ~~substance use]~~ treatment, an eligible defendant ~~[may]~~ shall be allowed
52 to participate in the judicial diversion program offered by this arti-
53 cle. ~~[Prior to the court's issuing an order granting judicial diver-~~
54 ~~sion, the eligible defendant shall be required to enter a plea of guilty~~
55 ~~to the charge or charges; provided, however, that no such guilty plea~~
56 ~~shall be required when:~~

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

~~(b) based on a finding of exceptional circumstances, the court determines that a plea of guilty shall not be required. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe collateral consequences.]~~

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

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

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

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

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

5. The [~~defendant~~] participant shall agree on the record or in writing to abide by the [~~release~~] judicial diversion program conditions set by the court, which[,] shall include[+] participation in a specified period of [~~alcohol or substance use~~] treatment at a specified program or programs [identified by the court, which may include periods of detoxification,]. In setting the program conditions, the court shall consider the participant's assessment and treatment plan, as agreed upon by the participant and treatment provider, in addition to the clinical evaluation. The court shall not consider the nature of a participant's charges. Judicial diversion program conditions may include:

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

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

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

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

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

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

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

4 5-a. The court shall not require a participant to consent to share, or
5 authorize the treatment provider to share, protected health information
6 in accordance with the Health Insurance Portability and Accountability
7 Act Privacy Rule (45 CFR Parts 160 and 164), with the court. Exceptions
8 include:

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

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

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

13 5-b. If the participant has a condition requiring prescription medica-
14 tion, or has another condition requiring prescription medication, they
15 may participate in and receive medically prescribed drug treatments
16 under the care of a health care professional licensed or certified under
17 title eight of the education law, acting within his or her lawful scope
18 of practice[~~, provided that no~~].

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

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

24 5-c. Treatment providers shall collaborate with the participant and
25 clinical court staff to create a discharge plan prior to completion of
26 diversion to incorporate peer support, housing and employment support,
27 and how to access other community-based health services. If a partic-
28 ipant finishes their inpatient or outpatient treatment course, they
29 shall be considered to have successfully completed their obligation to
30 the court, regardless of their ability to secure permanent housing,
31 employment, or other personal goals identified by the participant.

32 6. Upon [~~an eligible defendant's~~] a participant's agreement to abide
33 by the conditions set by the court, the court shall issue a securing
34 order providing for bail or release on the [~~defendant's~~] participant's
35 own recognizance and conditioning any release upon the agreed upon
36 conditions pursuant to article five hundred ten of this chapter. The
37 period of [~~alcohol or substance use~~] treatment shall begin as specified
38 by the court and as soon as practicable after the [~~defendant's~~] partic-
39 ipant's release, taking into account the availability of treatment, so
40 as to facilitate early intervention with respect to the [~~defendant's~~
41 ~~substance use or condition~~] participant's functional impairment and the
42 effectiveness of the treatment program. In the event that a treatment
43 program is not immediately available or becomes unavailable during the
44 course of the [~~defendant's participation~~] participant's involvement in
45 the judicial diversion program, the court may release the [~~defendant~~
46 participant] pursuant to the securing order.

47 7. When participating in judicial diversion treatment pursuant to this
48 article, any resident of this state who is covered under a private
49 health insurance policy or contract issued for delivery in this state
50 pursuant to article thirty-two, forty-three or forty-seven of the insur-
51 ance law or article forty-four of the public health law, or who is
52 covered by a self-funded plan which provides coverage for the diagnosis
53 and treatment of [~~chemical abuse and chemical dependence~~] functional
54 impairment however defined in such policy; shall first seek reimburse-
55 ment for such treatment in accordance with the provisions of such policy
56 or contract. The court in its discretion may order the participant to

1 obtain public insurance such as Medicaid or Medicare if they so qualify.
2 However, the participant shall not be required to pay for any part of
3 the cost of treatment required by the court that is not covered by
4 private or public health insurance.

5 8. (a) During the period of a [~~defendant's participation~~] partic-
6 ipant's involvement in the judicial diversion program, the treatment
7 court shall retain jurisdiction of the [~~defendant~~] participant,
8 provided, however, that the court [~~may~~] shall allow such [~~defendant~~]
9 participant to (i) reside in another jurisdiction, [~~or~~] and/or (ii)
10 participate in [~~alcohol and substance use~~] treatment and other programs
11 in the jurisdiction where the defendant resides or in any other juris-
12 diction, while participating in a judicial diversion program under
13 conditions set by the court and agreed to by the defendant pursuant to
14 subdivisions five and six of this section. The court may transfer the
15 participant's case to the judicial diversion court in the county in
16 which the participant resides pursuant to subdivision five of section
17 170.15 of this part, subdivision four of section 180.20 of this part, or
18 section 230.21 of this part to ensure continuity of treatment.

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

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

53 (b) In determining whether a [~~defendant~~] participant violated a condi-
54 tion of [~~his or her release under~~] the judicial diversion program or
55 willfully failed to appear in court, the court [~~may~~] shall conduct a
56 [~~summary~~] hearing consistent with due process [~~and sufficient~~] to satis-

1 fy the court that the [~~defendant~~] participant has, in fact, violated the
2 condition or willfully failed to appear.

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

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

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

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

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

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

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

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

55 (ii) all relevant circumstances, including the views of the prosecu-
56 tor, the defense and the [~~alcohol or substance use~~] participant's inter-

1 est in continuing treatment [~~provider, and the extent to which persons~~
2 ~~who ultimately successfully complete a drug treatment regimen sometimes~~
3 or the program; and

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

7 (d) The court shall [~~also consider using~~] use a system of graduated
8 and appropriate responses [~~or sanctions~~] designed to address such inap-
9 propriate behaviors[~~, protect public safety~~] and facilitate, where
10 possible, successful completion of the [~~alcohol or substance use~~] treat-
11 ment program.

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

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

36 10. Upon the court's determination that the [~~defendant~~] participant
37 has successfully completed the required period of [~~alcohol or substance~~
38 ~~use~~] treatment and has otherwise satisfied the conditions required for
39 successful completion of the judicial diversion program, the court shall
40 [~~comply with the terms and conditions it set for final disposition when~~
41 ~~it accepted the defendant's agreement to participate in the judicial~~
42 ~~diversion program. Such disposition may include, but is not limited to:~~
43 ~~(a) requiring the defendant to undergo a period of interim probation~~
44 ~~supervision and, upon the defendant's successful completion of the~~
45 ~~interim probation supervision term, notwithstanding the provision of any~~
46 ~~other law, permitting the defendant to withdraw his or her guilty plea~~
47 ~~and dismissing the indictment; or (b) requiring the defendant to undergo~~
48 ~~a period of interim probation supervision and, upon successful~~
49 ~~completion of the interim probation supervision term, notwithstanding~~
50 ~~the provision of any other law, permitting the defendant to withdraw his~~
51 ~~or her guilty plea, enter a guilty plea to a misdemeanor offense and~~
52 ~~sentencing the defendant as promised in the plea agreement, which may~~
53 ~~include a period of probation supervision pursuant to section 65.00 of~~
54 ~~the penal law; or (c) allowing the defendant to withdraw his or her~~
55 ~~guilty plea and dismissing~~] dismiss the indictment or superior court
56 information, felony complaint, misdemeanor complaint, information,

1 simplified information, or prosecutor's information and seal the case
2 pursuant to section 160.50 of this chapter.

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

7 § 7. The criminal procedure law is amended by adding a new section
8 216.10 to read as follows:

9 § 216.10 Diversion part established.

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

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

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

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

33 (ii) the number of people who are accepted into judicial diversion;
34 and

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

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

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

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

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

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

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

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

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

54 5. [~~(a)~~] Notwithstanding any provision of this section to the contra-
55 ry, in any county [~~outside a city having a population of one million or~~
56 ~~more~~], upon or after arraignment of a defendant on an information, a

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

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

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

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

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

34 4. [~~(a)~~] Notwithstanding any provision of this section to the contra-
35 ry, [~~in any county outside a city having a population of one million or~~
36 ~~more,~~] upon or after arraignment of a defendant on a felony complaint
37 pending in a local criminal court having preliminary jurisdiction there-
38 of, such court [~~may~~] shall, upon motion of the defendant [~~and after~~
39 ~~giving the district attorney an opportunity to be heard~~], order that the
40 action be removed from the court in which the matter is pending to
41 another local criminal court in the same county, or [~~with consent of the~~
42 ~~district attorney and the district attorney of the adjoining county~~] to
43 another court in such adjoining county, or to a court in the county in
44 which the defendant resides, that has been designated as a judicial
45 diversion, human trafficking [~~court~~], or veterans treatment court by the
46 chief administrator of the courts, and such judicial diversion, human
47 trafficking [~~court~~], or veterans treatment court may then conduct such
48 action to judgment or other final disposition; provided, however, that
49 no court may order removal pursuant to this subdivision to a veterans
50 treatment court of a family offense charge described in subdivision one
51 of section 530.11 of this chapter where the accused and the person
52 alleged to be the victim of such offense charged are members of the same
53 family or household as defined in such subdivision one of section
54 530.11; and provided further an order of removal issued under this
55 subdivision shall not take effect until five days after the date the
56 order is issued [~~unless, prior to such effective date, the human traf-~~

~~ficking court or veterans treatment court notifies the court that issued the order that:~~

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

~~ii. 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.~~

~~(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

1 defendants to make regular court appearances, and be closely supervised
2 by the court, for the duration of [~~drug~~] treatment and the pendency of
3 the criminal charge.
4 § 12. This act shall take effect on the one hundred eightieth day
5 after it shall have become a law; provided, however that the amendments
6 to the opening paragraph of subdivision 1 of section 216.00 of the
7 criminal procedure law made by section two of this act shall be subject
8 to the expiration and reversion of such paragraph pursuant to
9 section 12 of chapter 90 of the laws of 2014, as amended, when upon
10 such date the provisions of section three of this act shall take
11 effect.