

# STATE OF NEW YORK

4146

2023-2024 Regular Sessions

## IN ASSEMBLY

February 10, 2023

Introduced by M. of A. LEMONDES -- 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  
17 over other activities in their lives, often negatively impacting their  
18 professional and personal relationships. It is unknown why some people  
19 are more likely to become addicted than others.

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

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

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

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

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

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

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

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

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

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

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

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

19 Results from these diversion treatment programs have been positive. A  
20 2003 study of six drug courts conducted by the Center for Court Inno-  
21 vation demonstrated that the rates at which drug court graduates re-of-  
22 fend were significantly reduced as compared to rates at which incarcer-  
23 ated individuals re-offended. Notwithstanding the foregoing, an  
24 additional treatment option is required.

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

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

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

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

54 A state-run residential rehabilitation center would provide drug court  
55 judges with another alternative to criminal court. It would provide  
56 ongoing treatment over an extended period of time; participants would

1 not be released until health care providers believed they could success-  
 2 fully refrain from drug use. Drug court judges would have another alter-  
 3 native to criminal court. They would no longer have to tolerate relapse  
 4 after relapse. Participants would benefit from an environment where  
 5 recovery would be easier for them.

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

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

17 ARTICLE 23

18 DEDICATED OPIOID REHABILITATION TREATMENT FACILITY

19 Section 23.01 Definitions.

20 23.02 Establishment of a dedicated opioid rehabilitation facili-  
 21 ty.

22 23.03 Dedicated opioid rehabilitation facility.

23 23.04 Admission to a dedicated opioid rehabilitation treatment  
 24 facility.

25 23.05 Referral to a dedicated opioid rehabilitation facility by  
 26 an opioid court.

27 23.06 Sentencing agreement.

28 23.07 Minors.

29 23.08 Discharge from a dedicated opioid rehabilitation facility.

30 23.09 Treatment following discharge from a dedicated opioid  
 31 rehabilitation facility.

32 23.10 Court appearances.

33 23.11 Records.

34 23.12 Limitations.

35 23.13 Study.

36 § 23.01 Definitions.

37 As used in this article:

38 1. "commissioner" means the commissioner of the office of addiction  
 39 services and supports;

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

42 3. "court" or "drug court" means a state drug court, a young adult  
 43 drug treatment court, the Buffalo Opioid Intervention Court and the  
 44 Bronx Opioid Avoidance and Recovery Court;

45 4. "dedicated opioid rehabilitation facility" or "facility" means a  
 46 dedicated opioid rehabilitation facility established pursuant to section  
 47 23.02 of this article;

48 5. "defendant" means an individual referred to a dedicated opioid  
 49 rehabilitation facility pursuant to an agreement entered into in drug  
 50 court;

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

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

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

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

5 § 23.02 Establishment of a dedicated opioid rehabilitation facility.

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

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

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

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

25 § 23.03 Dedicated opioid rehabilitation facility.

26 1. A dedicated opioid rehabilitation treatment facility shall be a  
27 secure (locked) facility.

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

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

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

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

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

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

41 (b) Dormitory facilities for minors shall be maintained separately  
42 from dormitory facilities for adults.

43 § 23.04 Admission to a dedicated opioid rehabilitation treatment facili-  
44 ty.

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

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

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

55 4. A defendant shall not be a candidate for admission to the facility  
56 if, in the discretion of the sentencing court, such person is deemed to

1 be a danger to himself or herself or to other people, or to be a high  
2 flight risk.

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

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

10 § 23.05 Referral to a dedicated opioid rehabilitation facility by an  
11 opioid court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 § 23.06 Sentencing agreement.

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

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

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

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

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

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

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

40 § 23.07 Minors.

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

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

1 ment of the department of social services or agency with which the minor  
2 was placed.

3 § 23.08 Discharge from a dedicated opioid rehabilitation facility.

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

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

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

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

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

23 (e) at the request of the facility to the court for removal of the  
24 defendant from the facility.

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

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

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

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

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

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

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

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

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

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

45 § 23.09 Treatment following discharge from a dedicated opioid rehabili-  
46 tation facility.

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

52 2. A defendant who is discharged from a dedicated opioid rehabili-  
53 tation facility pursuant to paragraph (b) of subdivision one of section  
54 23.08 of this article and subsequently sentenced to serve the remaining  
55 balance of or a portion of such defendant's sentence at an alternative  
56 rehabilitation program shall be required by the court to reside at a

1 halfway house to reintegrate the defendant into society for a minimum  
2 period of two months up to a maximum period of two years following  
3 successful completion of the alternative rehabilitation program.

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

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

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

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

33 § 23.10 Court appearances.

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

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

46 § 23.11 Records.

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

53 2. All records of identity, diagnosis, prognosis, or treatment in  
54 connection with a person's receipt of chemical dependence services shall  
55 be confidential and shall be released only in accordance with applicable

1 provisions of the public health law, any other state law, federal law  
2 and duly executed court orders.

3 § 23.12 Limitations.

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

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

21 § 23.13 Study.

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

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

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

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

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

47 R.E. Blaisdell Addiction Treatment Center  
48 Bronx Addiction Treatment Center  
49 C.K. Post Addiction Treatment Center  
50 Creedmoor Addiction Treatment Center  
51 Dick Van Dyke Addiction Treatment Center  
52 Kingsboro Addiction Treatment Center  
53 McPike Addiction Treatment Center  
54 Richard C. Ward Addiction Treatment Center  
55 J.L. Norris Addiction Treatment Center  
56 South Beach Addiction Treatment Center

1 St. Lawrence Addiction Treatment Center

2 Stutzman Addiction Treatment Center

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

5 § 6. Subdivisions 4, 5, 6, 7 and 8 of section 216.05 of the criminal  
6 procedure law, as amended by chapter 435 of the laws of 2021, are  
7 amended to read as follows:

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

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

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

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

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

50 6. (a) Upon an eligible defendant's agreement to abide by the condi-  
51 tions set by the court, the court shall issue a securing order providing  
52 for bail or release on the defendant's own recognizance and conditioning  
53 any release upon the agreed upon conditions. The period of alcohol or  
54 substance use treatment shall begin as specified by the court and as  
55 soon as practicable after the defendant's release, taking into account  
56 the availability of treatment, so as to facilitate early intervention

1 with respect to the defendant's substance use or condition and the  
2 effectiveness of the treatment program. In the event that a treatment  
3 program is not immediately available or becomes unavailable during the  
4 course of the defendant's participation in the judicial diversion  
5 program, the court may release the defendant pursuant to the securing  
6 order.

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

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

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

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

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

55 7. The commissioner shall consult with the commissioner of addiction  
56 services and supports with respect to establishing a dedicated opioid

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

8 § 8. This act shall take effect January 1, 2024. Effective immediate-  
9 ly, the addition, amendment, and/or repeal of any rule or regulation  
10 necessary for the implementation of this act on its effective date are  
11 authorized to be made and completed on or before such effective date.