STATE OF NEW YORK

1976--A

2023-2024 Regular Sessions

IN SENATE

January 17, 2023

Introduced by Sens. RAMOS, BRISPORT, BROUK, CLEARE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KRUEGER, MAY, MYRIE, RIVERA, SALAZAR, SEPULVEDA, SERRANO, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Alcoholism and Substance Abuse -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

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

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

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 six new subdivisions 3, 4, 6, 7, 8 and 9 are added to read as follows:

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

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

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

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

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

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

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

6. "Treatment" means one or more evidence-based interventions including, but not limited to, counseling, psychotherapy, psychotropic medication, health promotion, and overdose prevention education. Treatment for the purposes of this article does not include treatment in a carceral setting or in a forensic hospital pursuant to article seven hundred thirty of this chapter. For substance use disorders, treatment includes any clinical service or intervention that assists individuals to achieve harm reduction.

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

8. "Harm reduction" means a set of interventions to reduce the negative consequences of substance use and does not require abstinence.

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

§ 6. Section 216.05 of the criminal procedure law, as amended by chapter 435 of the laws of 2021, is amended to read as follows:

§ 216.05 Judicial diversion program; court procedures.

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

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

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

(c) The defendant shall provide a written authorization, in compliance with the requirements of any applicable state or federal laws, rules or regulations authorizing disclosure of the results of the assessment to the defendant's attorney, the prosecutor, the local probation department, the court, authorized court personnel and other individuals specified in such authorization for the sole purpose of determining whether the defendant should be offered judicial diversion for treatment for

[~~substance use, alcohol use and any co-occurring mental disorder or mental illness~~] a functional impairment.

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

2. Upon receipt of the completed [~~alcohol and substance use~~] clinical evaluation [~~report~~], the court shall provide a copy of the report to the [~~eligible~~] defendant and the [~~prosecutor~~] defendant's counsel. The court and the prosecutor shall receive a copy of the clinical evaluation only if the defendant decides to proceed in requesting judicial diversion.

3. (a) Upon [~~receipt~~] review of the clinical evaluation [~~report~~], the prosecutor and defendant can agree to diversion based on the recommendations in the evaluation report. If the parties disagree, either party may request a hearing on the issue of whether the [~~eligible~~] defendant is an eligible defendant and should be offered [~~alcohol or substance use~~] treatment pursuant to this article. At such a proceeding, which shall be held as soon as practicable so as to facilitate early intervention in the event that the defendant is found to need [~~alcohol or substance use~~] treatment, the court may consider oral and written arguments, [~~may~~] take testimony from witnesses offered by either party, and [~~may~~] consider any relevant evidence [~~including, but not limited to, evidence that:~~

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

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

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

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

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

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

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

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

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

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

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. Judicial diversion program conditions may include:

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

(b) limited periods of detoxification or inpatient rehabilitation for participants with substance use disorders 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~~] participant'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

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

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

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

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

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

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

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

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

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

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

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

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

effectiveness of the treatment program. In the event that a treatment program is not immediately available or becomes unavailable during the course of the [~~defendant's participation~~] participant's involvement in the judicial diversion program, the court may release the [~~defendant~~] participant pursuant to the securing order.

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

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

(b) The court may require the [~~defendant~~] participant to appear in court [~~at any time~~] or remotely to enable the court to monitor the [~~defendant's~~] participant's progress in [~~alcohol or substance use~~] treatment. The frequency of appearances shall take into account a person's individual circumstances and treatment progress in accordance with best practices. The court shall provide notice, reasonable under the circumstances, to the people, the treatment provider, the [~~defendant~~] participant and the [~~defendant's~~] participant's counsel whenever it orders or otherwise requires the appearance of the [~~defendant in~~] participation for court appearances. Failure to appear as required without reasonable cause therefor shall constitute a violation of the conditions of the court's agreement with the [~~defendant~~] participant.

9. (a) If at any time during the [~~defendant's participation~~] participant's engagement in the judicial diversion program, the court has reasonable grounds to believe that the [~~defendant~~] participant has violated a [~~release~~] program condition in an important respect or has willfully failed to appear before the court as requested, the court except as provided in subdivision two of section 510.50 of this chapter regarding a failure to appear, shall direct the [~~defendant~~] participant to appear [~~or issue a bench warrant to a police officer or an appropriate peace officer directing him or her to take the defendant into custody and bring the defendant before the court without unnecessary delay; provided, however, that under no circumstances shall a defendant who requires treatment for opioid use be deemed to have violated a release~~

~~condition on the basis of his or her participation in medically prescribed drug treatments under the care of a health care professional licensed or certified under title eight of the education law, acting within his or her lawful scope of practice~~] for a hearing on the violation pursuant to paragraph (b) of this subdivision with at least forty-eight hours notice to the participant or the participant's counsel, unless notice is waived by the participant. The court may not modify the participant's securing order until such time as the hearing's conclusion. The relevant provisions of section 530.60 of this chapter relating to issuance of securing orders shall apply to such proceedings under this subdivision. There is a presumption that a bench warrant shall not be issued for participants in judicial diversion.

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

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

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

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

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

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

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

(c) If the court determines by clear and convincing evidence that the [~~defendant~~] participant has violated a condition of his or her release under the judicial diversion program, the court may permit the participant to continue their treatment mandate as previously ordered; modify the [~~conditions thereof, reconsider the order of recognizance or bail pursuant to subdivision two of section 510.30 of this chapter,~~] treatment plan per the recommendation of the treatment provider; hold treat-

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

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

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

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

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

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

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

10. Upon the court's determination that the [~~defendant~~] participant has successfully completed the required period of [~~alcohol or substance use~~] treatment and has otherwise satisfied the conditions required for successful completion of the judicial diversion program, the court shall [~~comply with the terms and conditions it set for final disposition when~~

~~it accepted the defendant's agreement to participate in the judicial diversion program. Such disposition may include, but is not limited to: (a) requiring the defendant to undergo a period of interim probation supervision and, upon the defendant's successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea and dismissing the indictment; or (b) requiring the defendant to undergo a period of interim probation supervision and, upon successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea, enter a guilty plea to a misdemeanor offense and sentencing the defendant as promised in the plea agreement, which may include a period of probation supervision pursuant to section 65.00 of the penal law; or (c) allowing the defendant to withdraw his or her guilty plea and dismissing~~] dismiss the indictment or superior court information, felony complaint, misdemeanor complaint, information, simplified information, or prosecutor's information and seal the case pursuant to section 160.50 of this chapter.

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

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

§ 216.10 Diversion part established.

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

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

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

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

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

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

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

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

(d) the crimes with which each participant was charged;
(e) whether the treatment obtained was for substance use, mental health, co-occurring or other;
(f) the court disposition in each supervised case, including sentencing information;
(g) the costs saved to the county by avoiding pre-trial or post-conviction detention in a county jail or state prison; and
(h) a list of service providers, including contact information, that the diversion part in the superior court of the county partners with to serve participants.

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

5. (a) Notwithstanding any provision of this section to the contrary, in any county [~~outside a city having a population of one million or more~~], upon or after arraignment of a defendant on an information, a simplified information, a prosecutor's information or a misdemeanor complaint pending in a local criminal court, such court [~~may~~] shall, upon motion of the defendant and after giving the district attorney an opportunity to be heard, order that the action be removed from the court in which the matter is pending to another local criminal court in the same county, or with consent of the district attorney and the district attorney of the adjoining county to another court in [~~such~~] an adjoining county, or to a court in the county in which the defendant resides that has been designated as a judicial diversion, human trafficking [~~court~~], or veterans treatment court by the chief administrator of the courts, and such judicial diversion, human trafficking [~~court~~], or veterans treatment court [~~may~~] shall then conduct such action to judgment or other final deposition; provided, however, that no court may order removal pursuant to this subdivision to a veterans treatment court of a family offense charge described in subdivision one of section 530.11 of this chapter 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:

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.

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

4. (a) Notwithstanding any provision of this section to the contrary, [~~in any county outside a city having a population of one million or more,~~] upon or after arraignment of a defendant on a felony complaint pending in a local criminal court having preliminary jurisdiction thereof, such court [~~may~~] shall, upon motion of the defendant and after giving the district attorney an opportunity to be heard, order that the action be removed from the court in which the matter is pending to

another local criminal court in the same county, or with consent of the district attorney and the district attorney of the adjoining county to another court in such adjoining county, **or to a court in the county in which the defendant resides,** that has been designated as a **judicial diversion,** human trafficking [~~court~~], or veterans treatment court by the chief administrator of the courts, and such **judicial diversion,** human trafficking [~~court~~], or veterans treatment court may then conduct such action to judgment or other final disposition; provided, however, that no court may order removal pursuant to this subdivision to a veterans treatment court of a family offense charge described in subdivision one of section 530.11 of this chapter 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 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:

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 defendants to make regular court appearances, and be closely supervised by the court, for the duration of [~~drug~~] treatment and the pendency of the criminal charge.

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