

STATE OF NEW YORK

1976--B

2023-2024 Regular Sessions

IN SENATE

January 17, 2023

Introduced by Sens. RAMOS, ASHBY, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KENNEDY, KRUEGER, MAY, MYRIE, PARKER, RIVERA, SALAZAR, SEPULVEDA, SERRANO, THOMAS, 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 -- reported favorably from said committee and committed to the Committee on Codes -- 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 § 2. The opening paragraph of subdivision 1 of section 216.00 of the 6 criminal procedure law, as amended by section 1 of chapter 435 of the 7 laws of 2021, is amended to read as follows:

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

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

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~~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.

§ 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 eight new subdivisions 3, 4, 6, 7, 8, 9, 10 and 11 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 pursuant to title eight of the education law who is qualified to diagnose or treat people with mental health disorders, including substance-related and addictive 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~~]. Such evaluation may

1 be conducted through telehealth when practicable and when delay would
2 otherwise occur. The evaluation shall include:

3 (a) an evaluation as to whether the defendant currently has [~~a history~~
4 ~~of alcohol or substance use disorder~~] one or more functional impairments
5 that may include but not be limited to a mental health disorder, as
6 [~~such terms are~~] defined in the most recent edition of the diagnostic
7 and statistical manual of mental disorders, [~~fifth edition, and a co-oc-~~
8 ~~curring mental disorder or mental illness and the relationship between~~
9 ~~such use and mental disorder or mental illness,~~] if any;

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

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

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

20 6. "Treatment" means one or more evidence-based interventions includ-
21 ing, but not limited to, counseling, psychotherapy, psychotropic medica-
22 tion or medications for addiction or substance use disorder treatment,
23 health promotion, and overdose prevention education. Treatment for the
24 purposes of this article does not include treatment in a carceral
25 setting or in a forensic hospital pursuant to article seven hundred
26 thirty of this chapter. For substance use disorders, treatment includes
27 any clinical service or intervention that assists individuals in their
28 recovery in accordance with harm reduction principles.

29 7. "Treatment provider" means a person or organization qualified to
30 provide interventions responsive to the needs identified by the defend-
31 ant and clinician during the clinical evaluation.

32 8. "Harm reduction" means a set of proven-effective substance use
33 intervention strategies that offer low-threshold access to treatment
34 with the goal of reducing the negative consequences of substance use,
35 preventing overdose and the transmission of infectious diseases, and/or
36 improving the physical, mental, and social well-being of those served.
37 In some cases, as identified by a licensed mental health care profes-
38 sional or a treatment provider, harm reduction interventions may recog-
39 nize that complete abstinence is not realistically attainable and may
40 instead aim to achieve a significant reduction or change in use.

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

46 10. "Treatment plan" means an individualized plan developed by a
47 licensed mental health care professional or a treatment provider in
48 conjunction with an eligible defendant, which may include any combina-
49 tion of treatment interventions identified in subdivision six of this
50 section. Provided that:

51 (a) treatment should occur in the setting or settings that are most
52 appropriate to the individual's medical needs.

53 (b) such treatment plan shall take into consideration the best prac-
54 tices for addressing any functional impairments identified during the
55 clinical evaluation and any evidence-based and peer-reviewed clinical
56 review criteria that is relevant to the identified functional impair-

1 ment, appropriate to the age of the patient and has been designated or
2 approved by the appropriate state agency or agencies, including but not
3 limited to, the office of mental health, the office of addiction
4 services and supports, and the office for people with developmental
5 disabilities.

6 (c) a treatment plan may include treatment through telehealth when
7 deemed appropriate by a licensed mental health care professional or a
8 treatment provider.

9 (d) a licensed mental health care professional or a treatment provider
10 may modify a treatment plan after the participant has been admitted to
11 the judicial diversion program with the consent of the participant where
12 the licensed mental health care professional or treatment provider deems
13 such modification to be clinically appropriate.

14 11. "Protected health information" means information protected by
15 federal and state laws and regulations governing the privacy of person-
16 ally-identifiable medical information, including the federal Health
17 Insurance Portability and Accountability Act Privacy Rule (45 Code of
18 Federal Regulations Parts 160 and 164), 42 United States Code § 290dd-2
19 (42 Code of Federal Regulations Part 2), section 33.13 of the mental
20 hygiene law, article twenty-seven-f of the public health law ("HIV and
21 AIDS Related Information"), and any other relevant health privacy laws
22 and regulations.

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

25 § 216.05 Judicial diversion program; court procedures.

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

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

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

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

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

52 2. Upon [~~receipt of the completed alcohol and substance use~~]
53 completion of the clinical evaluation [~~report~~], the [~~court~~] clinician
54 shall provide a copy of the report to the [~~eligible~~] defendant and the
55 [~~prosecutor~~] defendant's counsel. The court and the prosecutor shall
56 receive a copy of the clinical evaluation only if the defendant decides

1 to proceed in requesting judicial diversion. Where the defendant
2 decides to proceed in requesting judicial diversion, they shall consent
3 to disclosure of their protected health information with the court and
4 prosecutor.

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

17 ~~(i) the defendant had within the preceding ten years (excluding any~~
18 ~~time during which the offender was incarcerated for any reason between~~
19 ~~the time of the acts that led to the youthful offender adjudication and~~
20 ~~the time of commission of the present offense) been adjudicated a youth-~~
21 ~~ful offender for: (A) a violent felony offense as defined in section~~
22 ~~70.02 of the penal law; or (B) any offense for which a merit time allow-~~
23 ~~ance is not available pursuant to subparagraph (ii) of paragraph (d) of~~
24 ~~subdivision one of section eight hundred three of the correction law;~~
25 ~~and~~

26 ~~(ii) in the case of a felony offense defined in subdivision five of~~
27 ~~section 410.91 of this chapter, or section 165.10, 165.11, 190.79 or~~
28 ~~190.80 of the penal law, any statement of or submitted by the victim, as~~
29 ~~defined in paragraph (a) of subdivision two of section 380.50 of this~~
30 ~~chapter] except sealed cases defined in section 160.50 or 160.55 of this~~
31 ~~chapter.~~

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

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

36 (ii) [~~the defendant has a history of alcohol or substance use;~~
37 ~~(iii) such alcohol or substance use]~~ the defendant's functional
38 impairment is likely a contributing factor to [~~the defendant's criminal~~
39 ~~behavior]~~ their current or future involvement in the criminal legal
40 system;

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

43 [~~(v) institutional confinement of the defendant is or may not be~~
44 ~~necessary for the protection of the public]~~ (iv) the defendant's access
45 to treatment through this article would benefit the public and the
46 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:~~

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

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

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

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

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

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

16 5. The [~~defendant~~] participant shall agree on the record or in writing
 17 to abide by the [~~release~~] judicial diversion program conditions set by
 18 the court, which[, ~~shall~~] may include: [~~participation in a specified~~
 19 ~~period of alcohol or substance use treatment at a specified program or~~
 20 ~~programs identified by the court, which may include periods of detoxifi-~~
 21 ~~cation residential or outpatient treatment, or both, as determined after~~
 22 ~~taking into account the views of the health care professional who~~
 23 ~~conducted the alcohol and substance use evaluation and any health care~~
 24 ~~professionals responsible for providing such treatment or monitoring the~~
 25 ~~defendant's progress in such treatment; and may include: (i)]~~

26 (a) participation in the treatment plan;

27 (b) periodic court appearances, which, upon consent of the partic-
 28 ipant, may [~~include periodic urinalysis; (ii)~~] be an accessible audio or
 29 video appearance. When scheduling court appearances and determining the
 30 type of appearance required, the court shall consider the participant's
 31 treatment progress and shall attempt to avoid undue hardship, including
 32 but not limited to, treatment interruptions, the cost of transportation,
 33 mobility issues, childcare and employment disruptions. Upon application
 34 by defense counsel and with the consent of the participant, the court
 35 shall consider waiving the appearance of the participant;

36 (c) periodic drug screening as needed, when recommended by the treat-
 37 ment provider as part of a participant's treatment plan. Drug screening
 38 methods shall only include oral swabs, sweat patches, or non-observed
 39 urinalysis and shall comport with the office of addiction services and
 40 supports' guidance on toxicology use;

41 (d) a requirement that the [~~defendant~~] participant refrain from engag-
 42 ing in criminal behaviors[~~, (iii) if the defendant needs treatment for~~
 43 opioid use, that he or she].

44 5-a. The court shall not disclose a participant's protected health
 45 information without the participant's consent or authorization;
 46 provided, however, that a court may require a participant to consent to
 47 share the following protected health information as a condition of
 48 participating in judicial diversion:

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

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

52 (c) drug toxicology results, when part of the treatment plan; and

53 (d) relevant updates regarding engagement in the treatment plan.

54 5-b. If a participant has one or more conditions requiring
 55 prescription medication or certified drug treatments they may partic-
 56 ipate in and receive [~~medically prescribed~~] such medication or drug

1 treatments under the care of a health care professional licensed or
2 certified under title eight of the education law, acting within his or
3 her lawful scope of practice[~~, provided that no~~].

4 (a) No court shall limit the medications that a licensed mental health
5 care professional has prescribed or certified for a participant;

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

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

11 5-c. Every effort should be made to maximize the use of certified
12 peers in every stage of the judicial diversion process.

13 5-d. Upon request by the defense, the court shall allow participants
14 to consult a different mental health care professional for a second
15 opinion and propose an alternative treatment plan. Any alternative opin-
16 ion or alternative treatment plan shall be considered by the court when
17 determining the treatment plan.

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

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

45 8. (a) During the period of a [~~defendant's participation~~] partic-
46 ipant's involvement in the judicial diversion program, the treatment
47 court shall retain jurisdiction of the [~~defendant~~] participant,
48 provided, however, that the court [~~may~~] shall allow such [~~defendant~~]
49 participant to (i) reside in another jurisdiction, [~~or~~] and/or (ii)
50 participate in [~~alcohol and substance use~~] treatment and other programs
51 in the jurisdiction where the [~~defendant~~] participant resides or in any
52 other jurisdiction, while participating in a judicial diversion program
53 under conditions set by the court and agreed to by the [~~defendant~~]
54 participant pursuant to subdivisions five and six of this section. The
55 court may transfer the participant's case to the judicial diversion
56 court in the county in which the participant resides pursuant to subdi-

1 vision five of section 170.15 of this part, subdivision four of section
2 180.20 of this part, or section 230.21 of this part to ensure continuity
3 of treatment.

4 (b) The court may require the [~~defendant~~] participant to appear in
5 court [~~at any time~~] or, upon the request of the participant, make audio
6 or video appearances pursuant to paragraph (b) of subdivision five of
7 this section to enable the court to [~~monitor~~] promote the [~~defendant's~~]
8 participant's progress in [~~alcohol or substance use~~] treatment. The
9 court shall provide notice, reasonable under the circumstances, to the
10 people, the treatment provider, the [~~defendant~~] participant and the
11 [~~defendant's~~] participant's counsel whenever it orders or otherwise
12 requires the appearance of the [~~defendant in~~] participation for court
13 appearances. Failure to appear as required without reasonable cause
14 therefor shall constitute a violation of the conditions of the court's
15 agreement with the [~~defendant~~] participant.

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

39 (b) In determining whether a [~~defendant~~] participant violated a condi-
40 tion of [~~his or her release under~~] the judicial diversion program in an
41 important respect or willfully failed to appear in court, the court
42 [~~may~~] shall conduct a [~~summary~~] hearing consistent with due process [~~and~~
43 ~~sufficient~~] to satisfy the court that the [~~defendant~~] participant has,
44 in fact, violated the condition or willfully failed to appear.

45 (i) The people shall bear the burden of proving by clear and convinc-
46 ing evidence that the participant has violated a condition of the judi-
47 cial diversion program in an important respect or has willfully failed
48 to appear. The participant may cross-examine witnesses and may present
49 relevant, admissible evidence on their own behalf.

50 (ii) At the request of the participant or the participant's counsel,
51 the court may conduct proceedings off the record for portions of the
52 proceedings that will likely result in adverse collateral consequences,
53 including immigration consequences. In the alternative, the court shall
54 seal portions of the proceeding that may result in such consequences.

55 (c) If the court determines by clear and convincing evidence that the
56 [~~defendant~~] participant has violated a program condition [~~of his or her~~

1 ~~release under the judicial diversion program, the~~ in an important
2 respect or willfully failed to appear, the court shall respond by using
3 a system of graduated and appropriate responses designed to address such
4 inappropriate behaviors and facilitate, where possible, successful
5 completion of the treatment program. The court may permit the partic-
6 ipant to continue their treatment mandate as previously ordered; modify
7 the ~~[conditions thereof, reconsider the order of recognizance or bail~~
8 ~~pursuant to subdivision two of section 510.30 of this chapter,]~~ treat-
9 ment plan according to the recommendation of the treatment provider; or
10 terminate the ~~[defendant's]~~ participant's participation in the judicial
11 diversion program~~, and when applicable proceed with the defendant's~~
12 ~~sentencing in accordance with the agreement. Notwithstanding any~~
13 ~~provision of law to the contrary, the court may impose any sentence~~
14 ~~authorized for the crime of conviction in accordance with the plea~~
15 ~~agreement, or any lesser sentence authorized to be imposed on a felony~~
16 ~~drug offender pursuant to paragraph (b) or (c) of subdivision two of~~
17 ~~section 70.70 of the penal law taking into account]~~ if no other treat-
18 ment option is available. If the court finds a reasonable explanation or
19 mitigation for any alleged violation or alleged willful failure to
20 appear, the securing order shall not be modified. The court shall
21 consider:

22 (i) the length of time the [defendant] participant has spent in [resi-
23 dential] treatment and how best to continue treatment [while the defend-
24 ant is serving that sentence. In determining what action to take for a
25 violation of a release condition, the court shall consider];

26 (ii) all relevant circumstances, including the views of the prosecu-
27 tor, the defense and the [alcohol or substance use] participant's inter-
28 est in continuing treatment [provider, and the extent to which persons
29 who ultimately successfully complete a drug treatment regimen sometimes]
30 or the program;

31 (iii) the role of relapse [by not abstaining from alcohol or substance
32 use or by failing to comply fully with all requirements imposed by a
33 treatment program. The court shall also consider using a system of
34 graduated and appropriate responses or sanctions designed to address
35 such inappropriate behaviors, protect public safety and facilitate,
36 where possible, successful completion of the alcohol or substance use
37 treatment program] in recovery and treatment; and

38 (iv) any other mitigating factors that may have impacted the alleged
39 violation or willful failure to appear.

40 (d) Nothing in this subdivision shall be construed ~~[as preventing a~~
41 ~~court from terminating a defendant's participation in the judicial~~
42 ~~diversion program for violating a release condition when such a termi-~~
43 ~~nation is necessary to preserve public safety. Nor shall anything in~~
44 ~~this subdivision be construed]~~ as precluding the prosecution of a
45 [defendant] participant for the commission of a different offense while
46 participating in the judicial diversion program.

47 (e) A [defendant] participant may at any time advise the court that
48 ~~[he or she wishes]~~ they wish to terminate participation in the judicial
49 diversion program, at which time the court shall ~~[proceed with the case~~
50 ~~and, where applicable, shall impose sentence in accordance with the plea~~
51 ~~agreement. Notwithstanding any provision of law to the contrary, the~~
52 ~~court may impose any sentence authorized for the crime of conviction in~~
53 ~~accordance with the plea agreement, or any lesser sentence authorized to~~
54 ~~be imposed on a felony drug offender pursuant to paragraph (b) or (c) of~~
55 ~~subdivision two of section 70.70 of the penal law taking into account~~
56 ~~the length of time the defendant spent in residential treatment and how~~

1 ~~best to continue treatment while the defendant is serving that sentence]~~
2 transfer the case back to the appropriate trial part.

3 10. Upon the court's determination that the [~~defendant~~] participant
4 has successfully completed the required period of [~~alcohol or substance~~
5 ~~use~~] treatment and has otherwise satisfied the conditions required for
6 successful completion of the judicial diversion program, the court shall
7 [~~comply with the terms and conditions it set for final disposition when~~
8 ~~it accepted the defendant's agreement to participate in the judicial~~
9 ~~diversion program. Such disposition may include, but is not limited to:~~
10 ~~(a) requiring the defendant to undergo a period of interim probation~~
11 ~~supervision and, upon the defendant's successful completion of the~~
12 ~~interim probation supervision term, notwithstanding the provision of any~~
13 ~~other law, permitting the defendant to withdraw his or her guilty plea~~
14 ~~and dismissing the indictment; or (b) requiring the defendant to undergo~~
15 ~~a period of interim probation supervision and, upon successful~~
16 ~~completion of the interim probation supervision term, notwithstanding~~
17 ~~the provision of any other law, permitting the defendant to withdraw his~~
18 ~~or her guilty plea, enter a guilty plea to a misdemeanor offense and~~
19 ~~sentencing the defendant as promised in the plea agreement, which may~~
20 ~~include a period of probation supervision pursuant to section 65.00 of~~
21 ~~the penal law; or (c) allowing the defendant to withdraw his or her~~
22 ~~guilty plea and dismissing]~~ dismiss the indictment or superior court
23 information, felony complaint, misdemeanor complaint, information,
24 simplified information, or prosecutor's information and seal the case
25 pursuant to section 160.50 of this chapter. Participants who success-
26 fully complete judicial diversion shall also be eligible to apply for
27 sealing of prior convictions pursuant to section 160.58 of this chapter.
28 Upon successful completion of judicial diversion, the court shall notify
29 the participant of their potential eligibility for sealing pursuant to
30 subdivision two of section 160.58 of this chapter. No participant shall
31 be required or permitted to waive eligibility for sealing as a condition
32 of participation in judicial diversion.

33 10-a. Treatment providers shall collaborate with the participant and
34 the court to create a post-graduation plan prior to completion of judi-
35 cial diversion. Such plan shall make every effort to assist the partic-
36 ipant in obtaining stable housing and meeting their self-identified
37 long-term goals after graduation. However, when a participant finishes
38 their treatment plan, they shall be considered to have successfully
39 completed their obligation to the court, regardless of their ability to
40 secure housing, employment, or other personal goals identified.

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

45 § 7. The criminal procedure law is amended by adding a new section
46 216.10 to read as follows:

47 § 216.10 Diversion part established.

48 1. The chief administrator of the courts is hereby directed to estab-
49 lish, in each county of the state, a part of the court to be known as
50 the diversion part for the county in which such court presides. To aid
51 in their work, such judges and diversion court personnel shall receive
52 annual training in specialized areas, including, but not limited to
53 disability, mental illness, and substance use disorder needs, including
54 co-occurring disorders, evidence-based practices, trauma-informed care,
55 the immigration consequences of participation in judicial diversion for
56 individuals who are not United States citizens, certified peer programs,

1 harm reduction principles, and protected health information, as well as
2 training in procedural justice and cultural competency and medicaid or
3 medicare eligibility. The chief administrator of the courts shall ensure
4 that all employees who staff the diversion parts receive specialized
5 training in procedural justice and working with people with complex
6 needs.

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

14 (a) the number of people with cases in the diversion part for each of
15 the following categories, broken down by gender, sex, race and ethnici-
16 ty:

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

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

19 and

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

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

24 (c) the crimes with which each participant was charged;

25 (d) the specific functional impairment or impairments for which the
26 participant received treatment while participating in the judicial
27 diversion program;

28 (e) the final disposition, including the sentence, of each case
29 considered for judicial diversion; and

30 (f) a list of service providers, including contact information, that
31 the diversion part in the superior court of the county partners with to
32 serve participants.

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

36 5. (a) Notwithstanding any provision of this section to the contrary,
37 in any county [~~outside a city having a population of one million or~~
38 ~~more~~], upon or after arraignment of a defendant on an information, a
39 simplified information, a prosecutor's information or a misdemeanor
40 complaint pending in a local criminal court, such court [~~may~~] shall,
41 upon motion of the defendant and after giving the district attorney an
42 opportunity to be heard, order that the action be removed from the court
43 in which the matter is pending to another local criminal court in the
44 same county, or with consent of the district attorney and the district
45 attorney of the adjoining county to another court in [~~such~~] an adjoining
46 county, or to a court in the county in which the defendant resides that
47 has been designated as a judicial diversion, human trafficking [~~court~~],
48 or veterans treatment court by the chief administrator of the courts,
49 and such judicial diversion, human trafficking [~~court~~], or veterans
50 treatment court [~~may~~] shall then conduct such action to judgment or
51 other final disposition; provided, however, that no court may order
52 removal pursuant to this subdivision to a veterans treatment court of a
53 family offense charge described in subdivision one of section 530.11 of
54 this chapter where the accused and the person alleged to be the victim
55 of such offense charged are members of the same family or household as
56 defined in such subdivision one of section 530.11; and provided further

1 that an order of removal issued under this subdivision shall not take
2 effect until five days after the date the order is issued unless, prior
3 to such effective date, the human trafficking court or veterans treat-
4 ment court notifies the court that issued the order that:

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

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

9 (b) Upon providing notification pursuant to subparagraph i or ii of
10 paragraph (a) of this subdivision, the human trafficking court or veter-
11 ans treatment court shall promptly give notice to the defendant, his or
12 her counsel, and the district attorney.

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

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

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

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

45 (b) Upon providing notification pursuant to subparagraph i or ii of
46 paragraph (a) of this subdivision, the human trafficking court or veter-
47 ans treatment court shall promptly give notice to the defendant, his or
48 her counsel and the district attorney.

49 § 10. Section 230.21 of the criminal procedure law, as added by chap-
50 ter 91 of the laws of 2021, is amended to read as follows:

51 § 230.21 Removal of action to certain courts in an adjoining county or
52 county in which the defendant resides.

53 1. In any county [~~outside a city having a population of one million or~~
54 ~~more,~~] [~~the~~] upon or after arraignment of a defendant on an indictment
55 pending in a superior court having jurisdiction thereof, such court
56 [~~may~~] shall, upon motion of the defendant and with consent of the

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

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

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

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

27 § 11. Paragraph (r) of subdivision 2 of section 212 of the judiciary
28 law, as added by section 15 of part AAA of chapter 56 of the laws of
29 2009, is amended to read as follows:

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

42 § 12. The section heading, subdivision 1, and the opening paragraph of
43 subdivision 2 of section 160.58 of the criminal procedure law, as added
44 by section 3 of part AAA of chapter 56 of the laws of 2009, are amended
45 to read as follows:

46 Conditional sealing of certain [~~controlled substance, marihuana or~~
47 ~~specified offense~~] convictions for people who complete judicial diver-
48 sion or a judicially sanctioned drug treatment program.

49 1. A [~~defendant convicted of any offense defined in article two~~
50 ~~hundred twenty or two hundred twenty-one of the penal law or a specified~~
51 ~~offense defined in subdivision five of section 410.91 of this chapter]~~
52 person who has successfully completed a judicial diversion program under
53 article two hundred sixteen of this chapter, or one of the programs
54 heretofore known as drug treatment alternative to prison or another
55 judicially sanctioned drug treatment program of similar duration,
56 requirements and level of supervision, and [~~has completed the sentence~~

1 ~~imposed for the offense or offenses,~~ was sentenced for an offense or
2 offenses upon completion of such program is eligible to have such
3 offense or offenses conditionally sealed pursuant to this section. For
4 such offenses, the court that sentenced the defendant to a judicially
5 sanctioned drug treatment program may, on its own motion or on the
6 defendant's motion, order that all official records and papers relating
7 to the arrest, prosecution and conviction which resulted in the defend-
8 ant's participation in the judicially sanctioned drug treatment program
9 be conditionally sealed.

10 [~~The court that sentenced the defendant to a judicially sanctioned~~
11 ~~drug treatment program may on its own motion, or on the defendant's~~
12 ~~motion, order that all official records and papers relating to the~~
13 ~~arrest, prosecution and conviction which resulted in the defendant's~~
14 ~~participation in the judicially sanctioned drug treatment program be~~
15 ~~conditionally sealed. In such case, the court may also]~~

16 Where a person has completed a judicial diversion program pursuant to
17 article two hundred sixteen of this chapter or a drug treatment alterna-
18 tive to prison program or another judicially sanctioned drug treatment
19 program, the court that supervised the person's participation in the
20 program may, on its own motion or on the defendant's motion, condi-
21 tionally seal the arrest, prosecution and conviction records for no more
22 than three of the [~~defendant's~~ person's prior eligible misdemeanors,
23 which for purposes of this subdivision shall be limited to misdemeanor
24 offenses defined in article two hundred twenty ~~[ex]~~, two hundred twen-
25 ty-one, or two hundred twenty-two of the penal law. The court may only
26 seal the records of the defendant's arrests, prosecutions and
27 convictions when:

28 § 13. This act shall take effect one year after it shall have become
29 a law; provided, however that the amendments to the opening paragraph of
30 subdivision 1 of section 216.00 of the criminal procedure law made by
31 section two of this act shall be subject to the expiration and reversion
32 of such paragraph pursuant to section 12 of chapter 90 of the laws of
33 2014, as amended, when upon such date the provisions of section three of
34 this act shall take effect.