

STATE OF NEW YORK

10706

IN SENATE

September 23, 2026

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

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

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

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

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

9 "Eligible defendant" means any person who stands charged in an indictment [~~or a~~], superior court information [~~with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-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 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-~~], information, misdemeanor complaint or felony complaint with any offense and has a qualifying diagnosis. Provided, however, that a defendant is not an "eligible defendant" if they are charged with: (a) a class A felony offense defined in the penal law, other than a class A felony offense pursuant

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

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1 to article two hundred twenty of the penal law; or (b) a class B felony
2 offense pursuant to article one hundred thirty of the penal law;
3 provided further, however, that upon individualized consideration, and
4 with consent of the prosecutor, the court may deem an individual an
5 eligible defendant who otherwise does not meet the above-listed crite-
6 ria.

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

10 "Eligible defendant" means any person who stands charged in an indict-
11 ment ~~[or a]~~, superior court information ~~[with a class B, C, D or E felo-~~
12 ~~ny offense defined in article two hundred twenty or two hundred twenty-~~
13 ~~two of the penal law, an offense defined in sections 105.10 and 105.13~~
14 ~~of the penal law provided that the underlying crime for the conspiracy~~
15 ~~charge is a class B, C, D or E felony offense defined in article two~~
16 ~~hundred twenty or two hundred twenty two of the penal law, auto strip-~~
17 ~~ping in the second degree as defined in section 165.10 of the penal law,~~
18 ~~auto stripping in the first degree as defined in section 165.11 of the~~
19 ~~penal law, identity theft in the second degree as defined in section~~
20 ~~190.79 of the penal law, identity theft in the first degree as defined~~
21 ~~in section 190.80 of the penal law, or any other specified offense as~~
22 ~~defined in subdivision five of section 410.01 of this chapter, provided,~~
23 ~~however, a defendant is not an "eligible defendant" if he or she]~~,
24 information, misdemeanor complaint or felony complaint with any offense
25 and has a qualifying diagnosis. Provided, however, that a defendant is
26 not an "eligible defendant" if they are charged with: (a) a class A
27 felony offense defined in the penal law, other than a class A felony
28 offense pursuant to article two hundred twenty of the penal law; or (b)
29 a class B felony offense pursuant to article one hundred thirty of the
30 penal law; provided further, however, that upon individualized consider-
31 ation, and with consent of the prosecutor, the court may deem an indi-
32 vidual an eligible defendant who otherwise does not meet the above-list-
33 ed criteria.

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

36 § 5. Subdivision 2 of section 216.00 of the criminal procedure law, as
37 amended by chapter 435 of the laws of 2021, is amended and eight new
38 subdivisions 3, 4, 6, 7, 8, 9, 10 and 11 are added to read as follows:

39 2. ~~["Alcohol and substance use evaluation"]~~ "Participant" means an
40 eligible defendant who has been admitted into judicial diversion pursu-
41 ant to this article.

42 3. "Licensed mental health care professional" means a clinician with
43 professional experience, training and licensure pursuant to title eight
44 of the education law who is qualified to diagnose or treat people with
45 mental health disorders, including substance-related and addictive
46 disorders.

47 4. "Qualifying diagnosis" means a mental health diagnosis or more than
48 one mental health diagnoses that qualifies an individual for admission
49 to judicial diversion. This is a diagnosis-based categorization consist-
50 ing of the following mental health disorders described in the most
51 recent version of the diagnostic and statistical manual of mental disor-
52 ders:

53 (a) serious mental disorders such as: schizophrenia spectrum and other
54 psychotic disorders, bipolar and related disorders, depressive disor-
55 ders, and post-traumatic stress disorder; or

1 (b) other mental health disorders, including but not limited to neuro-
2 developmental or neurocognitive disorders, where associated symptoms
3 lead to severe functional impairment; or

4 (c) Substance use disorders and substance-induced disorders.

5 5. "Clinical evaluation" means a written assessment and report by a
6 court-approved entity or licensed mental health care professional [expe-
7 rienced in the treatment of alcohol and substance use disorder, or] as
8 defined in subdivision three of this section or an evaluation conducted
9 by an addiction and substance [abuse] use disorder counselor creden-
10 tialed by the office of addiction services and supports pursuant to
11 section 19.07 of the mental hygiene law[, which]. Such evaluation may be
12 conducted through telehealth when practicable and when delay would
13 otherwise occur. The evaluation shall include:

14 (a) an evaluation as to whether the defendant currently has [~~a history~~
15 ~~of alcohol or substance use disorder, as such terms are defined in the~~
16 ~~diagnostic and statistical manual of mental disorders, fifth edition,~~
17 ~~and a co-occurring mental disorder or mental illness and the relation-~~
18 ~~ship between such use and mental disorder or mental illness,~~] one or
19 more qualifying diagnoses, if any;

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

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

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

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

39 7. "Treatment provider" means a person or organization qualified to
40 provide interventions responsive to the needs identified in the clinical
41 evaluation or after a person has been admitted to treatment.

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

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

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

(a) treatment should occur in the setting or settings that are most appropriate to the individual's medical needs and taking into consideration possible employment, family, social, and housing disruptions.

(b) such treatment plan shall take into consideration the best practices for addressing any qualifying diagnosis identified during the clinical evaluation and any evidence-based and peer-reviewed clinical review criteria that is relevant to the identified qualifying diagnosis, appropriate to the age of the patient and has been designated or approved by the appropriate state agency or agencies, including but not limited to, the office of mental health, the office of addiction services and supports, and the office for people with developmental disabilities.

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

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

11. "Protected health information" means information protected by federal and state laws and regulations governing the privacy of personally-identifiable medical information, in accordance with federal Health Insurance Portability and Accountability Act Privacy Rule (45 Code of Federal Regulations Parts 160 and 164), 42 United States Code § 290dd-2 (42 Code of Federal Regulations Part 2), section 33.13 of the mental hygiene law, article twenty-seven-F of the public health law ("HIV and AIDS Related Information"), and any other relevant health privacy laws and regulations.

§ 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]~~ a defendant who the court has reason to believe has a qualifying diagnosis, ~~[may]~~ shall order ~~[an alcohol and substance use]~~ a clinical evaluation for all known qualifying diagnoses, provided that a court may, in its discretion, adopt an evaluation that has already been completed in lieu of ordering a clinical evaluation. The court may require the defendant to make a prima facie showing that the defendant has one or more qualifying diagnoses prior to ordering a clinical evaluation. A request by a defendant to be evaluated shall be made as soon as practicable. 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 subdivisions one and two of section 30.30 of this chapter.

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

~~[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]~~

(c) No statement, disclosure, or representation made by the defense for the purpose of providing relevant information to the court in the application process shall be used by the prosecution to prove any crime or offense alleged in the pending case.

(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.

2. Upon ~~[receipt of the completed alcohol and substance use]~~ completion of the clinical evaluation ~~[report]~~, the ~~[court]~~ clinician 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. Where the defendant decides to proceed in requesting judicial diversion, they shall consent to disclosure of their protected health information with the court and prosecutor.

3. (a) ~~[Upon receipt of the evaluation report either]~~ 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]~~ judicial diversion 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 410.01 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, 160.55, or 106.57 of this chapter. Reliable hearsay shall be admissible at such hearings. The court shall explain its decision on the record or in writing.

(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 qualifying diagnosis 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]~~ qualifying diagnosis; ~~[and]~~

~~(iv)~~ the defendant's qualifying diagnosis can be effectively treated by existing treatment providers;

~~(v)~~ institutional confinement of the defendant is or may not be necessary for the protection of the public; ~~and~~

~~(vi)~~ the defendant's access to treatment through this article would benefit the public and the 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]~~ such 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 unless they are charged with a felony enumerated in section 70.02 of the penal law, other than robbery in the second degree as defined in subdivision one of section 160.10 of the penal law; provided, however, that individuals charged with burglary in the second degree as defined in subdivision two of section 140.25 of the penal law may only be required to enter a plea of guilty to participate in judicial diversion where the defendant is charged with entering the living area of the dwelling. Individuals who have been deemed eligible by the court pursuant to paragraph (c) of subdivision one of section 216.00 of this article may be required to submit a plea of guilty to participate in judicial diversion.

~~(c)~~ Upon individualized consideration, a court may authorize admission into judicial diversion for individuals charged with offenses enumerated in paragraph (b) of this subdivision without a plea of guilty where the court finds that a guilty plea is not necessary to ensure successful participation in judicial diversion or that a guilty plea is likely to result in significant collateral consequences.

~~(d)~~ Notwithstanding the plea restrictions stated in article two hundred twenty of this part, a plea of guilty under paragraph (b) of this subdivision shall be accompanied by an agreement between all parties that clearly outlines the following:

~~(i)~~ the charge and final disposition and sentence that the participant could face if they fail to complete judicial diversion; and

~~(ii)~~ the charge and final disposition and sentence the participant is entitled to receive upon successful completion of judicial diversion in accordance with paragraph (e) of this subdivision.

(e) Notwithstanding the plea restrictions stated in article two hundred twenty of this part, where a plea of guilty is required under paragraph (b) of this subdivision, the court may require a plea to one or more counts in the accusatory instrument and any added felony, misdemeanor or violation offense not included in the accusatory instrument if those charges have been agreed upon pursuant to subparagraphs (i) and (ii) of paragraph (d) of this subdivision. Upon successful completion of the treatment plan, if the participant pled guilty to a felony charge, the court shall allow the participant to withdraw the guilty plea and dismiss that charge, and otherwise execute the agreement pursuant to subparagraph (ii) of paragraph (d) of this subdivision; provided, however, that in the interest of justice, the court may also dismiss any remaining charges. Under no circumstances shall a participant who successfully completes judicial diversion receive a sentence of incarceration.

(f) Where a guilty plea is required pursuant to this article, the court may order treatment to begin and defer the entry of the plea until such time as the participant is able to enter a plea knowingly, intelligently, and voluntarily.

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

(h) 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]~~ may 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, residential or outpatient treatment, or both, as determined after taking into account the views of the health care professional who conducted the alcohol and substance use evaluation and any health care professionals responsible for providing such treatment or monitoring the defendant's progress in such treatment; and may include: (i)]~~

(a) participation in the treatment plan;

(b) periodic court appearances, which, upon consent of the participant, may ~~[include periodic urinalysis; (ii)]~~ be an accessible audio or video appearance, notwithstanding the provisions of article one hundred eighty-two of this part. When scheduling court appearances and determining the type of appearance required, the court shall consider the participant's treatment progress and shall attempt to avoid undue hardship, including but not limited to, treatment interruptions, the cost of transportation, mobility issues, childcare and employment disruptions. Upon application by defense counsel and with the consent of the participant, the court shall consider waiving the appearance of the participant;

(c) periodic drug screening as needed, when recommended by the treatment provider as part of a participant's treatment plan. Drug screening shall comport with the office of addiction services and supports' guidance on toxicology use;

(d) 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]~~;

(e) a requirement that participation in the treatment plan may be facilitated by members of the treatment court team; provided, however, that there shall be no community supervision or monitoring of the participant conducted by any law enforcement personnel, including those

1 defined by sections 1.20 and 2.10 of the criminal procedure law, unless
2 the court determines that there are no alternative entities in the local
3 jurisdiction available to provide these services; or

4 (f) a requirement that under no condition shall members of the treat-
5 ment court team: conduct unannounced searches of the participant's home;
6 set curfews, other than those established by a residential facility; set
7 location restrictions; or limit family and peer relationships.

8 5-a. The court shall not disclose a participant's protected health
9 information without the participant's consent or authorization;
10 provided, however, that a court may require a participant to consent to
11 share the following protected health information as a condition of
12 participating in judicial diversion:

13 (a) record of attendance and relevant barriers to attendance;
14 (b) treatment plan and any recommended changes to the plan during
15 participation in judicial diversion;
16 (c) drug toxicology results, when part of the treatment plan; and
17 (d) relevant updates regarding engagement in the treatment plan.

18 5-b. If a participant has one or more conditions requiring
19 prescription medication or certified drug treatments they may partic-
20 ipate in and receive [~~medically-prescribed~~] such medication or drug
21 treatments under the care of a health care professional licensed or
22 certified under title eight of the education law, acting within [~~his-or~~
23 ~~her~~] their lawful scope of practice[~~, provided that no~~].

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

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

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

31 5-c. Every effort should be made to maximize the use of certified
32 peers in every stage of the judicial diversion process.

33 5-d. Upon request by the defense, the court shall allow participants
34 to consult a different mental health care professional for a second
35 opinion and propose an alternative treatment plan. Any alternative opin-
36 ion or alternative treatment plan shall be considered by the court when
37 determining the treatment plan.

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

53 7. When participating in judicial diversion treatment pursuant to this
54 article, any resident of this state who is covered under a private
55 health insurance policy or contract issued for delivery in this state
56 pursuant to article thirty-two, forty-three or forty-seven of the insur-

ance 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]~~ mental health disorders including substance use disorders, 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. In cases where the participant has entered a plea of guilty, the court may transfer the participant's case to the judicial diversion court in the county in which the participant resides or an adjourning county 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. Notwithstanding the restrictions outlined in paragraph (b) of subdivision four of this section, the court may require the participant to plead guilty prior to the transfer of the case to another county.

(b) The court may require the ~~[defendant]~~ participant to appear in court ~~[at any time]~~ or, upon the request of the participant, make audio or video appearances pursuant to paragraph (b) of subdivision five of this section to enable the court to ~~[monitor]~~ promote the ~~[defendant's]~~ participant's progress in ~~[alcohol or substance use]~~ treatment. 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]~~ them to take the ~~[defendant]~~ participant into custody and bring the ~~[defendant]~~ participant before the court without unnecessary delay; provided, however, that under no circumstances shall a ~~[defendant]~~ participant who requires treatment for opioid use be deemed to have violated a release condition on the basis of ~~[his or her]~~ their 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]~~ their

1 lawful scope of practice. Where a court intends to impose a response
2 that would result in incarceration or termination from judicial diver-
3 sion, the court shall conduct a hearing on the alleged violation pursu-
4 ant to paragraph (b) of this subdivision with at least forty-eight hours
5 notice to the participant or the participant's counsel, unless notice is
6 waived by the participant. In violations that may result in other
7 possible responses, a court may grant such hearing as a matter of
8 discretion. The relevant provisions of section 530.60 of this chapter
9 relating to issuance of securing orders shall apply to such proceedings
10 under this subdivision.

11 (b) [~~In determining whether a defendant violated a condition of his or~~
12 ~~her release under the judicial diversion program, the court may conduct~~
13 ~~a summary hearing consistent with due process and sufficient to satisfy~~
14 ~~the court that the defendant has, in fact, violated the condition.]~~
15 Where a hearing is conducted pursuant to paragraph (a) of this subdivi-
16 sion:

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

22 (ii) The court shall consider oral and written arguments, testimony
23 from witnesses offered by either party, and relevant evidence to assist
24 in making its determination. Reliable hearsay shall be admissible at
25 such hearings.

26 (iii) The court shall explain its findings and sentence, if so
27 imposed, on the record or in writing.

28 (iv) At the request of the participant or the participant's counsel,
29 the court may conduct proceedings off the record for portions of the
30 proceedings that will likely result in adverse collateral consequences,
31 including immigration consequences. In the alternative, the court shall
32 seal portions of the proceeding that may result in such consequences.

33 (c) If the court determines by clear and convincing evidence that the
34 [~~defendant~~] participant has violated a program condition [~~of his or her~~
35 ~~release under the judicial diversion program, the~~] in an important
36 respect or willfully failed to appear, the court shall respond by using
37 a system of graduated and appropriate responses designed to address such
38 inappropriate behaviors and facilitate, where possible, successful
39 completion of the treatment program. The court may permit the partic-
40 ipant to continue their treatment mandate as previously ordered; modify
41 the [~~conditions thereof, reconsider the order of recognizance or bail~~
42 ~~pursuant to subdivision two of section 510.30 of this chapter,~~] treat-
43 ment plan according to the recommendation of the treatment provider; or
44 terminate the [~~defendant's~~] participant's participation in the judicial
45 diversion program[~~; and when applicable proceed with the defendant's~~
46 ~~sentencing in accordance with the agreement. Notwithstanding any~~
47 ~~provision of law to the contrary, the court may impose any sentence~~
48 ~~authorized for the crime of conviction in accordance with the plea~~
49 ~~agreement, or any lesser sentence authorized to be imposed on a felony~~
50 ~~drug offender pursuant to paragraph (b) or (c) of subdivision two of~~
51 ~~section 70.70 of the penal law taking into account]~~ if no other treat-
52 ment option is available. If the court finds a reasonable explanation or
53 mitigation for any alleged violation or alleged willful failure to
54 appear, the securing order shall not be modified. The court shall
55 consider:

(i) the length of time the ~~[defendant]~~ participant has 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;

(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. The court shall also consider using 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]~~ in recovery and treatment; and

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

(d) In the event of termination from the judicial diversion program, all participants, except those who entered a guilty plea pursuant to paragraph (b) of subdivision four of this section, shall resume proceedings in criminal or supreme court. Those who previously entered a guilty plea shall be sentenced according to the following provisions:

(i) Upon individualized consideration, the court in its discretion may downwardly depart from the disposition and sentence outlined in the agreement under paragraph (d) of subdivision four of this section.

(ii) Notwithstanding the sentencing restrictions outlined in section 70.00, 70.02, 70.04, 70.06, 70.08, or 70.10 of the penal law, where the court determines that the individual made a good faith effort to participate in the judicial diversion program, the court shall impose a definite sentence of imprisonment of three hundred sixty-four days or less, probation, a conditional discharge, or a determinate term of imprisonment as follows:

(1) For a class B felony, the term must not exceed five years;

(2) For a class C felony, the term must not exceed three and one-half years;

(3) For a class D felony, the term must not exceed two years; and

(4) For a class E felony, the term must not exceed one and one-half years.

(iii) Prior to imposing any sentence of incarceration, the court shall hold a hearing to consider whether it would be unduly harsh to impose a sentence of incarceration in light of the nature and circumstances of the underlying charges and the history, character and condition of the defendant. In addition, the court shall consider any other mitigating factors.

(iv) At the hearing to determine whether the defendant should be sentenced pursuant to this subdivision, the court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay shall be admissible at such hearings. The court shall explain its sentence on the record or in writing.

~~[(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

1 [defendant] participant for the commission of a different offense while
2 participating in the judicial diversion program.

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

16 10. Upon the court's determination that the [defendant] participant
17 has successfully completed the required period of ~~[alcohol or substance~~
18 ~~use]~~ treatment and has otherwise satisfied the conditions required for
19 successful completion of the judicial diversion program, the court shall
20 comply with the terms and conditions it set for final disposition when
21 it accepted the defendant's agreement to participate in the judicial
22 diversion program. ~~[Such disposition may include, but is not limited to:~~
23 ~~(a) requiring the defendant to undergo a period of interim probation~~
24 ~~supervision and, upon the defendant's successful completion of the~~
25 ~~interim probation supervision term, notwithstanding the provision of any~~
26 ~~other law, permitting the defendant to withdraw his or her guilty plea~~
27 ~~and dismissing the indictment; or (b) requiring the defendant to undergo~~
28 ~~a period of interim probation supervision and, upon successful~~
29 ~~completion of the interim probation supervision term, notwithstanding~~
30 ~~the provision of any other law, permitting the defendant to withdraw his~~
31 ~~or her guilty plea, enter a guilty plea to a misdemeanor offense and~~
32 ~~sentencing the defendant as promised in the plea agreement, which may~~
33 ~~include a period of probation supervision pursuant to section 65.00 of~~
34 ~~the penal law; or (c) allowing the defendant to withdraw his or her~~
35 ~~guilty plea and dismissing]~~ Where the participant was required to enter
36 a plea of guilty pursuant to paragraph (b) of subdivision four of this
37 section, the court shall apply the disposition and sentence outlined in
38 the agreement under subparagraph (ii) of paragraph (d) of subdivision
39 four of this section. Where the participant did not enter a plea of
40 guilty pursuant to paragraph (b) of subdivision four of this section,
41 the court shall dismiss the indictment or superior court information,
42 felony complaint, misdemeanor complaint, information, simplified infor-
43 mation, or prosecutor's information and seal the case pursuant to
44 section 160.50 of this chapter.

45 (a) Participants who successfully complete judicial diversion shall be
46 eligible to apply for sealing pursuant to section 160.58 of this chap-
47 ter.

48 (b) Upon successful completion of judicial diversion, the court shall
49 notify the participant of their potential eligibility for sealing pursu-
50 ant to subdivision two of section 160.58 of this chapter. No participant
51 shall be required or permitted to waive eligibility for sealing as a
52 condition of participation in judicial diversion.

53 (c) Where necessary, the court may issue a final order of protection
54 as outlined in subdivision five of section 530.12 or subdivision four of
55 530.13 of this chapter even where the final disposition is a dismissal.
56 Notwithstanding the restrictions of section 160.50 of this chapter, such

order of protection and any documents necessary to establish proof of service may be made available to qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law. The duration of such final order of protection shall not exceed five years.

10-a. Treatment providers shall collaborate with the participant and the court to create a post-graduation plan prior to completion of judicial diversion. Such plan shall make every effort to assist the participant in obtaining stable housing and meeting their self-identified long-term goals after graduation. However, when 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 housing, employment, or other personal goals identified.

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, the immigration consequences of participation in judicial diversion for individuals who are not United States citizens, certified peer programs, harm reduction principles, and protected health information, 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 the following, 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, sex, 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 crimes with which each participant was charged;

(d) the specific qualifying diagnosis or diagnoses for which the participant received treatment while participating in the judicial diversion program;

1 (e) the final disposition, including the sentence, of each case
2 considered for judicial diversion;

3 (f) a list of service providers, including contact information, that
4 the diversion part in the superior court of the county partners with to
5 serve participants;

6 (g) the average amount of time that an eligible defendant must wait
7 for a clinical evaluation; and

8 (h) the number of eligible defendants denied admission to judicial
9 diversion due to the unavailability of treatment services pursuant to
10 subparagraph (iv) of paragraph (b) of subdivision four of section 216.05
11 of this article, and the specific qualifying diagnosis that the court
12 determined could not be adequately treated by existing treatment court
13 providers.

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

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

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

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

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

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

53 4. (a) Notwithstanding any provision of this section to the contrary,
54 [~~in any county outside a city having a population of one million or~~
55 ~~more~~], upon or after arraignment of a defendant on a felony complaint
56 pending in a local criminal court having preliminary jurisdiction there-

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

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

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

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

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

32 § 230.21 Removal of action to certain courts in an adjoining county or
33 county in which the defendant resides.

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

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

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

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

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

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

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

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

31 1. A [~~defendant convicted of any offense defined in article two~~
32 ~~hundred twenty or two hundred twenty one of the penal law or a specified~~
33 ~~offense defined in subdivision five of section 410.01 of this chapter~~]
34 person who has successfully completed a judicial diversion program under
35 article two hundred sixteen of this chapter, or one of the programs
36 heretofore known as drug treatment alternative to prison or another
37 judicially sanctioned drug treatment program of similar duration,
38 requirements and level of supervision, and [~~has completed the sentence~~
39 ~~imposed for the offense or offenses,~~] was sentenced for an offense or
40 offenses upon completion of such program is eligible to have such
41 offense or offenses conditionally sealed pursuant to this section. For
42 such offenses, the court that sentenced the defendant to a judicially
43 sanctioned drug treatment program may, on its own motion or on the
44 defendant's motion, order that all official records and papers relating
45 to the arrest, prosecution and conviction which resulted in the defend-
46 ant's participation in the judicially sanctioned drug treatment program
47 be conditionally sealed.

48 [~~The court that sentenced the defendant to a judicially sanctioned~~
49 ~~drug treatment program may on its own motion, or on the defendant's~~
50 ~~motion, order that all official records and papers relating to the~~
51 ~~arrest, prosecution and conviction which resulted in the defendant's~~
52 ~~participation in the judicially sanctioned drug treatment program be~~
53 ~~conditionally sealed. In such case, the court may also~~]

54 Where a person has completed a judicial diversion program pursuant to
55 article two hundred sixteen of this chapter or a drug treatment alterna-
56 tive to prison program or another judicially sanctioned drug treatment

1 program, the court that supervised the person's participation in the
2 program may, on its own motion or on the defendant's motion, condi-
3 tionally seal the arrest, prosecution and conviction records for no more
4 than three of the [~~defendant's~~ person's prior eligible misdemeanors,
5 which for purposes of this subdivision shall be limited to misdemeanor
6 offenses defined in article two hundred twenty ~~[or]~~, two hundred twen-
7 ty-one, or two hundred twenty-two of the penal law. The court may only
8 seal the records of the defendant's arrests, prosecutions and
9 convictions when:

10 § 13. Paragraph (j) of subdivision 1 of section 210.40 of the criminal
11 procedure law, as added by chapter 216 of the laws of 1979, is amended
12 to read as follows:

13 (j) any other relevant fact indicating that a judgment of conviction
14 would serve no useful purpose, including but not limited to, whether the
15 defendant was denied admission to judicial diversion due to the unavail-
16 ability of adequate treatment services pursuant to subparagraph (iv) of
17 paragraph (b) of subdivision three of section 216.05 of this chapter.

18 § 14. Paragraph (j) of subdivision 1 of section 170.40 of the criminal
19 procedure law, as added by chapter 216 of the laws of 1979, is amended
20 to read as follows:

21 (j) any other relevant fact indicating that a judgment of conviction
22 would serve no useful purpose, including but not limited to, whether the
23 defendant was denied admission to judicial diversion due to the unavail-
24 ability of adequate treatment services pursuant to subparagraph (iv) of
25 paragraph (b) of subdivision three of section 216.05 of this chapter.

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