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:

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

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

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

"Eligible defendant" means any person who stands charged in an indictment [~~or a~~]**,** superior court information [~~with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-two of the penal law, an offense defined in sections 105.10 and 105.13 of the penal law provided that the underlying crime for the conspiracy charge is a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-two of the penal law, auto stripping in the second degree as defined in section 165.10 of the penal law, auto stripping in the first degree as defined in section 165.11 of the penal law, identity theft in the second degree as defined in section 190.79 of the penal 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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to article two hundred twenty of the penal law; or (b) a class B felony offense pursuant to article one hundred thirty of the penal law; provided further, however, that upon individualized consideration, and with consent of the prosecutor, the court may deem an individual an eligible defendant who otherwise does not meet the above-listed criteria.

§ 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:~~], 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 to article two hundred twenty of the penal law; or (b) a class B felony offense pursuant to article one hundred thirty of the penal law; provided further, however, that upon individualized consideration, and with consent of the prosecutor, the court may deem an individual an eligible defendant who otherwise does not meet the above-listed criteria.

§ 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. "Qualifying diagnosis" means a mental health diagnosis or more than one mental health diagnoses that qualifies an individual for admission to judicial diversion. This is a diagnosis-based categorization consisting of the following mental health disorders described in the most recent version of the diagnostic and statistical manual of mental disorders:

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

(b) other mental health disorders, including but not limited to neurodevelopmental or neurocognitive disorders, where associated symptoms lead to severe functional impairment; or

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

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

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

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

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

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

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

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

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

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

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 410.91 of this chapter, or section 165.10, 165.11, 190.79 or 190.80 of the penal law, any statement of or submitted by the victim, as defined in paragraph (a) of subdivision two of section 380.50 of this chapter~~] except sealed cases defined in section 160.50, 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 defined by sections 1.20 and 2.10 of the criminal procedure law, unless the court determines that there are no alternative entities in the local jurisdiction available to provide these services; or

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

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

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

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

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

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

5-b. If a participant has one or more conditions requiring prescription medication or certified drug treatments they may participate in and receive [~~medically prescribed~~] such medication or 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 lawful scope of practice[~~, provided that no~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Upon the court's determination that the [~~defendant~~] participant has successfully completed the required period of [~~alcohol or substance use~~] treatment and has otherwise satisfied the conditions required for successful completion of the judicial diversion program, the court shall comply with the terms and conditions it set for final disposition when it accepted the defendant's agreement to participate in the judicial diversion program. [~~Such disposition may include, but is not limited to: (a) requiring the defendant to undergo a period of interim probation supervision and, upon the defendant's successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea and dismissing the indictment; or (b) requiring the defendant to undergo a period of interim probation supervision and, upon successful completion of the interim probation supervision term, notwithstanding the provision of any other law, permitting the defendant to withdraw his or her guilty plea, enter a guilty plea to a misdemeanor offense and sentencing the defendant as promised in the plea agreement, which may include a period of probation supervision pursuant to section 65.00 of the penal law; or (c) allowing the defendant to withdraw his or her guilty plea and dismissing~~] Where the participant was required to enter a plea of guilty pursuant to paragraph (b) of subdivision four of this section, the court shall apply the disposition and sentence outlined in the agreement under subparagraph (ii) of paragraph (d) of subdivision four of this section. Where the participant did not enter a plea of guilty pursuant to paragraph (b) of subdivision four of this section, the court shall dismiss the indictment or superior court information, felony complaint, misdemeanor complaint, information, simplified information, or prosecutor's information and seal the case pursuant to section 160.50 of this chapter.

(a) Participants who successfully complete judicial diversion shall be eligible to apply for sealing pursuant to section 160.58 of this chapter.

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

(c) Where necessary, the court may issue a final order of protection as outlined in subdivision five of section 530.12 or subdivision four of 530.13 of this chapter even where the final disposition is a dismissal. 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 10. Section 230.21 of the criminal procedure law, as added by chapter 91 of the laws of 2021, is amended to read as follows:

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

1. In any county [~~outside a city having a population of one million or more~~], [~~the~~] **upon or after arraignment of a defendant on an indictment pending in a superior court having jurisdiction thereof, such** court [~~may~~] **shall**, upon motion of the defendant and with consent of the district attorney and the district attorney of the adjoining county that has a superior court designated a human trafficking court or veterans treatment court by the chief administrator of the courts, order that the indictment and action be removed from the court in which the matter is pending to [~~such~~] **a superior court in an adjoining county or in the county in which the defendant resides that has been designated a judicial diversion,** human trafficking [~~court~~]**,** or veterans treatment court, whereupon such court may then conduct such action to judgment or other final disposition; provided, however, that no court may order removal to a veterans treatment court of a family offense charge described in subdivision one of section 530.11 of this chapter pursuant to this section where the accused and the person alleged to be the victim of such offense charged are members of the same family or household as defined in such subdivision one of section 530.11; and provided further that an order of removal issued under this subdivision shall not take effect until five days after the date the order is issued unless, prior to such effective date, the human trafficking court or veterans treatment court notifies the court that issued the order that:

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

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

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

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

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

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

Conditional sealing of certain [~~controlled substance, marihuana or specified offense~~] convictions for people who complete judicial diversion or a judicially sanctioned drug treatment program.

1. A [~~defendant convicted of any offense defined in article two hundred twenty or two hundred twenty-one of the penal law or a specified offense defined in subdivision five of section 410.91 of this chapter~~] person who has successfully completed a judicial diversion program under article two hundred sixteen of this chapter, or one of the programs heretofore known as drug treatment alternative to prison or another judicially sanctioned drug treatment program of similar duration, requirements and level of supervision, and [~~has completed the sentence imposed for the offense or offenses,~~] was sentenced for an offense or offenses upon completion of such program is eligible to have such offense or offenses conditionally sealed pursuant to this section. For such offenses, the court that sentenced the defendant to a judicially sanctioned drug treatment program may, on its own motion or on the defendant's motion, order that all official records and papers relating to the arrest, prosecution and conviction which resulted in the defendant's participation in the judicially sanctioned drug treatment program be conditionally sealed.

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

Where a person has completed a judicial diversion program pursuant to article two hundred sixteen of this chapter or a drug treatment alternative to prison program or another judicially sanctioned drug treatment program, the court that supervised the person's participation in the program may, on its own motion or on the defendant's motion, conditionally seal the arrest, prosecution and conviction records for no more than three of the [~~defendant's~~] person's prior eligible misdemeanors, which for purposes of this subdivision shall be limited to misdemeanor offenses defined in article two hundred twenty [~~or~~], two hundred twenty-one, or two hundred twenty-two of the penal law. The court may only seal the records of the defendant's arrests, prosecutions and convictions when:

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

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

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

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

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