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TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

Presented before

**The New York State Senate
Standing Committee on Alcoholism and Substance Use Disorders**

Public Hearing on the Treatment Court Expansion Act (S.4547)

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My name is Yung-Mi Lee, and I am the Director of Law and Appeals in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For nearly 30 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thank you to the New York State Senate Committee on Alcoholism and Substance Use Disorders and Chair Fernandez for the opportunity to testify about the importance of the Treatment Court Expansion Act.

BDS represents thousands of people each year who are accused of a crime, facing the removal of their children, or deportation. Our criminal defense practice represents people charged with crimes in Brooklyn and Queens. Our staff consists of specialized attorneys, social workers, investigators, paralegals and administrative staff who are experts in their individual fields. BDS' interdisciplinary, wraparound model allows us to provide support to people who may have avoided court involvement if they had access to services sooner.

BDS' Mental Health Representation Team consists of specially trained attorneys and social workers who are experts in working with and for people who have been accused of a crime and who are living with serious mental illness or a developmental disability. We are proud of having played an important role in the creation of the Brooklyn Mental Health Court in 2002. The Brooklyn Mental Health Court works with people accused of crimes who have serious and persistent mental illnesses, linking them to long-term treatment as an alternative to incarceration. BDS continues to collaborate with this court to advocate for its expansion to meet the needs of more people, including people with intellectual disabilities and people who have previous

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criminal legal system involvement. Outside of court, we also help people apply for benefits and supportive housing, access mental health and substance use treatment, and locate beds in respite centers and safe havens—as we know that access to services can help people avoid court involvement altogether.

It is nearly impossible to divorce conversations about mental health from the criminal legal system. The media and public discourse have conflated the two—creating a false narrative which links mental illness to increased rates of violence.¹ This damaging and unfounded messaging exacerbates social stigma and reduces public support of policies that create alternatives to incarceration.² New York relies largely on policing and incarceration to address issues related to mental health and substance use. Police, rather than medical providers, are most likely to respond to people experiencing a mental health crisis.³ Instances where the police respond to mental health crises often end in abuse or even death.⁴

Brooklyn has some of the best problem-solving courts in the state. Our experience has shown that these courts can provide non-jail alternatives for those wrapped up in the criminal justice system because of substance use disorders and serious mental illness. In Brooklyn’s mental health court, we have seen how those charged with violent or serious felonies and diagnosed with serious mental illness can successfully engage in treatment. We have seen how many of our clients, once engaged with appropriate services, have a much better prognosis even after graduation. Still, New York State’s treatment court statute leaves many people who would benefit from diversion unable to access specialized court parts. Passage of the Treatment Court Expansion Act (TCEA) is critical to ensure this pathway out of the criminal legal system by expanding access and eligibility for treatment for those living with substance use disorder, serious mental illness, developmental disabilities, and traumatic brain injury.

Background

In 2009, as part of the Rockefeller Drug Law Reforms, New York passed the Judicial Diversion Program legislation. Under Criminal Procedure Law Article 216 (CPL 216), this legislation created a pathway for a subset of people with substance use disorders to avoid prison and potentially have their charges reduced or dismissed after engaging in a course of

¹ Heather Stuart, Violence and mental illness: an overview, *World Psychiatry*, June 2003, Available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525086/>

² *Id.*

³ National Alliance on Mental Illness, Jailing people with mental illness, 2019, Available online at <https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Jailing-People-with-Mental-Illness>.

⁴ Eric Umansky, It wasn’t the first time the NYPD killed someone in crisis, *Propublica*, December 4, 2020, Available online at <https://www.propublica.org/article/it-wasnt-the-first-time-the-nypd-killed-someone-in-crisis-for-kawaski-trawick-it-only-took-112-seconds>

treatment. This treatment path, which does not require a prosecutor's consent, is monitored by specialized courts in every county in New York.

Judicial diversion has successfully enabled thousands of individuals to minimize or avoid a criminal record while receiving the benefit of potentially lifesaving substance use treatment. Judicial diversion has also saved tax dollars, from both reductions in recidivism and the decreased costs per capita of treatment versus incarceration.

Unfortunately, eligibility for judicial diversion is limited to people with substance use disorders who are specifically charged with a short list of crimes. This short list includes only non-violent offenses and those with a prior violent conviction. Although not required, many courts require a guilty plea prior to treatment. This "pre-plea" requirement disincentivizes people who do not believe they should plead guilty. The current law leaves behind people who have mental health challenges and others who do not fit the narrow charge-based eligibility criteria. To fill this glaring void, many counties have developed mental health courts, opioid courts, or various other ad hoc treatment courts. But without a statute authorizing the establishment of these programs and providing uniform guidance, the programs vary widely, and participation is extremely limited.

Treatment Court Expansion Act: Expanding and Modernizing New York's Judicial Diversion Courts

New York courts must do more to address root causes of criminal legal system involvement. The Treatment Court Expansion Act (TCEA) will greatly expand and modernize judicial diversion and create tangible steps toward ending the criminalization of mental health challenges and substance use disorders. The Treatment Court Expansion Act (S.4547) will promote community health and public safety by opening avenues of treatment where there are now only pathways to incarceration. The Treatment Court Expansion Act will:

- **Create access to judicial diversion for those with mental health challenges.** This bill will expand the current judicial diversion law so that people with mental health challenges and developmental, intellectual, and other disabilities may participate.
- **Bolster due process protections.** This bill shores up the process and rights afforded to diversion participants to ensure a more fair and effective treatment model and provide clarity and transparency for those enrolled.
- **End automatic exclusions based on charges and criminal history:** The TCEA will empower judges to make admissions decisions on an individualized, case-by-case basis. Research shows that diversion promotes public safety across all levels of

charges, even serious violent felonies. Judges should be afforded the discretion to evaluate all circumstances in determining whether an applicant is an appropriate candidate for treatment court.

- **Increase the likelihood of success by embracing clinical best practices:** Following the data and research of over a decade, TCEA incorporates innovations in intervention strategies proven successful, including harm reduction and the use of qualified peers. This bill will also allow individuals charged with non-violent felonies and misdemeanors the chance to participate without requiring them to plead guilty in order to access treatment. Judges will be given training on best practices for mental health treatment within the judicial system. Courts will be required to track and report data so that these programs can be continuously measured and improved year over year.

For decades, New York has funneled those with mental health and substance use disorders into our jails and prisons, rather than connect them with the treatment they need to stabilize and heal. The Treatment Court Expansion Act will provide more off-ramps from the revolving door of arrest, incarceration, trauma and instability, and in the process, make all of our communities healthier and safer.

Brooklyn Defender Services supports the swift passage of the Treatment Court Expansion Act because it will ensure that New Yorkers with mental health and substance disorders will have the opportunity to obtain treatment and support in their communities. As defenders, we see firsthand the devastating consequences of criminal legal system involvement, especially on those who need treatment, because incarceration causes rapid decompensation. Alternatives to incarceration and judicial diversion programs that provide access to counseling and stable housing are crucial for breaking the cycle of re-arrest. Brooklyn Defender Services joins the long list of advocates and stakeholders calling upon the legislature to pass this bill and the Governor to immediately sign and implement the TCEA.

Conclusion

The number of people living with or having experienced mental health issues remains alarmingly high, and jails and prisons have become the de facto mental health facilities across New York State. Treatment Court Expansion Act seeks to put an end to this untenable condition and to redirect people out of jails and the criminal legal system and into evidence-based treatment programs that can offer the medical care and support they need.

We thank the Senate Standing Committee on Alcoholism and Substance Use Disorders for convening this hearing to examine the need for an expansion of our problem-solving courts



which can address the mental health and substance use needs of New Yorkers caught in our criminal legal system. We welcome any opportunity to work with this Committee on this issue.

If you have any questions about my testimony, please contact me at ylee@bds.org.