



**URBAN
JUSTICE
CENTER**

Mental Health
Project

Written Testimony of
Chaplain Dr. Victoria A. Phillips
Community, Health and Justice Organizing
Urban Justice Center Mental Health Project
Treatment Not Jail Coalition Member

**Presented to the New York State
Joint Budget Committee on Public Protection
on February 7, 2023**

Peace and Blessings Everyone. My name is Chaplain Dr. Victoria A. Phillips. I'm the founder of a ministry called Visionary V. I am also a staff member of the Urban Justice Center Mental Health Project, where I guide community, health and justice organizing. I've sat on New York City Department of Corrections advisory for 6 years, and currently am the co-chair to the NYC Department of Correction (DOC) Young Adult Taskforce.

Over the course of two decades, I have worked in nursing, performed cognitive behavioral therapy (CBT), and chaplaincy in a variety of correctional facilities. I have also worked in community health, and I have consistently advocated for the needs of people with a serious mental illness, especially those who are incarcerated. In addition, as a proud Army-brat, I belong to several coalitions like Treatment Not Jail (which I'm representing today) that advocate for criminal justice reform and basic human rights.

I am here in all of these capacities to discuss why New York must pass the Treatment Not Jail Act ([S.1976-Ramos/A.1263-Forrest](#)) to expand access to our treatment courts to give those who become involved with the criminal legal system because of underlying mental health and substance use issues a chance to resolve their criminal cases through services and treatment in the community.

Thank you for giving me the opportunity to speak today.

1. The Criminalization and Incarceration of Mental Health and Substance Use Issues Make Our Communities Less Safe.

Let us be clear: incarcerating members of our community does not make our streets safer. In fact, as proven by years of research and data analyzing the impact of incarceration in New York and nationwide, jail and prison make people more likely to re-offend.¹

We do not have to look hard to understand why: incarceration is proven to exacerbate underlying issues and leave everyone exposed to it—even for short periods—far more destabilized and traumatized than they were when they went in. While incarcerated, individuals are disconnected from their families and communities and exposed every day to vicious violence and rampant drug use. I have personally witnessed many individuals who enter the carceral system without a diagnosis often come out with serious mental health concerns.

To make matters worse, years of working in our shelter systems allowed me to see firsthand how dire it is for us to holistically respond. I've seen how people are released from our jails and prisons, they are met with virtually no stable housing or mental health services. These individuals find themselves in a traumatized and destabilized state, without housing, employment, education programs, and disconnected from critical healthcare and social services. They are then expected to gain employment, housing and benefits while having to navigate the stigma and collateral consequences of their criminal conviction.

This creates a perfect storm for increased substance use and exacerbated mental health conditions, and ultimately, recidivism. This revolving door harms not only these individuals, but also jeopardizes the stability of our communities.

2. Arrest and Incarceration is Not a Solution to a Statewide Mental Health Crisis.

Fear mongering and misinformation about people with mental illness abounds in our media and even in testimony submitted to this hearing. To be clear: only 3% - 5% of violent crimes can be

¹Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, 91(3_suppl), 48S-65S. <https://doi.org/10.1177/0032885511415224>; Stemon, D. (2017, July). "The Prison Paradox: More Incarceration Will Not Make Us Safer." Vera Institute. Retrieved January 2022, from https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf; Emily Leslie & Nolan Pope, The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments 60 *J. OF L. AND ECON.* 3, 529-557 (2017), www.econweb.umd.edu/~pope/pretrial_paper.pdf; Will Dobbie et al., The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges (Nat'l. Bureau of Econ. Research, Working Paper No. N22511, 2018), www.nber.org/papers/w22511.pdf.

attributed to people with mental illness.² In fact, individuals with mental health diagnoses are 10-11 times more likely to be the victims of violence than the general population.³

Yet, because of a lack of coordinated resources, and because our state relies so heavily on law enforcement to respond to any kind of crisis, even where no crime or threat of harm occurred, many people with mental health issues get wrongly swept up into our criminal legal system. Thus, despite the lack of correlation between mental health concerns and violence, people living with mental illness are significantly overrepresented in our jails and prisons. About half of all people detained in our jails and nearly that much in prisons have mental health concerns. Thus, New York's jails and prisons have become larger mental health providers than psychiatric hospitals.⁴ There are more people with serious mental illness living in Rikers Island than in *any* psychiatric hospital in the United States.⁵

To be clear, though they purport to be facilities of “rehabilitation,” institutions of incarceration fundamentally fail to provide adequate mental health or psychiatric treatment, especially those in New York City jails, which in recent years has devolved into complete humanitarian crisis.⁶

3. Treatment Court Diversion Programs Make People Healthier and Make Our Communities Safer, But They Are Currently Wildly Underutilized.

Extensive research and data show that people who successfully complete pre-trial diversion programs (AKA “treatment courts”) have significantly lower rates of recidivism.⁷ Pre-trial

² Mental Health Facts and Myths, MentalHealth.gov, <https://www.mentalhealth.gov/basics/mental-health-myths-facts>; Canadian Mental Health Association, Durham, The Myth of Violence and Mental Illness, <https://cmhadurham.ca/finding-help/the-myth-of-violence-and-mental-illness/>.

³ *Id.*

⁴ Treatment Advocacy Center, “Criminalization of Mental Illness,” available at <https://www.treatmentadvocacycenter.org/key-issues/criminalization-of-mental-illness>

⁵ *Id.*

⁶ Jonah E. Bromwich, The New York Times, *Medical Care at Rikers Is Delayed for Thousands, Records Show* (Feb. 1, 2022), available at <https://www.nytimes.com/2022/02/01/nyregion/rikers-island-medical-care.html>.

⁷ Michael Mueller-Smith & Kevin T. Schnepel, Diversion in the Criminal Justice System, 8 THE REV. OF ECON. STUD. 2, 883–936 (2021), <https://doi.org/10.1093/restud/rdaa030> (finding that diversion cuts reoffending rates in half and grows quarterly employment rates by nearly 50% over 10 years); Amanda Agan, Jennifer Doleac & Anna Harvey, Misdemeanor Prosecution (Nat’l Bureau of Econ. Res., Working Paper No. 28600, 2021), https://www.nber.org/system/files/working_papers/w28600/w28600.pdf (finding non-prosecution of a nonviolent misdemeanor offense leads to large reductions in the likelihood of a new criminal complaint over the next two years); David Huizinga & Kimberly L. Henry, The Effect of Arrest and Justice System Sanctions on Subsequent Behavior: Findings from Longitudinal and Other Studies, in, THE LONG VIEW ON CRIME: A SYNTHESIS OF LONGITUDINAL RESEARCH 244 (Akiva M. Liberman, ed., 2008); John Laub & Robert Sampson, Life-Course and Developmental Criminology: Looking Back, Moving Forward, J. OF DEV. AND LIFE-COURSE CRIMINOLOGY (2020); Shelli B. Rossman, Janeen Buck Willison, Kamala Mallik-Kane, KiDeuk Kim, Sara Debus Sherrill, P. Mitchell Downey, Criminal Justice Interventions for Offenders with Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York, Nat’l Inst. of Justice (April 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238264.pdf>.

diversion allows people charged with crimes to resolve their criminal cases and avoid carceral sentences by successfully completing community-based treatment.

In addition to being more successful at lowering rearrest rates, diversion is materially more cost-efficient than incarceration. While every \$1 invested in treatment courts yields \$2.21 in savings,⁸ New York City alone expends \$556,539 per person, per year on incarceration. Moreover, diversion would reduce court backlogs, made even worse by the pandemic; courts would then be free to deal with the most serious cases.

Treatment courts and diversion programs are also highly popular: they have received widespread, bipartisan support⁹, from general members of the public¹⁰ as well as survivors of crime¹¹ specifically. Despite their popularity, success at driving down crime, and cost effectiveness, treatment court diversion programs are wildly underutilized due to narrow eligibility limitations imposed by existing Criminal Procedure Law.

The Treatment Not Jail Act would change the law that authorizes these courts to dramatically expand access to these programs and require these programs to follow the evidence-based best practices to give participants the best chance at success. The Treatment Not Jail Act achieves this by amending Criminal Procedure Law Article 216, which created drug courts in every county in New York State in 2009.

Enacted alongside the repeal of the Rockefeller Drug Laws, Article 216 opened a critical lifeline for thousands of New Yorkers with substance use disorders. However, in the fourteen years since the law was enacted, society's understanding around addiction and mental health has evolved, and the research regarding treatment practices has revealed new insights on best intervention and treatment strategies. In addition, eligibility limitations imposed by the statute are too narrow, excluding thousands of individuals every year who would otherwise benefit and thrive in these programs. Thus, Article 216 is long overdue for significant expansion of eligibility and incorporation of current best practices of treatment courts.

⁸ New York State Unified Court System, *The Future of Drug Courts in New York State: A Strategic Plan* (2017), https://www.nycourts.gov/legacyPDFS/courts/problem_solving/drugcourts/The-Future-of-Drug-Courts-in-NY-State-A-Strategic-Plan.pdf.

⁹ See, e.g. United States Senate Republican Policy Committee, *Bipartisan Safer Communities Act*, Sept. 2022, <https://www.rpc.senate.gov/policy-papers/the-bipartisan-communities-acts-treatment-court-funding>

¹⁰ National Center for State Courts, *State of the State Courts: 2022 Poll*, https://www.ncsc.org/_data/assets/pdf_file/0019/85204/SSC_2022_Presentation.pdf

¹¹ Alliance for Safety and Justice, *Crime Survivors Speak: National Survey of Victim's Views on Safety and Justice*, 2022, <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>.

First, the 2009 statute only applies to people with substance use or alcoholism disorders. These drug courts often reject applicants who have serious mental health illness, intellectual or developmental disabilities when “substance use” is not the primary diagnosis as required under CPL 216. Thus, despite a significant incidence of co-occurring mental illness disorders among substance users, many with these underlying mental health issues are excluded from any treatment court opportunities, and instead, end up serving jail and prison sentences and perpetuating the very revolving-door recidivism the statute was created to end.

Moreover, the 2009 law limits eligibility to a very narrow list of offenses – all of which are low-level, non-violent, drug and theft-related charges. Further, many people who would otherwise fit the charging criteria are excluded due to their criminal histories. As a result, a much smaller subset of those in the criminal legal system in need of drug treatment are granted access to drug treatment courts.

Importantly, New York State has no analogous diversion court statute for people with mental health issues, despite the statistics showing their prominence in the criminal legal system and society in general, where one out of every five people live with a mental health challenge. In the glaring void left by the statute, District Attorney offices and courts in 36 counties in New York state have collaborated to create *ad hoc* mental health courts. Yet these also fail to reach all of the individuals in need, to the detriment of public safety. Such ad hoc courts have stringent caps on the number of cases accepted every year: in New York County, for example, they only admit 50 people a year into Manhattan Mental Health Court. Additionally, because these courts operate without a statutory mandate, prosecutors in these courts have the unilateral gatekeeping power. Thus, access to these courts is very rarely afforded.

There is also often no clear process, explanation or recourse if the person is denied. And, many who would otherwise benefit are discouraged from applying when faced with the onerous, invasive and time-intensive application process, which typically entails multiple meetings and interrogations by prosecutors, most of whom are not trained in mental health issues and end up traumatizing the applicant, and a forfeiture of important due process and privacy rights.

Consequently, participation rates in such ad hoc mental health courts are terribly low: while there are currently 36 courts in New York State, in 2021 only 570 were able to participate in mental health courts statewide, out of the 274,592 adults arrested that year.

4. New York Must Expand Access and Improve Diversion Opportunities for Those With Underlying Mental Health and Substance Use Issues By Passing the Treatment Not Jail Act ([S.1976-Ramos/A.1263-Forrest](#)).

The Treatment Not Jail Act ([S.1976-Ramos/A.1263-Forrest](#)) addresses the untapped potential of New York's treatment courts by dramatically expanding access to and improving upon the treatment model outlined in CPL Article 216.

First, the Treatment Not Jail Act would allow admission for people with mental health diagnoses, intellectual disabilities and other disorders which have interfered with their functioning in society and led to their involvement in the criminal legal system. Under the model envisioned by Treatment Not Jail, judges would be empowered to order diversion regardless of the underlying charge, as long as the court determines that the person's underlying mental health or substance use issue has contributed to their criminal legal system involvement, that such underlying issue can be effectively treated, and that it is in the best interest of the public to offer the individual community-based treatment. Such a decision would be based upon the scientific assessment of mental health clinicians and evidence and arguments submitted by the prosecution and the applicant. If a person successfully completes the treatment plan designed and administered by the court-referred clinicians, the judge could then dismiss or reduce the person's criminal charges.

In addition to expanding access to these courts, the Treatment Not Jail Act improves upon the treatment court model by following conventional evidence-based best practices. For example, treatment court participants will not be required to plead guilty in order to access treatment. This is an approach already used in upstate opioid courts, Manhattan Misdemeanor Mental Health Court, and in all mental health treatment courts currently operating in California. Like those courts, the Treatment Not Jail Act recognizes that the mere act of entering a plea of guilty leads to many collateral consequences and enables abusive and counter-effective treatment court practices. It effectively excludes many deserving participants, namely virtually all noncitizens, who face serious immigration consequences for any admission of guilt, even if the case is later dismissed. It also excludes those who are not, in fact, guilty of all the counts charged against them. In addition, requiring an up-front plea often leads to overly punitive and coercive treatment modalities, which are less effective and highly disfavored in the treatment science community.¹² The pre-plea models that have already been adopted in many of New York's problem-solving courts have been proven to be effective.¹³ Passage of this important law would thus simply ensure the just and even application of what already is proven to work throughout New York State.

¹² Julian Adler, Joseph Barrett, and Michael Rempel, Center for Court Innovation, *The Myth of Legal Leverage? Toward a Relational Framework for Court-Based Treatment* (April 2020), available at <https://www.courtinnovation.org/publications/leverage-myth>; Opsal, A., Kristensen, Ø. & Clausen, T. Readiness to change among involuntarily and voluntarily admitted patients with substance use disorders. *Subst Abuse Treat Prev Policy* 14, 47 (2019). <https://doi.org/10.1186/s13011-019-0237-y>; Lauren Almquist, Elizabeth Dodd, Council of State Governments, Justice Center, Mental Health Courts: A Guide To Research-Informed Policy And Practice (2009), available at https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CSG_MHC_Research.pdf; Mental Health America, Policy Statement 53: Mental Health Courts (June 13, 2019), available at <https://mhanational.org/issues/position-statement-53-mental-health-courts>.

¹³ See, e.g. Office of Court Administration, Opioid Courts, available at https://ww2.nycourts.gov/COURTS/problem_solving/opioid-courts-overview.shtml#:~:text=The%20Opioid%20Court%20model%20holds,at%20high%20risk%20of%20overdose;

Finally, the Treatment Not Jail Act will afford individuals rightful due process protections, including prohibition of summary punishments without process, and adopt both the proven-effective harm reduction principles and the tenets of procedural justice. Upon completion of the treatment plan, participants will emerge without convictions that could block their ability to obtain stable housing, employment, and critical medical and mental health care. Consequently, society as a whole is better and the entire public is indeed safer simply because the human being in need received treatment, not jail.

5. Conclusion

New York can only achieve true public safety by treating the underlying, untreated mental health and substance use issues that contribute to criminal behavior. Treatment courts are highly effective, cost efficient, humane, and popular methods of providing this treatment and connecting people to the help and services they need. I, as a brain surgery survivor myself who now lives with many invisible disabilities and limitations, urge you to pass the Treatment Not Jail Act in this year's budget, to ensure that more New Yorkers in need of treatment receive it. Peace and Blessings everyone.