



WRITTEN TESTIMONY OF
Helen Skipper
Executive Director
NYC Justice Peer Initiative

**Presented to the New York State
Joint Budget Committee on Public Protection
on January 25, 2024**

My name is Helen “Skip” Skipper and I am Executive Director of the NYC Justice Peer Initiative. I am also a proud member of the Treatment Not Jail Coalition. I thank you for giving me the opportunity to speak today about the need for New York State to build additional off-ramps from the criminal legal system so that we prioritize peer support and community-based treatment over incarceration.

This year, Governor Hochul included \$24 million in her Executive Budget to expand treatment courts across the state. The Treatment Not Jail coalition commends the inclusion of this funding in her budget but we urge the legislature to go further and pass the Treatment Not Jail Act ([S.1976B - Ramos/A.1263B - Forrest](#)), along with the funding, to ensure that such courts are expanded equitably across the state, and are modernized to embody proven-effective best practices. The Treatment Not Jail Act will bring fairness and clarity to the admissions process, codify due process protections, curb abusive practices, encourage the integration of peers, and adopt evidence-based treatment that is driven by medical professionals and participants themselves.

I. My Story

Let me be clear and intentional about where I am coming from: I spent 25 years, starting at 17 years old, cycling through the criminal justice, mental health, homelessness and substance abuse systems. I am heavily impacted by these many systems of oppression.

All along, it should have been obvious to anyone who took one look at me that I was in desperate need of help. I was suffering from untreated serious mental illness that I was self-medicating for through illicit substances. I was arrested on dozens of occasions for drug and theft offenses. And yet, at no time in this extensive period was I ever offered a meaningful chance to get connected to the treatment and services I needed to safely exit from the criminal legal system, to treat these root causes, and to recover from the decades of trauma that these systems had inflicted. Instead, for 25 years, I was shuffled off to the next, only to rinse and repeat the same cycle over and over again. It was as if I wasn't a person, just a "defendant," an "addict," a "criminal."

Finally, in 2007 - at 43 years old - after being arrested on a misdemeanor, the court allowed me to go into a program. To be specific, it was a residential drug treatment program in Suffolk County.

For the first time in my adult life, I got the treatment I needed. It changed my life. I haven't been arrested or used any illicit substances since then - over 16 years. Eventually, I went back to school. Today, I am a Master's student in Criminology at John Jay College of Criminal Justice, and am pursuing a PhD. I became a Certified Peer Specialist with the Office of Mental Health and a Certified Recovery Peer Specialist with the Office of Addiction Services and Supports, and began using my experience to help pull others out of these cruel, oppressive, and traumatizing systems that I myself experienced. Seeing the profound impact of my peer work, I helped found the NYC Justice Peer Initiative to bring more individuals into this field.

II. NYC Justice Peer Initiative

A Justice Peer is an individual who uses their unique lived experience of recovery and the criminal legal system, along with skills honed through training to support the recovery of people still ensnared in that system. Justice Peers work alongside other public sector staff to model what is possible, spread hope, and destigmatize criminal legal involvement.

The NYC Justice Peer Initiative (JPI) is a non-profit organization, fiscally sponsored by CASES, that launched in 2020. This broad coalition of Justice Peers, allies, friends and employers have developed a community focused on a peer-led effort to expand and leverage the power of Justice Peers to contribute to criminal legal system (CLS) transformation. Justice Peers are individuals who use their lived experience with the CLS to bring peer support to others who are ensnared within the system. Justice Peers use the power of storytelling and lead by example, instilling hope and determination in those they serve. Their experience and compassion are critical for helping individuals to successfully navigate complex systems to overcome trauma, maintain their recovery, and live their best lives. JPI is on a mission to create a vibrant NYC based peer-run Justice Peer Center to advance the Justice Peer workforce and promote peer support delivered by Justice Peers as a key solution for the transformation of the CLS.

The Justice Peer movement in New York centers peer support as a movement, revolutionizing how impacted people provide evidence-based responses through mutual support. Justice Peers can be inserted at every stage of involvement in the criminal legal system and are people who use their professional training and lived experience to support others facing similar challenges and to infuse recovery and wellness. We lead by example, instilling hope and determination to promote connection and achieve transformation at the individual, social, and structural level.

III. The Systemic Failures That Perpetuate Criminal Involvement Due to Untreated Mental Health and Substance Use Issues.

Criminal legal involvement and public safety have a relationship that is connected but historically misunderstood. The current narrative on public safety is riddled with extremely damaging false narratives to the detriment of those who become entrenched in the criminal legal system, as well as communities who deserve and want to feel safe.

The common perception in our criminal legal system is that jail and prison make our communities safer. However, this is far from the truth. Studies show that jail and prison make someone *more likely* to reoffend.¹ The reason for this is obvious. Incarceration is an incredibly traumatizing and destabilizing experience, and those detained are left to cope without any therapy, proper medical care, or guidance. Moreover, once the period of incarceration ends, people are released from jail and prison without housing, medical care, therapy or rehabilitation systems in place, and then left to contend with the adverse collateral consequences that accompany a criminal record on their own.² This is a recipe for increased substance use, psychiatric hospitalizations, untreated mental health conditions, and inevitably, more involvement with the criminal legal system, all at the expense of public safety.

On the contrary, studies show that people who successfully complete mental health or drug diversion courts, should they be lucky enough to be eligible or accepted into one, have a

¹ Cullen, 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.

² Christopher Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, THE LAURA AND JOHN ARNOLD FOUND., https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf; Baer et al. *Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio*, Urban Institute Justice Policy Center (January 2006), <https://www.urban.org/sites/default/files/publication/42981/411289-Understanding-the-Challenges-of-Prisoner-Reentry.PDF>.

significantly lower rate of recidivism.³ Moreover, these programs are drastically more cost-efficient than incarceration. While New York City spends \$556,539 per year to incarcerate just one person in its jail system, the New York State Office of Court Administration projects that for every \$1 invested in treatment courts yields \$2.21 in savings.⁴ When accounting for reduced future criminal legal system involvement and the impact on other systems, like healthcare and child welfare, the Center for Justice Innovation estimates the cost savings to be closer to \$10/1.⁵

So how is it that this false narrative has lasted for so long? Why do so many people believe that incarceration protects our communities? To start, many wrongly believe that people who struggle with mental illness or substance use disorders are more likely to commit violence against another person. The truth is that people with mental health or substance use concerns are no more likely than the general public to engage in acts of violence, and in fact, those with mental illness are in fact far more likely to be the victims rather than the perpetrators of violence.⁶ Unfortunately for the thousands of justice-involved New Yorkers seeking admission into a mental health court in New York State, this misperception leads to rejection from treatment and ultimately incarceration, which leads to a decrease in protecting the public.

Treatment courts throughout the state have also wrongly concluded that people charged with violent charges or have prior violent convictions are less likely to succeed with diversion. Yet studies consistently show that people charged with violent crimes are as likely to succeed and rehabilitate in a problem-solving court as those charged with non-violent crimes.⁷ The result is

³ 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 DebusSherrill, 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>.

⁴ 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.

⁵ Waller, M., Carey, S., Farley, E., & Rempel, M. (2013). *Testing the Cost Savings of Judicial Diversion*. NCP Research and Center for Court Innovation. https://www.innovatingjustice.org/sites/default/files/documents/NY_Judicial%20Diversion_Cost%20Study.pdf

⁶ *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/>.

⁷ Naples, Michelle and Steadman, Henry, “Can Persons with Co-occurring Disorders and Violent Charges Be Successfully Diverted?” Intl J. on Forensic Mental Health, 2(2):137-143 (October 2003),

that many treatment courts do not accept motivated, willing and ready would-be participants who are otherwise eligible but for a prior violent conviction.

Public safety is something we all care about, no matter our race, ethnicity, socioeconomic status, geographic location or political persuasion. But if we are going to increase public safety, then we must provide more treatment opportunities for those in the criminal legal system who need it.

IV. The Treatment Not Jail Act (S.1976B-Ramos / A.1263B-Forrest)

The Treatment Not Jail Act significantly and intelligently expands on the 2009 Judicial Diversion statute, which created drug courts in New York State by introducing Criminal Procedure Law Article 216. Judicial diversion is currently the only law in the books that permits judges to offer court-mandated treatment to people as an alternative to incarceration. But the current law does not go far enough. Article 216 only accepts a narrow subset of the population in need of treatment because under the statute, only a small percentage of non-violent drug and theft-related penal law charges are eligible for drug court.

Moreover, even when a person is otherwise eligible, drug courts often reject people with mental health conditions or intellectual or developmental disabilities because “substance use” is not the primary diagnosis. So even these otherwise eligible candidates for drug court are rejected because of their impairment. Many of those who are rejected by drug courts are given a felony record and sent to state prison, where upon their release, they are without supports, without health care, and without a home – all of which can lead to drug use, psychiatric decompensation and ultimately, continued contact with the criminal legal system.

There is no analogous diversion court option for those with mental health challenges, despite the fact that mental health issues are prominent in the criminal legal system, and our society in general. One in five New Yorkers have a mental health diagnosis⁸ and roughly half of the New York City jail population is recommended to mental health treatment⁹ (though clearly few actually receive mental health care). Despite the undeniable need for mental health treatment in our legal system, New York law provides no legislation that authorizes mental health courts.

In the absence of any statutory authority permitting these courts, some District Attorney offices throughout the state have collaborated with courts and the defense bar to create *ad hoc* mental

https://www.researchgate.net/publication/232426982_Can_Persons_with_Co-occurring_Disorders_and_Violent_Charges_Be_Successfully_Diverted.

⁸ New York State Dept. of Health, Priority Area: Mental Health/Substance Abuse - Mental Health, https://www.health.ny.gov/prevention/prevention_agenda/mental_health_and_substance_abuse/mental_health.htm.

⁹ Greater Justice NY, People in Jail in New York City: Daily Snapshot, Vera Institute, <https://greaterjusticenyny.vera.org/nycjail/> (last accessed Jan. 21, 2022).

health courts. However, because eligibility is determined by prosecutors, virtually no one has access to these courts. In addition to rejecting mental health court applicants due to the person's history or underlying charges, prosecutors gatekeeping these courts often refuse to accept people with intellectual disabilities, developmental disabilities, traumatic brain injuries, neurological disorders and personality disorders - even when their criminal legal charges are directly related to their disability or impairment. To be clear, because there is no legislation authorizing mental health courts, judges have no discretion in deciding whether to admit a deserving person into these courts. As a result, the mental health courts that do exist are wildly underutilized. In 2021, for example, there were 39 mental health courts in existence across the state, but of the nearly 275,000 individuals arrested that year, only 570 were granted admission to these courts.¹⁰

The result is that deserving vulnerable, justice-involved New Yorkers who have been failed by health care, educational, and child welfare systems during their lives end up in jail or prison, only to be released back into their communities without a home, without supports and without health care. This is not protecting public safety.

We are calling for an end to this cruel, ineffective, and financially asinine system. We are calling for passage of The Treatment Not Jail Act (S.1976B-Ramos / A.1263B-Forrest). The Treatment Not Jail legislation creates meaningful off-ramps from the carceral system and significantly expands opportunities for robust community-based substance use and mental health care services for those who need it.

This bill expands existing CPL Article 216 so that court programs that currently exist as drug courts may also accept people with mental health concerns or dual diagnoses. The bill gives judges the discretion to order diversion for any offense and subsequently dismiss or reduce charges without the requirement of an up-front plea. The legislation pivots away from the overly-restrictive and arbitrary charge exclusions that currently limit the pool of applicants for diversion court. This legislation also removes significant barriers to entry that ensure that the people most in need of help can get it - and can get it swiftly, without languishing for months or years in jail first. The bill increases due process protections for people with cases in these courts to ensure that they are not jailed or remanded summarily. Finally, the bill specifically outlines the role of peers in the treatment court model, and urges courts to employ these professionals at every opportunity.

¹⁰ Data provided from the Office of Court Administration in 2022, on file with authors and available upon request; *see also* New York State Unified Court System, 2020 Annual Report (2020) <https://www.nycourts.gov/legacypdfs/20-UCS-Annual-Report.pdf> (reporting only 140 people admitted into mental health courts in 2020).

V. Fiscal Impact of the Treatment Not Jail Act.

A proper expansion of mental health courts will require up-front investments of: 1) \$24M to support the expansion of our state's court operations; and \$70M to help New York's community-based treatment and supportive housing providers absorb the influx of individuals seeking treatment, not jail. However, as has been proven in similar diversion expansion policies in the past, this legislation will ultimately save the state important tax dollars in the long run by creating a more efficient and more effective criminal legal system.

First, based on analysis on the projected impact of treatment court participations rates under TNJ conducted by the Vera Institute and Recidiviz, and an analysis of actual influx of participants in the years following the implementation of judicial drug diversion under Drug Law Reform of 2009, the TNJ campaign expects the number of participants in treatment court programs across the state to increase by roughly 3,500 participants. This will roughly double the number of individuals who currently participate in our state's system of drug courts.

In her FY25 Budget Proposal, Governor Hochul has proposed investing \$24M into the court system to expand mental health courts. The Treatment Not Jail coalition supports this assessment. The Governor's budget appropriation for expansion of mental health courts mirrors the budget increase of \$15M allocated to OCA when Article 216 first went into effect in 2000,¹¹ which in today's dollars, when adjusting for inflation, amounts to over \$21M.

In addition to court operations costs, successful implementation will require specific support to the network of providers currently serving justice-involved people, especially those offering both mental health and substance use treatment. In 2009, the state allocated \$50M to support treatment providers as they absorbed more patients under Drug Law Reform. We ask the state to provide the same level of funding, which in today's dollar's amounts to \$70M when accounting for inflation, for New York's treatment providers so that they can accommodate the influx of individuals seeking treatment. This could be accomplished by designating funds from the Governor's historic billion investment in mental health to specifically serve this population, including through dedicated investments in transitional and supportive housing for justice-impacted individuals and a significant expansion of Forensic Assertive Community Treatment (ACT) teams and justice peers.

The expansion of Treatment Courts promises substantial statewide savings in the long run, both because treatment is far less expensive than incarceration, and because it is significantly more successful at curbing future system-involvement. As mentioned above, the cost-savings are

¹¹ New York State Senate Standing Committee on Alcoholism and Drug Abuse, *Assessing the Effectiveness of Substance Abuse Treatment Under Rockefeller Drug Law Reform* (February 2012), https://www.nysenate.gov/sites/default/files/Rockefeller%20Drug%20Laws%20Committee%20Final_0.pdf

estimated to be as much as \$10/1, when accounting for reduced future criminal legal system involvement and the impact on other systems, like healthcare and child welfare.

Community-based treatment also helps distribute the financial burden of treating this population across all levels of government, shifting more of the burden onto the federal government, largely through Medicaid coverage. Generally speaking, the federal government pays roughly 56% of Medicaid invoices, and the remainder is split between NYS and the municipality. When a person is incarcerated, however, the state and city are *solely* responsible for all of the ensuing costs, including the cost of psychiatric and substance use treatment.¹²

Indeed, the financial crisis of 2008 was a driving force behind the Drug Law Reforms that created CPL Article 216 in 2009. The great recession spurred state legislators to rethink its spending across all sectors and develop a more financially efficient criminal legal system.¹³ Just 18 months after Drug Law Reform was passed, OASAS calculated that the diversion policies were saving the state \$1M each month, and noted “with the deficits we're in right now of the millions and billions we can see that we are saving and doing what's right for the people of the state of New York.”¹⁴

VI. Conclusion

Treatment Not Jail understands that most people who enter into the criminal legal system are often victims of lifelong racial and economic injustice, including a lack of access to health care, stable housing, and education. Those admitted are given the chance to get well and thrive in the community, maintaining or re-building connections to family and friends. Ultimately, those who complete the court-mandated treatment program will emerge without a criminal conviction and without a sentence of incarceration, thus sparing participants from the inevitable stigma and trauma that would have otherwise thwarted the ability to procure housing and employment and proper mental health and medical care. As a result, both the participant and our communities benefit because the individual in need received treatment, not jail.

Treatment Not Jail is exactly what I needed at 17 years old. If this had been the law back then, I would have been saved 25 years of trauma and suffering.

If there are any questions about this testimony, I can be reached at NYCJPIExeDir@cases.org.

¹² Jim Parsons, Qing Wei, Joshua Rinaldi, Christian Henrichson, Talia Sandwick Travis Wendel and Ernest Drucker, Michael Ostermann, Samuel DeWitt, Todd Clear, *A Natural Experiment in Reform: Analyzing Drug Policy Change In New York City Final Report* (January 2016), p. 186-7, https://www.vera.org/downloads/publications/drug-law-reform-new-york-city-technical-report_03.pdf.

¹³ *Id.* at p. 172.

¹⁴ Public Hearing Transcript, “Implementation and Funding of the Rockefeller Drug Law Reform Legislation,” 20 December 2010, p. 20, <https://nyassembly.gov/av/hearings/>.