

# TREATMENT NOT JAIL ACT

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BILL SUMMARY



## SUMMARY OF TREATMENT NOT JAIL ACT

Currently, mental health and other treatment courts are not available in most counties in the state, and many treatment courts have significant barriers to access that prevent some of the people most in need of treatment and support from being able to participate. The Treatment Not Jail Act (TNJ) will expand existing law regarding drug treatment courts to enable them to accept people with mental health concerns, intellectual disabilities, and other conditions that cause functional impairment. These disabilities may contribute to an individual's involvement in the criminal legal system or make jail and prison a crueler outcome than they are for people without disabilities. TNJ also creates more efficient and fair processes, and shifts the approach of the current diversion court model.

## TNJ EXPANDS ACCESS TO TREATMENT COURT

- TNJ expands eligibility for judicial diversion beyond substance use disorder and alcohol dependence to encompass all “functional impairments,” including mental illness, developmental disability, intellectual disability, traumatic brain injury or other neurological disease, personality disorder, cognitive dysfunction, dementia, emotional disturbance, and any other disability.
- The legislation authorizes the transfer of a participant's case to the diversion court in the county in which the participant resides to ensure continuity of treatment.
- By allowing individuals to participate in treatment court without first pleading guilty, TNJ effectively expands eligibility to many non-citizens and other groups who could not participate in treatment court due to the collateral consequences of a guilty plea to the top charge.
- TNJ expands access to judicial diversion to people accused of any criminal offense. Research shows that diversion programs promote public safety and that the nature of the charges does not impact treatment outcomes. The bill also allows for people charged with misdemeanors to participate in treatment court to the extent that they are likely to serve jail time related to those charges.
- Individuals will not be barred from participation in treatment court due to:
  - Prior participation in treatment
  - Lack of resources in the community and ability to pay for treatment
  - Gender identity

## **CREATES A MORE FAIR AND EFFICIENT PROCESS FOR JUDICIAL DIVERSION**

- TNJ allows eligible individuals to seek treatment before the case is adjudicated. Participants who successfully complete treatment have the charges dismissed and sealed. Participants who do not succeed in treatment continue through the court process to have the case resolved.
- Given the harm that incarceration causes individuals eligible for diversion, the bill creates a presumption that the individual will remain in the community while they await a clinical evaluation or placement in treatment.
- The bill increases due process protections for people with cases in these courts to ensure that they are not jailed or remanded summarily.
- An individual's successful completion of treatment will be based solely upon clinical objectives, as opposed to securing permanent housing or employment, even though treatment providers are required to collaborate with clinical court staff and participants in creating a discharge plan that addresses those needs.
- When the court believes the participant may have violated the agreed upon terms of their participation, the court is required to provide a hearing consistent with due process protections, including:
  - 48 hours notice to the participant and defense counsel
  - The opportunity for the participant to provide evidence and cross-examine any witnesses
  - Consideration of the participant's mental and cognitive status, as well as current engagement in treatment and any other factors that may have impacted their participation.

## **MOVES THE TREATMENT COURT MODEL AWAY FROM A PUNITIVE APPROACH AND TOWARDS ONE BASED ON CLINICAL GUIDANCE**

- The court can no longer consider a participant's charges in determining the course of treatment, but instead must rely on a clinical evaluation as well as an assessment and treatment plan agreed upon between the treatment provider and the participant.
- All participants in judicial diversion programs will be entitled to privacy protections afforded by federal law with only limited exceptions.
- Requirements of the participant will be based on their needs as determined by the treatment plan and evaluation, and will be limited to what is clinically necessary, such as:
  - Drug testing
  - Level of care (i.e residential vs. outpatient treatment)
  - Information sharing with the court (specifics of HIPAA consent)
- When a determination is made that the participant has violated the terms of their participation, any modifications to their treatment plan will be based on a recommendation by the treatment provider.
- The legislation is guided by harm-reduction principles. For instance, TNJ allows for successful program completion even when a participant is unable to achieve full abstinence provided that the participant has engaged to the best of their ability and has improved health and social stability in other categories.