

TREATMENT NOT JAIL: FAQ

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WHAT WILL THE TREATMENT NOT JAIL ACT DO?

- TNJ will **expand access** to treatment for people who are entangled in the criminal legal system by building on existing law that establishes drug courts in every county in the state. The TNJ model will allow people with a wide variety of “functional impairments” - including mental illness, development and intellectual disabilities, traumatic brain injuries and similar disorders - the opportunity to argue to a judge that they should receive treatment rather than a jail sentence.
- TNJ will **improve** upon the existing **treatment court model** by:
 - embracing **harm reduction** principles
 - adopting the tenets of **procedural justice**
 - allowing participation without the coercive and proven-ineffective requirement of a plea of guilty (AKA the "**pre-plea model**")
 - lifting arbitrary eligibility restrictions that tie access to the person’s criminal history and criminal charges, **instead allowing judges to review each case to decide if treatment is in the public interest.**

HOW DO TREATMENT COURTS IMPROVE PUBLIC SAFETY?

- **Incarceration has repeatedly proven to be a poor strategy for reducing crime.** Indeed, a robust body of evidence - studying New York and other jurisdictions - shows that imprisoning people actually makes them more likely to reoffend, and ultimately, makes our communities less safe. [1]
- **Treatment courts are highly successful methods of reducing crime, and thus, have received widespread, bipartisan support.** [2] Indeed, in a national survey conducted this fall, 81% of the 1,000 registered voters polled believe courts should help find treatment options for those charged with crimes, and 79% support diversion for low-risk offenders. [3]
- Currently, **mental health diversion is wildly underutilized:** half of the counties in New York do not even have a mental health treatment court, and those that do have significant barriers that prevent people most in need of treatment from being able to participate. In 2021, over **274,000 adults were arrested in NY state but only 570 individuals were admitted to mental health courts.**
- Drug diversion courts do exist in every county in New York, but they do not address mental health diagnoses, and are otherwise in need of overhaul.

WHY THE PRE-PLEA MODEL?

- The Treatment Not Jail Act adopts the “pre-plea” model, which allows applicants to participate in diversion programs and access treatment without requiring them to plead guilty first. New York’s drug treatment courts and many mental health courts currently require participants to plead guilty at the outset of the program. However, for the reasons listed below, the “pre-plea” model has been embraced as a critical component of the newer generation of treatment courts, namely New York’s opioid courts [5] and the newly inaugurated Misdemeanor Mental Health Court in Midtown, Manhattan. Indeed, in 2018, the state of California passed legislation creating mental health treatment courts across the state and adopted a pre-plea model. [6]

1.ACCESS	2.EFFECTIVENESS	3.EFFICIENCY
<p>Requiring a guilty plea excludes many people from treatment, namely noncitizens who almost categorically cannot plead guilty due to exposure to deportation, even where the plea is vacated and dismissed. [7]</p>	<p>In treatment court settings, true voluntariness of the participant is critically linked with success. [8] Requiring an up-front plea often leads to coercive and in some cases abusive treatment modalities. Thus, the pre-plea model has shown to be more effective at reducing rearrest rates than courts requiring up-front pleas of guilty. [9]</p>	<p>Discarding the up-front plea requirement significantly speeds up and streamlines what has historically been an inordinately cumbersome admissions process. In Manhattan’s Felony Mental Health Court, for example, it takes applicants nearly one year on average to become enrolled in mental health court programming. [10] Operating without a plea allows courts to swiftly intervene when those in need of treatment enter the criminal legal system. [10]</p>

WHY NOT DISQUALIFY VIOLENT FELONIES?

- Rather than tie eligibility to broad charge categories, like drug offenses or nonviolent felonies, TNJ would allow judges to make individual, case-by-case admissions determinations based on all the circumstances in a person’s case, as is the case in Brooklyn’s Mental Health Treatment Court, a nationally-recognized treatment model.

- Under the TNJ model, judges will be able to consider whether an underlying mental health or substance use issue contributed to the person’s criminal legal system involvement, whether the underlying issue can effectively be treated, and finally, whether it is in the best interest of the public to permit treatment, rather than jail or prison. This means that even those with violent felonies may be admitted to treatment court.
 - TNJ understands that being accused of a violent charge does not mean that allowing the person to participate in treatment will make the community less safe. In fact, the data is clear that people accused of violent charges are as likely to succeed as those charged with non-violent offenses. [11]
 - Even when another person is harmed, allowing the person accused of committing that harm to receive treatment ultimately keeps everyone safer by addressing the underlying causes of the criminal behavior.
 - 75% of those harmed in violent felony cases support treatment for the accused party. [12]

WHY IS TNJ SUCH AN IMPORTANT FINANCIAL INVESTMENT FOR NYS?

Treatment courts are a far more cost-effective public safety method than traditional carceral responses.

- New York City on average expends \$556,539 to incarcerate just one person per year. [13]
- Treatment courts, however, actually save the state money and resources: the New York Office of Court Administration estimates that every \$1 invested in treatment courts produces \$2.21 in benefits to the state. [14]

CITATIONS AND RESOURCES

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[3] 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>

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