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Judging Symptoms: The Cost of Punishing a Public Health Crisis

BY JENNIFER THURSTON

PARTNERSHIP FOR THE PUBLIC GOOD

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Acknowledgements

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About the Author

Jennifer (Jenni) Thurston completed her Master of Social Work Advanced Year internship with Partnership for the Public Good. She has experience advocating in criminal and family courts, guided by a commitment to human dignity and preserving families and communities. Jenni has contributed to state and county level campaigns, providing community-based research on the impacts of carceral responses to mental health and substance use conditions. She hopes this report will help policymakers, practitioners, and community members critically examine current systems and develop responses informed by the biological and social factors that are too often overlooked or worsened for people with mental health and substance use conditions.

Executive Summary

This report was developed to support public awareness and policy action on the need for change in particular problem-solving courts, locally and across the state. Problem-solving courts are different from regular criminal courts. These courts were created to address underlying issues that contribute to legal system involvement, such as substance use and mental health conditions, by allowing people facing certain charges to participate in community-based services rather than detention. This process is called diversion. Buffalo City Court was one of the first to establish a Drug Treatment Court, a Mental Health Court, and an Opioid Intervention Court. By 2016, there were 96 criminal court drug treatment diversion programs statewide. Each court runs by their own set of rules and without community oversight or collaboration with agencies like the NYS Office of Mental Health or the Office of Addiction and Substance Abuse Services. Inconsistent structure across the board has created inequitable access and inconsistent outcomes.

Drug Treatment Courts only accept people whose primary need is substance use intervention and currently only 41 courts out of 62 counties across the state have diversion available for people with mental health conditions. These courts are also not achieving what they set out to do. In New York, more than 8 in 10 people in state prisons have substance use related health needs, and more than half of the people in Erie County jails report mental health concerns.

One of the most glaring impacts of the structural differences is seen in racial disparities in Buffalo City Court's Opioid Intervention Court where, unlike the other courts, participants are not required to plead guilty, jail sanctions are rare, and services begin immediately after arrest. Since its inception in 2017, 83% of Opioid Court participants have been white. Because of the overwhelming racial disparities in diversion court assignments, the legal system continues to criminalize and punish Black drug users and favor white drug users.

The Treatment Not Jail coalition is pushing for the passage of the Treatment Court Expansion Act (TCEA), which changes existing laws to include specific mental health conditions and a wider set of eligible charges for all existing drug treatment courts. This means that anywhere there is a drug court, mental health diversion will be available as well. The bill also makes structural changes to connect people with services more quickly, restricts the use of jail sanctions, and allows more people to participate without requiring a guilty plea for admission - much like Buffalo City Court's Opioid Court.

Between April and June 2025, the author observed over 80 cases in Buffalo City Court Mental Health, Drug, and Opioid Courts, as well as Drug Courts in Cheektowaga Town Justice Court, and Tonawanda City Court. Interviews with previous participants, service providers, family members, and legal actors occurred between March and July 2025. The data collected came together to offer a glimpse into problem-solving courts in Western New York. What became clear is that, even when well-intentioned, a system designed by legal professionals and court staff prioritizes punishment over recovery for some, and life-saving intervention for others. Law and policymakers must implement common sense reforms to treatment courts and prevent people from being swept into an ill-equipped legal system in the first place by investing in community-based services and clinical care.

What became clear is that, even when well-intentioned, **a system designed by legal professionals and court staff prioritizes punishment over recovery for some, and life-saving intervention for others.**

Introduction

In 2008, after several years of courts across New York informally diverting hundreds of people with substance use conditions away from detention, New York State officially gave judges the legal authority to send people with certain charges to community-based substance use services instead of putting them in jail. Shortly after, NYS Unified Court System (the administrative body that oversees New York's judicial system) allowed courts to establish specific drug treatment diversion parts to accommodate these new programs.[1] By 2016, there were 96 criminal drug treatment diversion programs statewide, and other problem-solving courts, like Mental Health Court and Opioid Intervention Court, continued to expand across the state.[2] In addition to receiving much-needed services, the possibility of reduced or removed charges upon successful completion is a major incentive to participate.[3] However, the current eligibility standards are highly restrictive, and graduation rates are inconsistent. And because drug courts do not accommodate diversion for mental health concerns, access is limited to only 41 mental health courts in the state. People across New York are denied diversion because of narrow criteria or where their case is heard, reinforcing systemic inequities and missed opportunities for care.

The Treatment Court Expansion Act (NYS Senate Bill S4547/NYS Assembly Bill A4869) intends to address these inequities. It expands upon the existing New York State drug court laws by adding specific mental health conditions and a wider set of charges to the eligibility criteria. TCEA also standardizes operations that include more clinical expertise.[4] By creating and solidifying these standards through the legislative process, TCEA's goal is to improve the quality, availability, and effectiveness of treatment court diversion.

HOW MENTAL HEALTH AND SUBSTANCE USE CONDITIONS BECAME CRIMINALIZED

The legal system was not always responsible for responding to the most serious and disruptive mental health conditions. Residential services were the long-standing approach to care. Starting in the 1950s, deinstitutionalization promised to replace these dehumanizing and often abusive facilities with community-based services, which prompted the mass closure of psychiatric hospitals. Adequate funding to fulfill these promises never materialized, and without it, many people who could have thrived in community settings went from round-the-clock care to no care at all.[5] More people began to experience homelessness, and because of the general public's lack of understanding of the symptoms of more serious mental health conditions, stigma drove people to call upon police and the legal system to respond.[6] Arrest rates among people experiencing poverty and homelessness surged.[7] Another concerning trend emerged as more people began to turn to street drugs to manage difficult symptoms.[8]

Carol M. Highsmith Photography, Inc.; 2018; (DLC/PP-2018:052-2)

Forms part of Carol M. Highsmith's America Project in the Carol M. Highsmith Archive.

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By the 1970s and 1980s, the War on Drugs imposed severe sentences for drug offenses, and the U.S. prison population dramatically increased.[9] Drug enforcement was heavily targeted in Black communities, which created severe racial disparities in arrests, sentencing, and incarceration.[10] Under these new guidelines, for example, someone would have to be in possession of 100 times more powder cocaine (more common among white drug users) than crack cocaine (more common among Black drug users) to receive similar sentencing.[11] Other social punishments were put in place as well. Until 2023, students with drug convictions were automatically denied financial aid for college, and the federal government placed a lifetime ban on anyone with a drug-related felony from receiving public assistance.[12] In other words, once incarcerated, opportunities to find alternative, healthier ways of living became even more limited.

The criminalization of mental health symptoms and substance use led to the re-institutionalization of people with complicated service needs into jails and prisons. Today, 83% of people in New York State prisons have underlying substance use conditions, and 59% of people in Erie County jails report mental health concerns.[13] For people living with mental health conditions, incarceration worsens symptoms like irritability and emotional stress due to separation from family and community, spending extended time alone, exposure to violence, and decreased access to healthy activities.[14]

Today, 83% of people in New York State prisons have underlying substance use conditions, and **59% of people in Erie County jails report mental health concerns.**

NEGLECTING TREATMENT RESPONSIBILITY

Documented abuse and neglect of incarcerated people has raised concerns for decades. For people with substance use and mental health conditions, the risk of maltreatment significantly increases. Death rates in Erie County jail have remained steady-- and unacceptable-- under the supervision of the past three sheriffs.[15] In June 2022, the investigation of the death of Sean Riordan in the Erie County Holding Center revealed that medical staff inaccurately completed intake screens and prematurely removed him from the jail's detoxification unit. This is just one example of the deadly consequences of the correctional system's failure to provide adequate care.[16]

The harm of being locked up does not end at release. The risk of fatal overdose skyrockets during the first three weeks after release from incarceration.[17] The stigma of a criminal record makes it harder to find stable employment, housing, and healthcare.[18] People return to their communities without the skills and resources to maintain sobriety after release.[19] Despite this, Erie County continues to prioritize spending public dollars on jails over lifesaving community health services, and the mental health budget remains inadequate.[20]

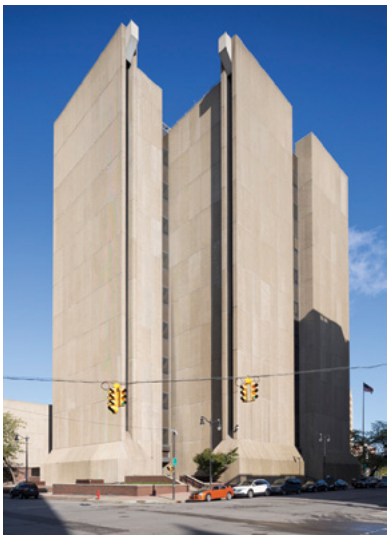
The Current Treatment Court Landscape in Buffalo

HOW COURTS WORK

Buffalo's problem-solving courts offer a window into both the promise of and the gaps in the current diversion system. In Western New York, problem-solving courts include Drug Treatment Court, Mental Health Court, Veterans Court, and Opioid Intervention Court, among others. Currently, a single judge oversees Buffalo City Courts' Drug Courts, Mental Health Courts, and Veterans Court. These hands-on specialty courts require intensive case oversight and dedication to building crucial relationships with hundreds of participants. This workload far exceeds the baseline for a single Buffalo judge. Public defenders continue to raise concerns about the length of time it takes for a participant to complete the required program to "graduate", with some in court for upwards of 10 years. This extends well beyond the 1-year or less jail sentence that would accompany a misdemeanor conviction in a traditional court.

Also, the process drags on not because people aren't engaging in treatment, but because graduation standards are often arbitrary and inconsistent. One participant completed his entire treatment plan but was not permitted to graduate because he "looked tired." Another met all clinical goals according to his counselor, but he was denied graduation because he used prescribed medical marijuana. Ahead of a family court appearance, a father on track to successfully complete treatment court asked to graduate a few weeks early, hoping to bring proof of all he had done to regain custody of his children. He was denied. Because there is no clear or consistent standard for what qualifies someone for a successful discharge, courts continue to block even those who are considered clinically stable and free of any new charges from moving forward in life.

In addition to Buffalo City Court, other town and justice courts like Lackawanna, Niagara Falls, Tonawanda, Lockport, and Cheektowaga offer Drug Court diversion.[21] The newest addition is Buffalo City Court's Opioid Intervention Court, established in 2017 in response to several Drug Court participants fatally overdosing just after their first appearance.[22] In traditional Drug Courts, it can take days or even weeks to determine eligibility and begin services. In contrast, Opioid Courts initiate services immediately after arrest. Unlike Drug Courts, Opioid Court does not require a guilty plea or District Attorney approval for admission. It also avoids using jail as a punishment for positive drug tests. In Opioid Court, staff focus on getting people the help they need sooner, which shortens the time it takes to resolve a case.[23]



Buffalo City Court Building, Buffalo, NY. Photo by Fortunate4now, CC0 1.0 (Public Domain) via Wikimedia Commons.

In addition to Buffalo City Court, other town and justice courts like Lackawanna, Niagara Falls, Tonawanda, Lockport, and Cheektowaga offer **Drug Court diversion.**

For all other problem-solving courts, the person is held in custody until the District Attorney approves the court's diversion recommendation, and the participant pleads guilty. Participants are released from custody and instructed to meet with Courts Outreach Unit: Referral and Treatment Services (C.O.U.R.T.S) staff to receive their contract. These contracts, commonly referred to by staff as "treatment plans," outline a combination of requirements that include inpatient or outpatient health services (where a healthcare professional develops a clinical treatment plan), scheduled court appearances, supervised urine screens, check-ins with staff, and participation in self-help groups. C.O.U.R.T.S staff are typically not licensed healthcare professionals, and they don't provide the actual treatment services. However, they are responsible for monitoring, reporting, and making recommendations for rewards or punishments.

Beyond the core contract, strict monitoring and general rules apply. All urine screens must be visually supervised by court staff. Inability to produce a urine sample is treated as a positive result. Participants are expected to remain fully abstinent from all substances, including prescription narcotic medications, the use of products containing THC regardless of prescription, some over-the-counter cold and allergy medicines, and certain foods, for a consecutive period of six to 12 months before being considered for graduation. Some participants may be encouraged or required to purchase an ankle monitor. In cases where new charges are filed, the judge decides if the person may remain in the program or spend time behind bars. A bench warrant is issued if a participant stops showing up to treatment court.

For graduates, family and friends are encouraged to attend the participants' final appearance, where they receive a certificate, and the judge publicly recognizes them for the completion of the program. However, for people unable to complete the program, the initial guilty plea is often met with the maximum sentence on the original charges. In one case, a Mental Health Court client with a traumatic brain injury was unhoused. After much effort, his non-court social worker finally secured him a place in supportive housing. Frustrated with the length of time it was taking to reach graduation, he decided to leave treatment court. In retaliation, the court hit him with the maximum sentence possible for his original charge; he was jailed and lost his housing. After incarceration, he was given a list of homeless shelters by C.O.U.R.T.S. staff.

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SUCCESS DEPENDS ON STRUCTURE, NOT PARTICIPANTS

A recent assessment reported that in the past ten years over 75% of the 24,000 participants in problem-solving courts were successful in completing requirements. However, the data lumps outcomes from ten different problem-solving courts.[24] C.O.U.R.T.S data for the past decade shows that substantially more people entered Drug Court, Opioid Court,

Mental Health Court, and Veterans Court than graduated.[25] Completion rates vary depending on the type of court, and there are stark racial differences among participants.

- Veterans Treatment Court had the lowest number of cases, but the highest success rate, with nearly 59% of participants completing the program.
- Both Drug and Mental Health Courts had nearly a 40% completion rate and about 18% labeled as "failed/non-compliant"
- Drug Court had a much higher rate of people voluntarily leaving the program than Mental Health Court.
- A small number of participants were listed as "non-compliant" in Opioid Court, but 23% of people quit the program
- 83% of Opioid Court were white participants
- Almost no one in Opioid Court is marked as "failing"[26] (SEE APPENDIX FOR FULL DATA SET).

Opioid Court was created out of an urgent response to an increase in opioid overdoses. While some people choose to use fentanyl on its own, recent trends in Erie County show cocaine laced with fentanyl as the leading cause of overdose in opioid-related deaths, but cocaine-related arrests are not eligible for Opioid Court.[27] Providing more effective care for opioid users than for people using other drugs is not just. Specialized care in a clinical setting means that the methods used are known to be most effective in treating a specific condition. The structure and approaches used in Opioid Court are known to be effective in the treatment and overdose prevention for all substances. If clinical providers were to withhold medical intervention in this way they could face malpractice lawsuits, suspension, or revocation of licensures.[28] In court, it's business as usual.

The structure and approaches used in Opioid Court are known to be effective in the **treatment and overdose prevention for all substances.**

RESTRICTIVE AND UNDERUTILIZED

Too often, a criminal history tells the story of how long a person has been living in crisis without meaningful intervention. Narrow eligibility restricts people who would benefit the most from receiving life-changing care and forces them into cycles of arrest and incarceration. In 2010, it was reported by drug court leaders that nationally, drug courts were reaching only 5–10% of those in need.[29] This doesn't account for the large group of vulnerable, legal system-involved people left out of the discussion. Many counties lack a mental health court at all, and where they exist, they are underutilized. Out of the 11,799 arrests in Erie County in 2021, only 45 people were admitted to mental health court.[30]

The rate of diversion into problem-solving courts has decreased. In Erie County, the overall number of arrests and arrests for misdemeanor drug charges has declined. However, today, a lower percentage of those who are arrested are being diverted into problem-solving courts. In 2017, 15% of misdemeanor drug arrests were diverted, compared to only 7% of drug arrests in 2023.

YEAR	ALL ARRESTS IN ERIE COUNTY[31]	MISDEMEANOR DRUG ARRESTS	PROBLEM-SOLVING COURT DIVERSIONS[32]	PERCENT OF ALL ARRESTS DIVERTED	PERCENT OF MISDEMEANOR DRUG ARRESTS DIVERTED
2017	19,877	3,015	3,687	18%	15%
2023	14,828	1,111	1,103	7%	7%

TRANSPARENCY AND OVERSIGHT

Although best practice manuals state that Drug Treatment Courts should have public advisory boards, there is no publicly available information on these groups in WNY.[33] Outreach attempts regarding the status of these groups have been unsuccessful. Statewide drug court evaluations and assessments specific to Opioid Court in Buffalo are easily accessible. However, data specific to local drug and mental health courts is scarce. After repeated inquiries, the Office of Court Administration and Buffalo City Court released limited data. A top administrator who has overseen the C.O.U.R.T.S. program in Buffalo City Court for more than two decades expressed concern that the data might be used to advance legislation to make changes in problem-solving courts.

C.O.U.R.T.S was initially established to ensure that updates from clinical service providers made their way to the judge. Now, C.O.U.R.T.S. acts as a barrier to the relay of accurate information. Providers give C.O.U.R.T.S staff a summary of the participant's progress, and the staff then write their own shorter summary for the judge. A common concern among defense attorneys, counselors, and participants is that important context and information is left out in this process. Another concern is that participants, their counselors, and their attorneys are not allowed to view the reports submitted by C.O.U.R.T.S. Because the court controls the narrative, any disagreement can be framed as resistance or dishonesty that can lead to the court issuing sanctions like frequent drug testing or jail time. Some participants and court actors have reported that some C.O.U.R.T.S staff can be patronizing and punitive, leading to animosity. In one instance, after a participant completed his hearing and left the courtroom, a C.O.U.R.T.S staffer followed him into the lobby because she said she could smell alcohol on him. In another instance, a staffer belittled a participant who had been making progress by saying, "It's the Super Bowl weekend, don't screw it up." These interactions, however small they might seem in the moment, can erode trust, and reinforce the power imbalance that keeps participants in a cycle of compliance rather than recovery.[34]

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Failed promises for transparency and improvement are a statewide issue. In 2017, the New York State Unified Court System released a strategic plan outlining standard reviews every three years to ensure adherence to the Adult Drug Court Best Practice Standards.[35] The plan also established a vision for peer-based reviews, self-assessments, site visits, and written evaluations. Pilot peer reviews were conducted in several courts, but nearly a decade later, not a single statewide report has been released to the public. There is no available documentation of which courts have been reviewed, what the findings were, or how courts are being held accountable to improve practices. There is also no publicly stated plan or timeline for sharing those results.

Legal Versus Clinical Evidence-Based Practice

COMPLIANCE OVER CARE

The research literature is clear that incarceration makes behavioral health symptoms worse, specifically because of inhumane practices within jails.[36] Health research also shows what works well in mental health and substance use treatment. One of the most important changes in mental health and substance use care comes from research and lived experience showing that recovery works best when people feel cared for, respected, understood, and have a say in their own goals.[37] This challenges outdated beliefs that the professional is the sole expert, and the client must simply comply. The popularity of peer-led recovery support has also grown because shared experience and mutual understanding can foster trust, hope, and motivation.[38]

Ideally, a treatment court will utilize evidence-based practices to ensure that a participant receives high-quality care and gets the services they need to address the underlying health issue that led to the criminal charge. However, in reality, differences in operation produce piecemeal results. *The Drug Court Judicial Benchbook* is a guide authored primarily by legal professionals and law enforcement to assist judges in creating and operating drug courts. The text claims that all drug courts must use evidence-based practices, yet it is unclear whether this refers to legal or clinical standards.[39] Legal evidence-based practices are limited by law and policy, leaving little room for individualized care. Clinical evidence-based practices focus on improving outcomes based on individual needs. The *Benchbook* also cautions judges not to adjust care levels as a reward or punishment, as this can deter engagement.[40] However, it does not extend this logic to jail sanctions, which similarly reduce care. The text emphasizes that, "If a treatment program provides similar interventions for all clients irrespective of their substance use diagnosis, the program is not engaged in evidence-based practices."[41] Yet these priorities are inconsistently applied across courts.

Legal evidence-based practices are limited by law and policy, leaving little room for individualized care. **Clinical evidence-based practices focus on improving outcomes based on individual needs.**

In drug court, all participants must agree to the same generic contract (including requirements like complete abstinence and urine screens) before meeting with their counselor, who will also create a personalized treatment plan (group counseling twice a week, for example). This creates layers of rules and undermines treatment. In multiple court observations across various jurisdictions, participants were repeatedly told that only counselors have authority over treatment plans.[42] However, court personnel are the ones responsible for administering sanctions and punishments based on their interpretation of how well the participant is adhering to their treatment plan and the court's rules. Court personnel tend to ignore that treatment plans are intended to be a clinical tool used to guide people along the path to recovery, not act as a legal contract.[43] When rewards or punishments are based on a person's adherence to the clinical treatment plan, this undermines the effectiveness of the tool, the clinician's expertise, and relationships with their client.

Court personnel tend to ignore that treatment plans are **intended to be a clinical tool** used to guide people along the path to recovery, **not act as a legal contract.**

During one court observation, a participant appeared virtually from an inpatient recovery facility after informing the court coordinator that he had independently booked and paid for a spot at a lower-level residential treatment facility. In the absence of both his attorney and counselor, he was threatened with incarceration if he were to move forward with this plan. Visibly emotional, the participant expressed urgency in wanting to reunite with family and shared concern about having already paid for this spot. With no confirmation that the counselor opposed the move, the participant was repeatedly scolded for "trying to dictate the terms of treatment." Fortunately, the coordinator was instructed to assist in recovering the money even though she disagreed because "he knew he wasn't supposed to do this." In this case, it may have been appropriate for the participant to remain at a higher level of care, even without explicit clinical approval. However, threatening incarceration and blatantly resisting providing any support navigating recovery within the legal system is at odds with the court's stated commitment to the use of evidence-based practices. In another instance, the parent of a previous participant disclosed that her adult child's experience in drug court went smoothly until just before graduation. When he described his work in a hearing, the court learned that his job required him to travel outside of the jurisdiction, which is not allowed without express permission. A harsh jail sanction resulted in a voluntary exit from the program.[44]

Several participants reported challenges in meeting court requirements due to work schedules. While some judges were flexible about court appearance times, this flexibility was only granted after emphasizing that court compliance must come before employment, education, or family stability. In one instance, a single parent who had no childcare options brought a child to court. Rather than recognizing the commitment to appear and the realities of parenting and managing daily life, the participant was scolded

for "making it difficult" and dismissed from the courtroom. Although a free, drop-in childcare center operated by an outside organization is located on the first floor of Buffalo City Court, many participants were unaware of its availability, highlighting that the court does not effectively inform people about resources to reduce barriers to participation.

ABSTINENCE OR HARM REDUCTION IN TREATMENT COURTS

Abstinence was once seen as the best way to maintain long-term recovery. Unlike harm reduction, which is now widely accepted, abstinence ignores factors like stress, social pressures, poor coping skills, and past trauma that often drive substance use. Rigid expectations of abstinence can reinforce the idea to people that they are not capable or worthy of recovery and can prevent them from reaching out for help after a relapse.[45] It typically takes 9 years from the first time someone begins rehabilitative services to remain abstinent for a full 12 months. For people under high mental distress, this can take even longer.[46] The move away from abstinence-only models has broadened recovery options to include Medication-Assisted Treatment, which uses medications to ease withdrawal and cravings alongside other supports. This approach allows people to focus more on the underlying causes of their substance use.[47]

Despite decades of research supporting harm reduction approaches, written guidance from Drug Court leaders continues to misrepresent core recovery concepts and provide conflicting instructions.[48] *Behavior Modification 101 for Drug Courts,* a fact sheet used by the court, states that courts should extend control into participants' daily lives via "random home visits, verifying employment and school attendance, enforcing area and person restrictions, monitoring curfew compliance, or performing bar sweeps."[49] The author recommends therapeutic interventions like journaling and writing assignments but also supports shame-based punishments such as public reprimands and fines. Other guidance describes urine tests as "therapeutic tools," but since court staff oversee them and use the results to impose sanctions or rewards, their clinical purpose is undermined.[50]

Opioid Court participants choose if they are working toward full abstinence and are not punished for relapse. In contrast, Drug Treatment Courts demand full abstinence from all "mind-altering" substances, even those that are legal and irrelevant to the person's charges. They also use retraumatizing practices. In one case, a participant set to be recommended for graduation was denied after a positive THC urine test. When he asked about the levels, the coordinator replied, "It's positive," overlooking his progress and clear record. The court referenced a positive test from the previous year, framing it as a pattern of noncompliance. Another graduate of Buffalo City Court's Drug Treatment Court stated that she continues to struggle because the only thing her experience taught her was to "stay

Another graduate of Buffalo City Court's Drug Treatment Court stated that she continues to struggle because **the only thing her experience taught her was to 'stay clean or at least fake being clean to get through it.'**

clean or at least fake being clean to get through it." Public reprimands, threats of jail, and ignoring progress make the takeaway clear: prioritize the rules to avoid punishment.

REAL ALTERNATIVES TO INCARCERATION DON'T INCLUDE INCARCERATION

Although problem-solving courts were designed to serve as an alternative to incarceration, participants are frequently ordered to spend time in jail for relapses, for not immediately disclosing use, or for failing to comply with court treatment plans. Senior problem-solving court leaders in Western New York have openly demeaned participants by referring to these jail sanctions as "adult timeouts" meant to teach participants a lesson in the importance of honesty. Shame, guilt, and fear of consequences often lead to dishonesty, especially early in recovery. Former participants have shared that this approach reflects a profound misunderstanding of substance use disorders. As one former participant said, "Lying is all I knew how to do for 15 years of active addiction. How do they expect addicts to tell the truth when we can't trust that they won't send us to jail for relapsing?" The people most directly impacted prefer solutions outside of incarceration. By a margin of 3 to 1, crime survivors prefer accountability that includes rehabilitation, mental health, and substance use services, or community supervision over detention.[51] In no other area of healthcare is incarceration treated as a legitimate response to symptoms. Yet in drug courts, jail is routinely used under the guise of preventing overdose, including while participants wait for inpatient beds to become available.

In no other area of healthcare is incarceration treated as a legitimate response to symptoms.

In one court observation, a man arrived shackled and escorted by officers. He was reprimanded for past failed attempts at sobriety and told he would stay in jail until a bed opened. He pleaded, "Someone just spit in my face in there. Why do I have to go back? Can't I stay with my mom?" The court insisted jail was necessary to keep him safe. While framed as protective, jail exposes people to violence, trauma, suicide risk, and the very substance use it claims to prevent.[52] This is also in opposition to the court's own guidance. *Adult Drug Court Best Practice Standards* explicitly states, "Fearing that a person might overdose or be otherwise harmed is not sufficient grounds, by itself, for jail detention."[53]

While incarceration is the most extreme punishment, other court requirements and sanctions disrupt progress and drain court resources by keeping people under unnecessary surveillance. Courts demand that participants prioritize appearance schedules over employment and impose significant financial burdens, often preventing graduation even after meaningful recovery progress. Some judges assign monetary sanctions as punishment, and many participants are required to pay for their own urine screens, treatment services, or monitoring devices.[54] One service provider described a client who was thriving in recovery but was denied graduation

because of an unpaid balance of over $1,000 on an ankle monitor. Based on income, this participant faced staying under court supervision for an additional seven years simply due to unpaid fees. In this way, courts also punish people for following the rules by setting schedules that undermine stable employment, then extending supervision when the resulting low wages or job loss makes it impossible to pay.

The Treatment Court Expansion Act (TCEA)

Photo: The Bronx Defenders

CLINICAL CARE AND LEGAL RESPONSIBILITY

The Treatment Court Expansion Act (TCEA) shifts the courts' role to supporting health decisions made by clinical professionals, with the goal of reducing punitive responses to symptoms of health conditions. Under TCEA, licensed professionals conduct clinical evaluations to determine if a person's mental health or substance use condition is related to their charges, replacing prosecutors' role in deciding eligibility. Judges have the discretion to decide if the candidate poses a threat to public safety and deny entry to treatment court. Inclusion focuses on level of need rather than charge type by establishing a set of qualifying diagnoses. These include serious mental illnesses such as schizophrenia, psychotic disorders, bipolar disorder, depression, and PTSD. Neurodevelopmental and neurocognitive disorders are also included if they cause severe functional impairment, and substance use disorders are also eligible. Courts must approve requests for a second opinion and consider proposed alternative treatment plans. By identifying eligibility according to mental health and substance use diagnosis, people with serious mental health conditions will have access to diversion wherever a drug court exists. TCEA limits the role of law enforcement supervision and prohibits unannounced home

By identifying eligibility according to mental health and substance use diagnosis, **people with serious mental health conditions will have access to diversion** wherever a drug court exists.

searches, invasive surveillance, or excessive restrictions that interfere with family and peer relationships.

MULTI-TIERED PLEAS AND PARTICIPANT RIGHTS

The current model requires that people plead guilty before diversion, which means they give up key legal rights like the right to a trial. And if they don't make it to graduation, participation means risking jail time and a permanent criminal record. TCEA introduces a multi-tiered plea model. People charged with non-violent felonies or misdemeanors can enter the program without pleading guilty. Judges can decide whether or not to require a plea for charges classified as violent felonies, which include some offenses where no one is hurt, such as stealing from inside a building or purse-snatching. When a guilty plea is required, the court can reduce the charge upon completion of the diversion court's requirements.

ACCOUNTABILITY WITHOUT RELYING ON INCARCERATION

The Treatment Court Expansion Act includes provisions that prohibit courts from using jail as a first response to non-compliance or relapse. Instead, courts must establish a "system of graduated and appropriate responses" to support continued engagement in services. To discourage unnecessary incarceration, courts must schedule a hearing before imposing jail time or termination. This hearing gives participants and their attorneys time to gather and present clinical evidence and testimony related to their progress and ongoing needs. This change protects participants from being punished for symptoms of their clinical conditions, keeping them connected to health services and in their communities.

Limitations and Recommendations

LIMITATIONS OF TCEA AND RECOMMENDATIONS FOR NEW YORK STATE

TCEA expands eligibility for diversion, but it does not guarantee that services will be available or effective. People will continue to miss out on diversion based on the individual court and the surrounding community's ability to accommodate an increased demand for services. Rural areas in particular may face challenges without targeted investment. The Office of Court Administration should increase funding for drug and mental health courts because it is responsible for their performance and overall effectiveness. This includes investing in court staff, training, coordination, and data systems. TCEA emphasizes educating court actors, but service providers also need training on court operations, participant expectations, and potential outcomes to strengthen collaboration, better support participants, and develop more informed treatment plans. Without

The Treatment Court Expansion Act includes provisions that **prohibit courts from using jail as a first response to non-compliance or relapse.**

knowledge sharing, this gap can make communication and coordination more difficult, especially for generalist practitioners with limited understanding of the legal system. Courts should develop standardized training and accessible resources for service providers because this encourages interdisciplinary collaboration, leading to a stronger, more comprehensive program.

The Treatment Court Expansion Act (TCEA) does not include requirements for standardized reporting, data collection, and program evaluation. This risks difficulty with implementation and evaluation. New York State should also pass Assembly Bill 4871/Senate Bill 3778 because it addresses these gaps and strengthens accountability.[55] Under this bill, the Chief Administrator of the Courts would be required to submit an annual report detailing the administration, function, and effectiveness of all drug treatment courts operating in New York State. The report would include data on expenditures, staffing levels, and involvement of community-based providers. By advocating for this, the Treatment Not Jail coalition can extend its work to improve problem-solving courts. If passed, it would provide consistent data to inform future legislation and complement the Treatment Court Expansion Act by supporting better overall responses to mental health and substance use needs beyond the judicial system.

RECOMMENDATIONS FOR LOCAL COURTS AND ERIE COUNTY

Local court administration can improve transparency and oversight without new legislation by requiring advisory committees made up of community members, including service providers, peers, and past participants. Quarterly reporting and specialized case reviews can help inform court decisions and act as educational tools for staff. Additionally, publicly releasing annual or bi-annual reports outlining participation, completion, and sanctions, in addition to updates on staff, training, administration, and finances, increases communication and trust among stakeholders. This information can be used to recognize accomplishments by showcasing impact and inform strategic planning to address gaps. A third-party observer should attend daily case conferences and share observations at quarterly advisory meetings. This feedback loop can improve court operations, communication, and accountability. Buffalo City Court should also divide up Drug Court, Mental Health Court, and Veteran's Court to more than one judge so that each case is given the

Courts should develop standardized training and accessible resources for service providers because this encourages **interdisciplinary collaboration**, leading to a stronger, more comprehensive program.

Buffalo Veterans Treatment Court | Buffalo, NY

time and attention it deserves. The same courts must establish reasonable written standards based on clinical best practices in substance use and mental health treatment to inform graduation requirements, including a maximum amount of time a participant must spend in court before graduating or being released.

Even at their best, all courts are inherently limited in how well they can address mental health and substance use issues. True alternatives to incarceration happen before a crisis leads to arrest. Erie County should require the redirection of funds earmarked for expanding Erie County jails to community mental health and substance use services. Both the Erie County Sheriff's Office and the Department of Corrections and Community Supervision acknowledge that substance use and mental health conditions are major drivers of legal system involvement and that they are not equipped to effectively manage or respond to these needs.[56]

Conclusion

TCEA gives courts a clear framework to address urgent legal system inequities and the correctional system's inability to meet complex medical needs. If protecting the public is truly a core purpose of the law, courts must align with evidence showing that care-based responses to mental health and substance use promote recovery and reduce the likelihood of future legal involvement. When people get the care they need, they are less likely to act out of desperation in ways that harm others. This benefits everyone. The way these courts are currently run oppresses poor, under-resourced, over-policed communities, and worsens racial disparities. As support systems for vulnerable populations are dismantled, the justice system must confront the harm it causes and commit to change. The dangers of the judicial system failing to recognize and adapt to what is known about the internal motivation behind true behavior change for people with mental health and substance use conditions are a threat to every community. Change happens over time, in small increments, with setbacks and surprises, in supportive environments among caring communities. Treatment Courts can change. Passing the Treatment Court Expansion Act is a concrete step that prioritizes recovery, safety, and equity over punishment. Buffalo has been the model for statewide diversion courts in years past, and it's time for Buffalo to step up again and treat our neighbors well.

Change happens over time, in small increments, with setbacks and surprises, in supportive environments among caring communities.

Appendix

Courts Outreach Unit: Referral and Treatment Services (C.O.U.R.T.S) participant datasets

Buffalo City Court Participant Demographics by Court Type (2016 – 2025)

RACE REPORT	Criminal Drug Treatment Court	Mental Health Court	Opioid Court	Veterans Court	Grand Total
American Indian/Alaskan Native	4	4	2		10
Asian/Pacific Islander	1	1			2
Black	561	619	88	91	1359
None	1	1			2
Other	2				2
Unknown	793	232	51	112	1188
White	1179	666	700	158	2703
Grand Total	**2541**	**1523**	**841**	**361**	**5266**

GENDER REPORT	Criminal Drug Treatment Court	Mental Health Court	Opioid Court	Veterans Court	Grand Total
Female	628	480	286	19	1413
Male	1866	1030	554	338	3788
Unknown	47	13	1	4	65
Grand Total	**2541**	**1523**	**841**	**361**	**5266**

Reason for Case Closure in Buffalo City Court (2016-2025)

E REASON REPORT	Criminal Drug Treatment Court/Art 216 Judicial Diversion	Mental Health Court	Opioid Court	Veterans Court	Grand Total
Abated by Death	64	54	30	14	162
Contemplation of Dismissal (ACD)	15	25	3	11	54
Failed/Noncompliant	457	260	4	28	749
Failed/Re-Arrest	42	20		2	64
Failed/Voluntary Dropout	134	16	180	8	338
Failed/Warranted: Final	1	7			8
Graduated & CD Pending	145	18		30	193
Graduated & CD Successful	175	19	3	36	233
Graduated/Adjournment	12	1		2	15
Graduated/Charges Dismissed	19	8	6	4	37
Graduated/Completed	562	520	275	113	1470
Graduated/Conditional Discharge	45	19	3	10	77
Graduated/Sentenced to Probation	13	1		1	15
Incomplete: Medical Problem	7	8		3	18
Incomplete: Mental Illness		81	1		82
Incomplete: Sentenced on Other Case	257	158	107	23	545
Ineligible	4				4
Loss of Contact	2	1			3
Refused	4	2	3		9
Transferred to Other Court/Jurisdiction	154	55	27	16	252
Unable to Complete PSC	11	30	4	1	46
Warranted/Not Final	292	118	134	33	577
Grand Total	**2415**	**1421**	**780**	**335**	**4951**

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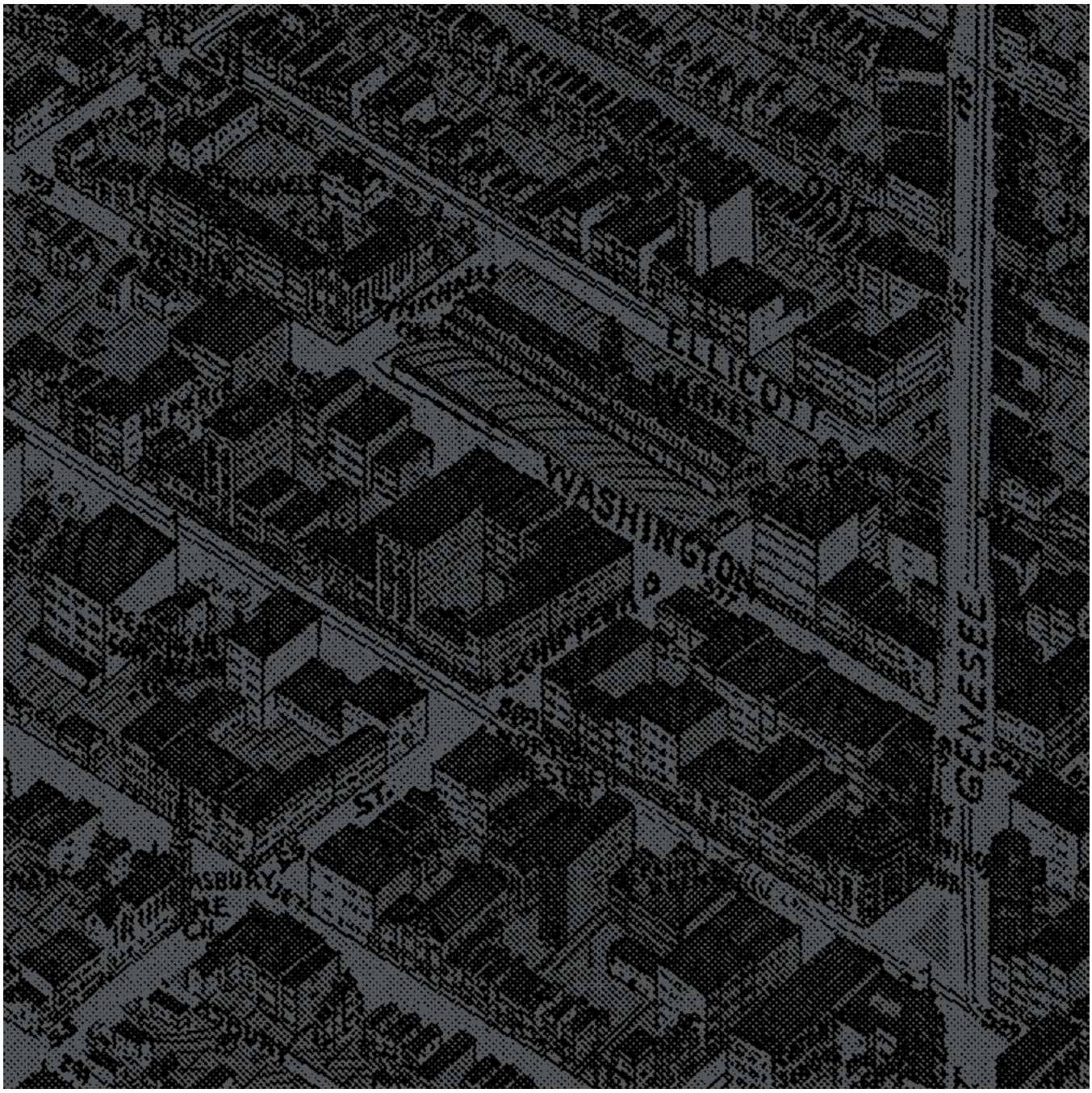

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