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Memorandum of Support

S.1976-A (Ramos)/A.1263-A (Forrest)

AN ACT to amend the criminal procedure law and the judiciary law, in relation to judicial diversion programs; and to repeal certain provisions of the criminal procedure law relating thereto

The Mental Health Association in New York State, Inc. (MHANYS) submits this memorandum calling for the legislature to pass S.1976-A/A.1263-A (AKA - the Treatment Not Jail Act), which will create a fair and equally accessible system of judicial diversion for all New Yorkers.

MHANYS is a not for profit organization whose mission is to improve the lives of individuals, families and the community by raising mental health awareness, ending stigma and discrimination and promoting wellness and recovery

In 2009, as part of the Rockefeller Drug Law Reforms, New York State passed the Judicial Diversion Program legislation. The new Criminal Procedure Law Article 216 (CPL 216) created a pathway for a small subset of people with substance use disorders to avoid prison and potentially have their charges reduced or dismissed after engaging in a course of treatment. This treatment is monitored by specialized court parts in every county in New York. Judicial diversion has successfully enabled thousands of individuals to minimize or avoid a criminal record while receiving the benefit of potentially lifesaving substance abuse treatment. Judicial diversion has also realized the saving of tax dollars, from both reductions in reoffending and the decreased costs per capita of treatment versus incarceration.

Unfortunately, CPL 216 diversion is limited to people with substance use disorders charged with a short list of crimes related to substance use. The current law leaves behind people who do not struggle with substance abuse, but have mental health challenges, developmental disabilities, or other functional impairments that contributed to their involvement in the criminal legal system. Like those with substance use disorders, these individuals face personal challenges that could be effectively addressed through treatment - making our communities safer and stronger. While some counties in our state have developed mental health courts or opioid courts to support people with these kinds of challenges, the courts vary widely and participation is extremely limited. There are myriad reasons why people become entwined in the criminal legal system, but the current statutory off ramp is so limited that most people who would benefit from treatment are left behind.

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New York must finally begin to address the root causes of criminal legal system involvement. The Treatment Not Jail Act will level the field of judicial diversion, and create tangible steps toward ending the criminalization of mental health challenges and functional impairments in New York. Treatment Not Jail will create parity in the system for all vulnerable populations who need support and opportunity, and promote public safety by opening avenues of appropriate, individualized treatment where there are now only pathways to incarceration. The Treatment Not Jail Act will:

- Create equitable access to judicial diversion: Makes the current judicial diversion law inclusive so that people with mental health challenges and neurological, intellectual, and other disabilities may participate.
- Allow New Yorkers to access treatment regardless of where they live: Some counties will not allow people to participate in treatment court unless they are a county resident. TNJ will enable people to engage in treatment court within their county of residence, regardless of where their offense took place.
- Provide Due Process Protections: Ensures that judicial diversion participants are not jailed without due process by requiring there be some substantiation of violations of judicial diversion conditions.
- End Automatic Exclusions Based on Level of Charge: Currently, some people are excluded from participating in judicial diversion because of the section of the Penal Law they are charged with, rather than their personal circumstances and background. 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. Judges should be given the discretion to give people appearing before them individual consideration.
- Increase likelihood of success by embracing a clinical rather than punitive approach: TNJ will allow individuals to participate without requiring them to plead guilty in order to access treatment. Judges will be given training on best practices for mental health treatment within the judicial system. These practices will be grounded in providing support for participants, and guided by treatment providers' individualized recommendations over the imposition of punitive sanctions. TNJ promotes collaboration between participants and treatment providers, offering participants the best chance of achieving their treatment goals.

The number of people identifying as struggling or having struggled with mental health challenges is at an all-time high, and jails and prisons have become the de facto mental health facilities across New York State. Treatment Not Jail seeks to put an end to this untenable condition.

Mental Health Association in New York State, Inc. supports the swift passage of the Treatment Not Jail Act because there is a preponderance of people with mental health issues in the

criminal justice system. Many of those individuals are in the system because of minor offenses. We support this legislation because people with mental health related issues should have equal due process protections, equal access to treatment and assurances that there is a best practice clinical approach to recovery and support and not a punitive model that will only serve to exacerbate existing mental health conditions. MHANYS joins the Treatment Not Jail coalition in calling upon the Legislature to pass S.1976-A/A.1263-A and the Governor to immediately sign and implement it.