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§§1-8,13,14
C.2C:43-32
to 2C:43-41
§15
Note to all
sections

P.L. 2023, CHAPTER 188, *approved December 21, 2023*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 524

1 AN ACT concerning offenders with mental health concerns,
2 amending various sections of the law, and supplementing Title
3 2C of the New Jersey Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. The Legislature finds and declares that, to facilitate the
9 expansion and growth of programming for individuals with mental
10 ¹**illness involved** disorders who, due to their mental health issues,
11 engage in conduct that results in involvement¹ in the criminal
12 justice system, a comprehensive response is needed. It is the goal
13 of the Legislature to establish a Statewide Mental Health Diversion
14 Program ¹**in three regions of the State**¹ to divert individuals with
15 serious mental ¹**illnesses** disorders¹ from having a public record
16 of conviction or serving custodial time in the county jail or State
17 prison, to allow participants to engage in mental health treatment
18 and social services, and to reduce recidivism, thereby increasing
19 public safety.

20 The Legislature further declares that the objectives of the
21 program include: (1) reducing incarceration rates for the appropriate
22 target population through effective diversion away from the
23 criminal justice system; (2) increasing quality of life for the target
24 population through efficient linkage to available social entitlements
25 and community based mental health treatment providers, in
26 conjunction with supportive monitoring to ensure compliance; (3)
27 increasing community awareness and understanding through cross
28 training of law enforcement and mental health communities; and (4)
29 reducing recidivism and re-hospitalization rates for the target
30 population leading to an increase in public safety.

31 The Mental Health Diversion Program established by this
32 enactment is grounded in principles of restorative justice where
33 victims of crimes are empowered by maximizing their input when

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 20, 2023.

² Senate amendments adopted in accordance with Governor's
recommendations December 11, 2023.

1 considering legal outcomes, and participants are held accountable,
2 yet supported in achieving long-term stability with mental health
3 issues, gaining recovery tools, becoming law-abiding citizens, and
4 being successful community members. This process is enhanced by
5 the critical role of the diversion team which is anchored by the
6 judge who presides over a team of professionals from the fields of
7 mental health and criminal justice, and the prosecutor. When the
8 prosecutor makes the determination that a defendant is legally
9 eligible for admission, a clinical determination of appropriateness is
10 made, including a psychosocial evaluation which assists the
11 prosecutor in a final determination of appropriateness for the
12 program, and provides critical information for other professionals
13 involved in programming including the case managers, probation
14 officers, public defenders, and clinical personnel.

15 The ¹**["bill] Act¹** initially establishes the program in three
16 vicinages of the State. It is the intention of the Legislature to
17 eventually expand the program to a State-wide mental health
18 diversion program in all vicinages.

19

20 2. (New section) As used in this act:

21 "Eligible offense" means a crime of the third or fourth degree
22 that does not involve violence ¹or the threat of violence¹. ¹**["A**
23 crime of the third or fourth degree involving violence or the threat
24 of violence shall be considered by the prosecutor on a case by case
25 basis.¹ A crime or offense ¹**["involves] does not involve¹** violence
26 or threat of violence ¹if none of the following apply:¹ the victim
27 sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1,
28 or the actor is armed with and uses a deadly weapon as defined in
29 subsection c. of N.J.S.2C:11-1, or threatens by word or gesture to
30 use a deadly weapon or threatens to inflict bodily injury. ¹**["Crimes**
31 of the second degree, sexual offenses subject to Megan's Law as
32 defined in chapter 14 of Title 2C of the New Jersey Statutes and
33 arson offenses as defined in chapter 17 of Title 2C of the New
34 Jersey Statutes are ineligible offenses unless the prosecutor
35 determines on a case-by case basis that an exception is warranted¹
36 "Eligible offense" shall not include a crime of the first degree ²,
37 sexual offenses, subject to subsection b. of section 2 of P.L.1994,
38 c.133 (C.2C:7-2) or pursuant to chapter 14 of Title 2C of the New
39 Jersey Statutes,² or a presumptively ineligible offense.¹

40 "Eligible person" means a person who: (1) is mentally competent
41 as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an
42 eligible offense ¹, or allegedly committed a presumptively ineligible
43 offense but is approved for participation by the prosecutor,¹ and is
44 not otherwise disqualified by the provisions of this act; and (3) has
45 been diagnosed with a mental ¹**["illness] disorder¹**, either previously
46 or through a mental health evaluation conducted through the
47 program, and there is a nexus between the person's mental

1 **‘[illness] disorder¹** and the commission of the alleged crime as
2 determined by a **‘[certified] licensed¹** mental health professional.

3 “Mental Health Diversion Program” or “program” means the
4 criminal diversionary program established pursuant to this **‘[bill]**
5 **act¹** that shall have the purpose of diverting eligible persons away
6 from the criminal justice system and into appropriate case
7 management and mental health services following interaction with
8 law enforcement **‘[where the person is alleged to have committed**
9 **an eligible offense, The program shall be established in three**
10 **judicial vicinages, one in each of the northern, central, and southern**
11 **regions of the State. As used in this act “northern region” means**
12 **Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset,**
13 **Sussex, and Warren Counties; “central region” means Middlesex,**
14 **Monmouth, Mercer and Union; and southern region” means**
15 **Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester,**
16 **Ocean, and Salem Counties.**

17 The program leader shall be a judge of the Superior Court who
18 shall preside over all participant appearances, regularly held Mental
19 Health Diversion Team meetings, and all related court proceedings.
20 Court proceedings include but are not limited to Orders of
21 Acceptance, guilty pleas, sentencings, sanctions, recognitions,
22 notice of terminations, termination hearings, graduations,
23 withdrawals, and violations of probation. The Judge shall meet
24 with each participant individually along with all members of the
25 Mental Health Diversion Team either in the court well or in the jury
26 room to facilitate private conversations about their progress,
27 problems, and goal achievements. Three months prior to any
28 participant moving on, a formal goal attainment log is reviewed by
29 the participant and team members with the Judge. At the
30 conclusion of the court supervision term, a “moving on” or
31 graduation ceremony is held where an individual, their family or
32 friends, and other participants recognize the achievement of
33 completion. The Judge presides over regular Mental Health
34 Diversion Team meetings where participant treatment, progress,
35 and barriers are discussed. All sanctions are discussed by the team
36 but the Judge makes the final sanction decisions **]** and where there is
37 a nexus between the commission of the alleged offense and the
38 eligible person’s mental disorder¹.

39 “Mental Health Diversion Team” is a collaboration of
40 professionals led by the Superior Court Judge and comprised of
41 Assistant Prosecutors, designated Public Defenders, a **‘[certified]**
42 **licensed¹** mental health professional, a case manager, a specially
43 trained mental health probation officer, and a collaborative justice
44 specialist. If resources are available, a certified drug and alcohol
45 counselor **‘[should] shall¹** be included as a member of the
46 diversion team.

1 ¹“Clinical partner” means an entity designated to provide or
2 coordinate case management or mental health services, or both, to
3 eligible persons in conjunction with participation in a Mental
4 Health Diversion Program, which services may include screening,
5 counseling, treatment, medication management, and case
6 management for mental health issues and other co-occurring health
7 disorders.】¹

8 “Mental ¹【illness】 disorder¹ ” means a serious mental disorder,
9 other than a personality disorder, classified within the current
10 version of the American Psychiatric Association Diagnostic and
11 Statistical Manual of Mental Disorders (DSM), including, but not
12 limited to, psychotic disorder, bipolar disorder, major depressive
13 disorder, post-traumatic stress disorder (PTSD), and co-occurring
14 substance use disorders.

15 ¹“Presumptively ineligible offense” means a crime of second
16 degree, a crime of the third or fourth degree that involves violence
17 or the threat of violence, an offense enumerated in subsection a., b.,
18 c., or e. of N.J.S.2C:39-5, ²【sexual offenses subject to Megan’s
19 Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of
20 Title 2C of the New Jersey Statutes】² or an arson offense as defined
21 in chapter 17 of Title 2C of the New Jersey Statutes. For purposes
22 of this section, a crime or offense involves violence or threat of
23 violence if the victim sustains bodily injury as defined in subsection
24 a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly
25 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by
26 word or gesture to use a deadly weapon or threatens to inflict bodily
27 injury. A crime of the first degree ²and sexual offenses subject to
28 Megan’s Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in
29 chapter 14 of Title 2C of the New Jersey Statutes² shall be
30 ineligible under all circumstances.¹

31 “Psychosocial assessment” or “psychosocial evaluation” means a
32 written evaluation of an individual’s mental and emotional
33 functioning.

34
35 3. (New section) a. (1) ¹There is hereby established a
36 Statewide Mental Health Diversion Program that shall have the
37 purpose of diverting certain persons away from the criminal justice
38 system and into appropriate case management and mental health
39 services as early as possible following an interaction with law
40 enforcement, where the person meets the statutory criteria for
41 participation in the program and is alleged to have committed an
42 eligible offense or, subject to the approval of the prosecutor, a
43 presumptively ineligible offense, where there is a nexus between
44 the commission of the alleged offense and the eligible person’s
45 mental disorder.

46 (2) The Statewide Mental Health Diversion Program shall be
47 established initially in no less than three judicial vicinages, with at

1 least one program operating in each of the northern, central, and
2 southern regions of the State. As used in this act “northern region”
3 means Bergen, Essex, Hudson, Hunterdon, Morris, Passaic,
4 Somerset, Sussex, and Warren Counties; “central region” means
5 Middlesex, Monmouth, Mercer and Union Counties; and “southern
6 region” means Atlantic, Burlington, Camden, Cape May,
7 Cumberland, Gloucester, Ocean, and Salem Counties.

8 (3)¹ The Attorney General, in consultation with ¹the¹
9 Administrative Office of the Courts shall ¹select the vicinages that
10 shall participate in the Statewide Mental Health Diversion program,
11 and¹, within one year of the effective date of P.L. c. (C.)
12 (pending before the Legislature as this bill), ¹**[**establish and
13 maintain a Mental Health Diversion Program in one vicinage in
14 each of the northern, central, and southern regions of the State]
15 shall designate currently operating mental health diversion program
16 pursuant to paragraph (5) of this section or cause to be established
17 and maintained new mental health diversion program in additional
18 selected vicinages¹, which shall accept eligible persons from within
19 the vicinage.

20 ¹**[**(2)] (4) Programs in vicinages selected to participate in the
21 Statewide Mental Health Diversion Program shall be eligible to
22 receive funding from the “Statewide Mental Health Diversion
23 Support Program Fund” established pursuant to section 14 of P.L.
24 c. (C.) (pending before the Legislature as this bill), to defray
25 the costs of program administration and operation.

26 (5)¹ A mental health diversion program in operation on the
27 effective date of this act, that serves the purpose of diverting
28 eligible persons away from the criminal justice system and into
29 appropriate case management and mental health services, and that
30 applies the same eligibility criteria as provided under this ¹**[**bill]
31 act¹, may be deemed to comply with the requirements of this act
32 and may be selected by the Attorney General for inclusion in the
33 Mental ¹**[**health] Health¹ Diversion Program established pursuant
34 to this act.

35 b. The Attorney General, in consultation with the Administrative
36 Office of the Courts and the Department of Human Services, shall ¹,
37 to the extent consistent with the selected program model,¹ designate
38 at least one regional Mental Health Diversion Team for the
39 northern, central, and southern regions of program operation to
40 coordinate case management and mental health services to eligible
41 persons participating in the Mental Health Diversion Program
42 established or maintained in accordance with this act, provided,
43 however, that nothing in this section shall be construed to prevent a
44 Mental Health Diversionary Program from using other providers if
45 authorized by the county prosecutor.

46 c. ¹**[**Two] No later than two¹ years after the establishment of
47 the Mental Health Diversion Program pursuant to subsection a. of

1 this section, the Attorney General, in conjunction with the
2 Administrative Office of the Courts and the Department of Human
3 Services, may, subject to the availability of funds, expand the
4 program to additional vicinages, and shall have discretion to modify
5 the program to meet the intent of P.L. c. (C.) (pending before
6 the Legislature as this bill).

7 d. The Attorney General shall publish on its website information
8 regarding the Mental Health Diversion Program, including the
9 guidelines required pursuant to P.L. , c. (C.) (pending
10 before the Legislature as this bill).

11

12 ¹4. (New section) The program leader in a selected vicinage
13 shall be a judge of the Superior Court who shall preside over all
14 participant appearances, regularly held Mental Health Diversion
15 Team meetings, and all related court proceedings. The judge shall
16 preside over regular Mental Health Diversion Team meetings where
17 participant treatment, progress, and barriers are discussed. All
18 sanctions shall be subject to discussion by team members, but final
19 sanction decisions shall be the sole province of the court.

20 The judge shall meet with each participant individually along
21 with all members of the Mental Health Diversion Team in a
22 location, such as the court well, which is suitable to facilitate
23 private conversations, to review and discuss the participant's
24 progress, problems, and goal achievements.

25 Court proceedings include but are not limited to Orders of
26 Acceptance, guilty pleas, sentencing, sanctions, recognitions,
27 notice of terminations, termination hearings, graduations,
28 withdrawals, and violations of probation.

29 Three months prior to any participant moving on, the judge shall
30 review a formal goal attainment log with the participant and team
31 members. At the conclusion of the court supervision term, a
32 “moving on” or graduation ceremony shall be held where an
33 individual, their family or friends, and other participants recognize
34 the achievement of completion.¹

35

36 ¹**[4.]** 5.¹ (New section) a. ¹**[(1)]**¹ At any time after the filing
37 of a criminal complaint, including the pre-indictment and post-
38 indictment period, but prior to the disposition of the complaint, a
39 prosecutor may refer a person for consideration for diversion to the
40 Mental Health Diversion Program.

41 ¹**[(2)]** b.¹ At any time after the filing of a criminal complaint,
42 including the pre-indictment and post-indictment period, but prior
43 to the disposition of such complaint, an eligible person, or their
44 defense counsel, may make an application to the prosecutor for
45 diversion to the Mental Health Diversion Program.

1 ~~1~~¹ ~~5.~~ 6. (New section) a. Application process. An eligible
2 person who seeks to apply to the Mental ~~1~~¹ ~~health~~ Health
3 Diversion Program shall, by submitting an application, agree to
4 postpone their speedy trial rights. Applicants who are detained pre-
5 trial shall agree to a reasonable amount of excludable time while
6 legal and clinical determinations of eligibility are made.

7 b. Legal determination. ~~1~~¹ ~~Except as provided in paragraphs (1)~~
8 ~~and (2) of this subsection, the~~ The¹ prosecutor shall have the
9 discretion to determine if an eligible person qualifies for diversion
10 to the Mental Health Diversion Program established or maintained
11 pursuant to P.L. , c. (C.) (pending before the Legislature as this
12 bill) after consideration of the nature of the eligible offense, the
13 causative relationship between the person's diagnosed or apparent
14 mental ~~1~~¹ ~~illness~~ disorder¹ and the commission of the offense as
15 determined by a mental health professional, the amenability of the
16 person to participation in the services of the program, the
17 availability of case management and mental health services, the
18 desires of any victim, the person's history of prior convictions, any
19 accompanying violations of probation, and the probability that
20 diversion will promote the person's recovery, prevent future
21 criminal behavior, and protect public safety. The prosecutor's
22 office shall make a determination as to legal eligibility within a
23 reasonable time frame. If an applicant is detained, no more than 30
24 days of excludable time should be granted as against an applicant
25 for a legal determination.

26 (1) A person who allegedly committed ~~1~~¹ ~~an~~ a presumptively
27 ineligible¹ offense ~~1~~¹ ~~that included violence or the threat of violence~~
28 ~~is presumptively ineligible for participation~~ shall not be permitted
29 to participate¹ in the Mental Health Diversion Program unless the
30 prosecutor further determines, on a case-by-case basis, that mental
31 health treatment will serve to benefit the eligible person by
32 addressing the person's mental ~~1~~¹ ~~illness~~ disorder¹ and will thereby
33 reduce the likelihood that the person will thereafter commit another
34 offense and no increased danger to the community will result from
35 the person being admitted into the Mental Health Diversion
36 Program.

37 (2) If the person was previously convicted of a violent crime
38 enumerated in subsection d. of section 2 of P.L.1997, c.117
39 (C.2C:43-7.2.), an application may be considered on a case-by-case
40 basis. For purposes of this paragraph, a crime or offense involves
41 violence or the threat of violence if the victim sustains bodily injury
42 as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed
43 with and uses a deadly weapon or threatens by word or gesture to
44 use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1,
45 or threatens to inflict bodily injury.

46 (3) Offenses enumerated in subsection a., b., c., or, e. of
47 N.J.S.2C:39-5 are presumptively ineligible, however, each

1 application may be considered by the prosecutor on a case-by-case
2 basis subject to prosecutorial discretion.

3 (4) A person charged with a sexual offense as defined in chapter
4 14 of Title 2C of the New Jersey Statutes that is subject to
5 P.L.2001, c.167 (C.2C:7-12 et seq.) known as Megan's Law and a
6 person currently charged with an arson offense shall be ineligible
7 unless the prosecutor determines on a case-by-case basis that an
8 exception is warranted.

9 (5) The prosecutor shall consult with victims of an eligible
10 offense prior to approving an eligible person's admission into the
11 Mental Health Diversion Program and shall give due consideration
12 to the victims' position on whether the eligible person should be
13 admitted into the program. Nothing in this subsection shall be
14 construed to alter or limit the authority or discretion of the
15 prosecutor to admit an eligible person into the Mental Health
16 Diversion Program which the prosecutor deems appropriate.
17 Nothing in this section shall be construed to limit a prosecutor's
18 discretion to admit any applicant for any ineligible ¹**【crime】**
19 offense¹ on a case-by-case basis if, in the prosecutor's discretion,
20 doing so is in the interests of justice.

21 (6) The prosecutor shall have the discretion to determine
22 whether to approve, disapprove, or conditionally approve a person
23 for diversion into the Mental Health Diversion Program and the
24 determination shall not be subject to review by any court.

25 c. The prosecutor's approval of an application for diversion into
26 the Mental Health Diversion Program pursuant to this section may
27 be conditioned on an admission or plea of guilt by an eligible
28 person.

29 d. Clinical determination. If a county prosecutor determines that
30 an applicant meets the legal requirements for admission into the
31 Mental Health Diversion Program as established in this ¹**【bill】** act¹,
32 a clinical determination of eligibility shall be made by a
33 ¹**【certified】** licensed¹ mental health professional who holds a
34 current, valid license issued pursuant to subsection a. of section 6 or
35 subsection a. or d. of section 8 of P.L.1991, c.134 (C.45:15BB-1 et
36 seq.) who shall conduct an interview with an applicant to determine
37 clinical appropriateness, and who may also conduct interviews with
38 family members, where the applicant has completed a release
39 authorizing such communications. ¹**【Certified mental health**
40 **professionals】** The licensed mental health professional¹ should have
41 training or certification in co-occurring diagnoses, treatment, and
42 services. The ¹**【certified】** licensed¹ mental health professional
43 shall also assess whether there is a nexus between the person's
44 mental ¹**【illness】** disorder¹ and the alleged crime. The clinical
45 interview may be done in-person or remotely. If conducted
46 remotely, the interview ¹**【must】** shall¹ be conducted through
47 technology that enables the interviewer and applicant to see one

1 another. The ¹~~certified~~ licensed¹ mental health professional shall
2 submit a psychosocial evaluation to aid the prosecutorial
3 determination of the applicant's eligibility for the Mental Health
4 Diversion Program. Psychosocial reports should be returned to the
5 prosecutor's office and applicant's legal counsel simultaneously
6 within a reasonable period of time following clinical interviews so
7 as to not prejudice the prosecutor's office or the defendant's
8 interests. The evaluation shall not be shared outside of the mental
9 health evaluation process within the prosecutor's office. Defense
10 counsel's use of the psychosocial evaluation is limited to the mental
11 health diversion application process, and it cannot be used in any
12 other proceeding. The psychosocial evaluation shall be provided to
13 the judge presiding over the mental health diversion calendar prior
14 to the issuance of any orders of acceptance or guilty pleas. Final
15 decisions as to acceptance shall lie with the prosecutor's office
16 provided appropriate mental health or co-occurring services are
17 available in the community.

18 e. To qualify for prosecutorial diversion under this section, an
19 eligible person shall, in addition to the terms set forth in the
20 application to participate in the Mental Health Diversion
21 ¹~~program~~ Program¹, agree in writing to the following terms,
22 where relevant to the eligible offense:

23 (1) Participate in case management and mental health services
24 initiated through the Mental Health Diversion Program or other
25 similar services;

26 (2) Provide through defense counsel their mental health records
27 to consider the person's eligibility for the program, and cooperate
28 with any recommended course of treatment, including the use of
29 medications as prescribed and participation in counseling;

30 (3) Authorize the case management or mental health service
31 provider to release to the prosecutor and defense counsel periodic
32 status reports regarding the person's participation, cooperation, and
33 recovery progress with case management and mental health
34 services;

35 (4) Cooperate with case management service providers to
36 procure housing, education, and employment services, where
37 appropriate;

38 (5) Refrain from the use of alcohol, use of any recreational
39 drugs, or any illegal drugs;

40 (6) Refrain from the possession or use of firearms or other
41 weapons;

42 (7) Refrain from further criminal activity;

43 (8) Refrain from any contact with a victim of the offense unless
44 otherwise permitted;

45 (9) The tolling of time for the purposes of the person's right to a
46 speedy trial while the person is participating in the program;

- 1 (10) Advise the prosecutor of any change in the person's
2 residential address or any change in the provider of case
3 management and mental health services; and **[';']¹**
- 4 (11) Any other terms and conditions related to the person's
5 recovery and public safety deemed appropriate by the prosecutor.
- 6 An eligible person, in consultation with the public defender
7 assigned to the eligible person or the person's own legal counsel,
8 shall be given the opportunity to review and sign all necessary
9 agreements and informed consents after consulting with their
10 designated or retained counsel.
- 11 f. The prosecutor shall determine the duration of the person's
12 participation in the Mental Health Diversion Program, whether their
13 acceptance into the diversion program requires a guilty plea or
14 whether a person may be accepted without having to enter a plea of
15 guilty. The length of the person's participation in the program shall
16 not exceed two years from the date of the Order of Acceptance
17 issued by the court ¹unless the prosecutor requests that the person's
18 participation in the program be extended based on the person's
19 treatment needs and progress, and the court for good cause approves
20 the request¹. The term of the person's participation shall be based
21 on the initial clinical evaluation and recommendations, status
22 reports of the person's participation and attaining established goals,
23 and progress reports from the case management and mental health
24 service providers.
- 25 g. The eligible person shall be responsible for executing any
26 necessary releases to allow for the Mental Health Diversion
27 Program or other case management and mental health service
28 provider to receives periodic reports on the person's participation,
29 cooperation, and recovery progress, including the execution of any
30 necessary signed releases. The person shall contact the Mental
31 Health Diversion Program or other case management and mental
32 health service provider within seven days of the date of the
33 diversion agreement to initiate treatment, services, and any other
34 required activity.
- 35 h. If at any time, the prosecutor finds that the person has
36 willfully failed to comply with any term or condition of the
37 diversion agreement, the prosecutor shall file a notice with the court
38 and defense counsel alleging willful failure to comply with the
39 conditions of diversion. The court shall afford the person notice
40 and an opportunity to be heard on the issue of for the defendant's
41 continued participation in the program. All actions taken to
42 terminate an eligible person's participation in a Mental Health
43 Diversion Program shall be carried out in full compliance with due
44 process laws and the Rules Governing the Courts of the State of
45 New Jersey.
- 46 i. No fee shall be assessed to a person for application,
47 participation, or treatment in the Mental Health Diversion Program
48 ¹, and program participants shall not be required to pay for

1 treatment and services as a condition of participating in the
2 program¹. ¹ **["Treatment costs shall be covered by the Department of**
3 **Mental Health and Addiction Services.]"**¹ Indigent participants who
4 are sentenced to a term of probation may petition the court for a
5 waiver of any other applicable fines ¹, to the extent consistent with
6 law. The mental health diversion team shall assist program
7 participants in applying for all federal and State benefits that may
8 cover or offset the cost of necessary treatment and services,
9 including medication. The Department of Human Services shall
10 assist a mental health diversion team in identifying available
11 resources, programs, and benefits¹.

12 j. An eligible person may be admitted to the Mental Health
13 Diversion Program one or more times at the discretion of the
14 prosecutor, subject to the restrictions in this section, if diversion
15 promotes the person's recovery, prevents the commission of future
16 offenses, and protects the safety of the public. Nothing in P.L. , c.
17 (C.) (pending before the Legislature as this bill) shall preclude
18 an eligible person from applying for admission to a criminal justice
19 diversion program, including a program of supervisory treatment
20 pursuant to N.J.S.2C:43-12, conditional discharge pursuant to
21 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of
22 P.L.2013, c.158 (C.2C:43-13.1), as an alternative to the Mental
23 Health Diversion Program to the extent that the person meets the
24 eligibility criteria and qualifies for those programs. Nothing in
25 P.L. , c. (C.) (pending before the Legislature as this bill) shall
26 preclude an otherwise eligible person with pending charges, prior
27 convictions, or prior diversion through supervisory treatment
28 pursuant to N.J.S.2C.:43-12, conditional discharge pursuant to
29 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of
30 P.L.2013, c. 158 (C.2C:43-13.1) from applying to the Mental
31 Health Diversion Program. A dismissal of a criminal complaint
32 resulting from successful participation in a Mental Health Diversion
33 Program pursuant to this section shall bar a person's subsequent
34 eligibility for a program of supervisory treatment pursuant to
35 N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1,
36 or conditional dismissal pursuant to section 1 of P.L.2013, c.158
37 (C.2C:43-13.1); however an eligible person may seek subsequent
38 admission to the Mental Health Diversion Program and may be
39 admitted at the discretion of the prosecutor.

40 k. The dismissal of charges for a crime of the second, third or
41 fourth degree, which did not involve violence or the threat of
42 violence based on a person's successful participation in Mental
43 Health Diversion Program pursuant to this section shall not be
44 deemed:

45 (1) a conviction for purposes of disqualifications or disabilities,
46 if any, imposed by law upon conviction of a petty disorderly
47 persons or disorderly persons offense or a crime, but shall be
48 reported to the State Bureau of Identification criminal history

1 record information files for purposes of determining future
2 eligibility or exclusion from other diversion programs; or

3 (2) a conviction for the purpose of determining whether a
4 second or subsequent offense has occurred under any law of this
5 State.

6 **1**¹ Except as otherwise provided in this section, nothing
7 in P.L. , c. (C.) (pending before the Legislature as this bill)
8 shall limit the prosecutor's discretion to otherwise divert or provide
9 any other available disposition for a person alleged to have
10 committed any crime or offense other than an eligible offense, and
11 in compelling circumstances may allow the person to participate in
12 a Mental Health Diversion Program established or maintained in
13 accordance with section 3 of P.L. , c. (C.) (pending before
14 the Legislature as this bill).

15

16 **7**¹ (New section) Nothing in P.L. , c. (C.) (pending
17 before the Legislature as this bill) shall be construed to limit or
18 constrain in any way the authority or discretion of a prosecutor to
19 divert, prosecute or pursue any other disposition of a criminal
20 matter involving a defendant who is an eligible person. When
21 considering the diversion of an eligible person from the criminal
22 justice system, a prosecutor may use the Mental Illness Diversion
23 Program established pursuant to P.L. , c. (C.) (pending before
24 the Legislature as this bill), any other diversion mechanism
25 authorized by law, or a county-based law enforcement diversion
26 program after considering each program's restrictions, the relief
27 available to the person, and the safety of any victim and the public.

28

29 **8**¹ (New section) a. The Administrative Director of the
30 Courts shall develop a differentiated mental health supervision case
31 type within the Probation Division of the Superior Court for eligible
32 persons who are sentenced to a term of probation supervision. To the
33 extent that sufficient resources are available, probation officers
34 assigned to the specialized caseload shall be experienced in behavioral
35 health and evidence-based therapeutic interventions and shall
36 coordinate with federal and State case management and mental health
37 service providers available to persons to promote their recovery,
38 compliance with the terms of probation and re-integration into the
39 community.

40 Eligible persons who are sentenced to a term of probation
41 supervision shall be screened and assigned to a differentiated mental
42 health supervision case type pursuant to procedures developed by the
43 Administrative Director of the Courts. A person who is assigned to a
44 differentiated mental health supervision case type shall provide written
45 authorization for any case management or mental health service
46 provider to release to the Probation Division, the court, and prosecutor,
47 and defense counsel periodic status reports regarding the person's
48 participation, cooperation, and recovery progress.

1 Probation officers assigned to the mental health diversion program
2 may provide supervision to those participants who have been accepted
3 into the mental health diversion.

4 b. A county prosecutor shall notify the Mental Health Diversion
5 Judge that an eligible person has qualified for admission to the
6 Mental Health Diversion Program, and request that the case be
7 placed on the differentiated mental health supervision docket
8 established pursuant to subsection a. of this section.

9 c. The Judge shall preside over all Orders of Acceptance for
10 each individual who is accepted into the Mental Health Diversion
11 Program. The Mental Health Diversion Team shall meet at regular
12 intervals as determined by the court to discuss participant treatment
13 plans and participant progress and other topics critical to treatment,
14 reduction of recidivism and public safety including, but not limited
15 to, pending applications, legal statuses, timelines for psychosocial
16 evaluation, plea agreements, and requirements for program
17 participation to promote the goals of programming.

18 d. All guilty pleas are required to be entered before the court and
19 may not originate from another court.

20 e. The Mental Health Diversion Team shall consist of a Judge of
21 the Superior Court who shall preside over the Mental Health Diversion
22 Program for each designated region of the State, designated Assistant
23 Prosecutors, designated Public Defenders, a certified mental health
24 professional, a case manager, a specially trained mental health
25 probation officer, and a collaborative justice specialist. The Judge
26 of the Superior Court shall be designated the Mental Health
27 Diversion Team Leader. A social worker who is trained and or
28 certified regarding co-occurring issues can, if resources are
29 available, be incorporated into the mental health diversion team.

30
31 ¹~~8.~~ 9.¹ N.J.S.2C:52-6 is amended to read as follows:

32 2C:52-6. Arrests not resulting in conviction.

33 a. When a person has been arrested or held to answer for a crime,
34 disorderly persons offense, petty disorderly persons offense, or
35 municipal ordinance violation under the laws of this State or of any
36 governmental entity thereof and proceedings against the person were
37 dismissed, the person was acquitted, or the person was discharged
38 without a conviction or finding of guilt, the Superior Court shall, at the
39 time of dismissal, acquittal, or discharge, or, in any case set forth in
40 paragraph (1) of this subsection, order the expungement of all records
41 and information relating to the arrest.

42 (1) If proceedings took place in municipal court, the municipal
43 court shall follow procedures developed by the Administrative
44 Director of the Courts.

45 (2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall
46 not apply to an expungement pursuant to this subsection.

47 (3) An expungement under this subsection shall not be ordered
48 where the dismissal, acquittal, or discharge resulted from a plea

1 bargaining agreement involving the conviction of other charges. This
2 bar, however, shall not apply once the conviction is itself expunged.

3 (4) The court shall forward a copy of the expungement order to the
4 county prosecutor. The county prosecutor shall promptly distribute
5 copies of the expungement order to appropriate law enforcement
6 agencies and correctional institutions who have custody and control of
7 the records specified in the order so that they may comply with the
8 requirements of N.J.S.2C:52-15.

9 (5) An expungement related to a dismissal, acquittal, or discharge
10 ordered pursuant to this subsection shall not bar any future
11 expungement.

12 (6) Where a dismissal of an offense is based on an eligible
13 servicemember's successful participation in a Veterans Diversion
14 Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), the county
15 prosecutor, on behalf of the eligible servicemember, may move before
16 the court for the expungement of all records and information relating
17 to the arrest and the diversion at the time of dismissal pursuant to this
18 section.

19 (7) Where a dismissal of an offense is based on an eligible
20 person's successful participation in a Mental Health Diversion
21 Program pursuant to P.L. , c. (C.) (pending before the
22 Legislature as this bill), the eligible person may make a motion before
23 the court for the expungement of all records and information relating
24 to the arrest or charge and the diversion, at the time of dismissal
25 pursuant to this section.

26 b. When a person did not apply or a prosecutor did not move on
27 behalf of an eligible servicemember for an expungement of an arrest
28 not resulting in a conviction pursuant to subsection a. of this section,
29 the person may at any time following the disposition of proceedings,
30 present a duly verified petition as provided in N.J.S.2C:52-7 to the
31 Superior Court in the county in which the disposition occurred praying
32 that records of such arrest and all records and information pertaining
33 thereto be expunged.

34 c. (1) Any person who has had charges dismissed against him
35 pursuant to a program of supervisory treatment pursuant to
36 N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-1,
37 or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et
38 al.), shall be barred from the relief provided in this section until six
39 months after the entry of the order of dismissal.

40 (2) A servicemember who has successfully participated in a
41 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
42 et al.) may apply for expungement pursuant to this section at any time
43 following the order of dismissal if an expungement was not granted at
44 the time of dismissal.

45 (3) An eligible person who has successfully participated in the
46 Mental Health Diversion Program pursuant to P.L. , c. (C.)
47 (pending before the Legislature as this bill), may apply for
48 expungement pursuant to this section at any time following the order

1 of dismissal if an expungement was not granted at the time of
2 dismissal.

3 d. Any person who has been arrested or held to answer for a
4 crime shall be barred from the relief provided in this section where the
5 dismissal, discharge, or acquittal resulted from a determination that the
6 person was insane or lacked the mental capacity to commit the crime
7 charged.

8 (cf: P.L.2019, c.269, s.4)

9
10 **1**[9.] **10.**¹ Section 1 of P.L.2013, c.158 (C.2C:43-13.1) is amended
11 to read as follows:

12 1. Eligibility and Application. a. Whenever any defendant who
13 has not been previously convicted of any petty disorderly persons
14 offense, disorderly persons offense or crime under any law of the
15 United States, this State or any other state, and who has not previously
16 participated in conditional discharge under N.J.S.2C:36A-1,
17 supervisory treatment under N.J.S.2C:43-12, or conditional dismissal
18 under P.L.2013, c.158 (C.2C:43-13.1 et al.), **[or]** a Veterans Diversion
19 Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), or a Mental
20 Health Diversion Program pursuant to P.L. , c. (C.) (pending
21 before the Legislature as this bill), is charged with a petty disorderly
22 offense or disorderly persons offense except as provided in subsection
23 b. of this section, the defendant may, after a plea of guilty or a finding
24 of guilt, but prior to the entry of a judgment of conviction and with
25 appropriate notice to the prosecutor, apply to the court for entry into
26 the conditional dismissal program pursuant to the requirements of
27 P.L.2013, c.158 (C.2C:43-13.1 et al.). As a condition of such
28 application, the defendant shall submit to the fingerprint identification
29 procedures as provided in R.S.53:1-15 before making such application
30 to the court to allow sufficient time for verification of the defendant's
31 criminal history by the prosecutor.

32 b. (1) A defendant shall not be eligible for participation in the
33 conditional dismissal program if the offense for which the person is
34 charged involved: (a) organized criminal or gang activity; (b) a
35 continuing criminal business or enterprise; (c) a breach of the public
36 trust by a public officer or employee; (d) domestic violence as defined
37 by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); (e) an
38 offense against an elderly, disabled or minor person; (f) an offense
39 involving driving or operating a motor vehicle while under the
40 influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or
41 habit-producing drug; (g) a violation of animal cruelty laws; or (h) any
42 disorderly persons offense or petty disorderly persons offense under
43 chapter 35 or 36 of Title 2C.

44 (2) Nothing in this act shall preclude a defendant charged with any
45 disorderly persons offense or petty disorderly persons offense under
46 chapter 35 or 36 of Title 2C from applying to the court for admission
47 into the conditional discharge program in accordance with
48 N.J.S.2C:36A-1.

1 c. In addition to the eligibility criteria enumerated in this section,
2 the court shall consider the following factors:

- 3 (1) The nature and circumstances of the offense;
- 4 (2) The facts surrounding the commission of the offense;
- 5 (3) The motivation, age, character and attitude of the defendant;
- 6 (4) The desire of the complainant or victim to forego prosecution;
- 7 (5) The needs and interests of the victim and the community;
- 8 (6) The extent to which the defendant's offense constitutes part of
9 a continuing pattern of anti-social behavior;
- 10 (7) Whether the offense is of an assaultive or violent nature,
11 whether in the act itself or in the possible injurious consequences of
12 such behavior;
- 13 (8) Whether the applicant's participation will adversely affect the
14 prosecution of codefendants;
- 15 (9) Whether diversion of the defendant from prosecution is
16 consistent with the public interest; and
- 17 (10) Any other factors deemed relevant by the court.

18 (cf: P.L.2017, c.42, s.8)

19

20 ¹**[10.] 11.** N.J.S.2C:36A-1 is amended to read as follows:

21 2C:36A-1. Conditional discharge for certain first offenses.

22 a. Whenever any person who has not previously been convicted
23 of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or a
24 disorderly persons or petty disorderly persons offense defined in
25 chapter 35 or 36 of this title or, subsequent to the effective date of this
26 title, under any law of the United States, this State or any other state
27 relating to marijuana, or stimulant, depressant, or hallucinogenic
28 drugs, and who has not previously participated in a program of
29 supervisory treatment pursuant to N.J.S.2C:43-12 or conditional
30 dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et al.), **[or]** a
31 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
32 et al.), or a Mental Health Diversion Program pursuant to P.L. , c.
33 (C.) (pending before the Legislature as this bill) is charged with or
34 convicted of any disorderly persons offense or petty disorderly persons
35 offense under chapter 35 or 36 of this title, the court upon notice to the
36 prosecutor and subject to subsection c. of this section, may on motion
37 of the defendant or the court:

38 (1) Suspend further proceedings and with the consent of the person
39 after reference to the State Bureau of Identification criminal history
40 record information files, place him under supervisory treatment upon
41 such reasonable terms and conditions as it may require; or

42 (2) After a plea of guilty or finding of guilty, and without entering
43 a judgment of conviction, and with the consent of the person after
44 proper reference to the State Bureau of Identification criminal history
45 record information files, place him on supervisory treatment upon
46 reasonable terms and conditions as it may require, or as otherwise
47 provided by law.

1 b. In no event shall the court require as a term or condition of
2 supervisory treatment under this section, referral to any residential
3 treatment facility for a period exceeding the maximum period of
4 confinement prescribed by law for the offense for which the individual
5 has been charged or convicted, nor shall any term of supervisory
6 treatment imposed under this subsection exceed a period of three
7 years.

8 Upon violation of a term or condition of supervisory treatment the
9 court may enter a judgment of conviction and proceed as otherwise
10 provided, or where there has been no plea of guilty or finding of
11 guilty, resume proceedings. Upon fulfillment of the terms and
12 conditions of supervisory treatment the court shall terminate the
13 supervisory treatment and dismiss the proceedings against him.
14 Termination of supervisory treatment and dismissal under this section
15 shall be without court adjudication of guilt and shall not be deemed a
16 conviction for purposes of disqualifications or disabilities, if any,
17 imposed by law upon conviction of a crime or disorderly persons
18 offense but shall be reported by the clerk of the court to the State
19 Bureau of Identification criminal history record information files.
20 Termination of supervisory treatment and dismissal under this section
21 may occur only once with respect to any person. Imposition of
22 supervisory treatment under this section shall not be deemed a
23 conviction for the purposes of determining whether a second or
24 subsequent offense has occurred under section 29 of P.L.1970, c.226
25 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

26 c. Proceedings under this section shall not be available to any
27 defendant unless the court in its discretion concludes that:

28 (1) The defendant's continued presence in the community, or in a
29 civil treatment center or program, will not pose a danger to the
30 community; or

31 (2) That the terms and conditions of supervisory treatment will be
32 adequate to protect the public and will benefit the defendant by serving
33 to correct any dependence on or use of controlled substances which he
34 may manifest; and

35 (3) The person has not previously received supervisory treatment
36 under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or
37 the provisions of this chapter.

38 d. A person seeking conditional discharge pursuant to this section
39 shall pay to the court a fee of \$75 which shall be paid to the Treasurer
40 of the State of New Jersey for deposit in the General Fund. The
41 defendant shall also be required to pay restitution, costs and other
42 assessments as provided by law. A person may apply for a waiver of
43 this fee, by reason of poverty, pursuant to the Rules Governing the
44 Courts of the State of New Jersey, or the court may permit the
45 defendant to pay the conditional discharge fee and other assessments
46 in installments or may order other alternatives pursuant to section 1 of
47 P.L.2009, c.317 (C.2B:12-23.1).

48 (cf: P.L.2019, c.276, s.5)

1 ¹~~11.~~ 12. N.J.S.2C:43-12 is amended to read as follows:

2 2C:43-12. Supervisory Treatment--Pretrial Intervention.

3 a. Public policy. The purpose of N.J.S.2C:43-12 through
4 N.J.S.2C:43-22 is to effectuate a Statewide program of Pretrial
5 Intervention. It is the policy of the State of New Jersey that
6 supervisory treatment should ordinarily be limited to persons who
7 have not previously been convicted of any criminal offense under the
8 laws of New Jersey, or under any criminal law of the United States, or
9 any other state when supervisory treatment would:

10 (1) Provide applicants, on an equal basis, with opportunities to
11 avoid ordinary prosecution by receiving early rehabilitative services or
12 supervision, when such services or supervision can reasonably be
13 expected to deter future criminal behavior by an applicant, and when
14 there is apparent causal connection between the offense charged and
15 the rehabilitative or supervisory need, without which cause both the
16 alleged offense and the need to prosecute might not have occurred; or

17 (2) Provide an alternative to prosecution for applicants who might
18 be harmed by the imposition of criminal sanctions as presently
19 administered, when such an alternative can be expected to serve as
20 sufficient sanction to deter criminal conduct; or

21 (3) Provide a mechanism for permitting the least burdensome form
22 of prosecution possible for defendants charged with "victimless"
23 offenses, other than defendants who were public officers or employees
24 charged with offenses that involved or touched their office or
25 employment; or

26 (4) Provide assistance to criminal calendars in order to focus
27 expenditure of criminal justice resources on matters involving serious
28 criminality and severe correctional problems; or

29 (5) Provide deterrence of future criminal or disorderly behavior by
30 an applicant in a program of supervisory treatment.

31 b. (1) Admission of an applicant into a program of supervisory
32 treatment shall be measured according to the applicant's amenability
33 to correction, responsiveness to rehabilitation and the nature of the
34 offense.

35 (2) There shall be a presumption against admission into a program
36 of supervisory treatment for:

37 (a) a defendant who was a public officer or employee whose
38 offense involved or touched upon his public office or employment; and

39 (b) a defendant charged with any crime or offense involving
40 domestic violence, as defined in subsection a. of section 3 of P.L.1991,
41 c.261 (C.2C:25-19) if the defendant committed the crime or offense
42 while subject to a temporary or permanent restraining order issued
43 pursuant to the provisions of the "Prevention of Domestic Violence
44 Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or if the crime or
45 offense charged involved violence or the threat of violence. For
46 purposes of this subparagraph, a crime or offense involves violence or
47 the threat of violence if the victim sustains serious or significant bodily
48 injury as defined in subsection

- 1 b. or d. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly
2 weapon or threatens by word or gesture to use a deadly weapon as
3 defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict serious
4 or significant bodily injury.
- 5 c. The decision and reasons therefor made by the designated
6 judges (or assignment judges), prosecutors and program directors in
7 granting or denying applications for supervisory treatment, in
8 recommending and ordering termination from the program or
9 dismissal of charges, in all cases shall be reduced to writing and
10 disclosed to the applicant.
- 11 d. If an applicant desires to challenge the decision of the
12 prosecutor or program director not to recommend enrollment in a
13 program of supervisory treatment the proceedings prescribed under
14 N.J.S.2C:43-14 and in accordance with the Rules of Court shall be
15 followed.
- 16 e. Referral. At any time prior to trial but after the filing of a
17 criminal complaint, or the filing of an accusation or the return of an
18 indictment, with the consent of the prosecutor and upon written
19 recommendation of the program director, the assignment judge or a
20 judge designated by him may postpone all further proceedings against
21 an applicant and refer said applicant to a program of supervisory
22 treatment approved by the Supreme Court. Prosecutors and program
23 directors shall consider in formulating their recommendation of an
24 applicant's participation in a supervisory treatment program, among
25 others, the following criteria:
- 26 (1) The nature of the offense;
 - 27 (2) The facts of the case;
 - 28 (3) The motivation and age of the defendant;
 - 29 (4) The desire of the complainant or victim to forego prosecution;
 - 30 (5) The existence of personal problems and character traits which
31 may be related to the applicant's crime and for which services are
32 unavailable within the criminal justice system, or which may be
33 provided more effectively through supervisory treatment and the
34 probability that the causes of criminal behavior can be controlled by
35 proper treatment;
 - 36 (6) The likelihood that the applicant's crime is related to a
37 condition or situation that would be conducive to change through his
38 participation in supervisory treatment;
 - 39 (7) The needs and interests of the victim and society;
 - 40 (8) The extent to which the applicant's crime constitutes part of a
41 continuing pattern of anti-social behavior;
 - 42 (9) The applicant's record of criminal and penal violations and the
43 extent to which he may present a substantial danger to others;
 - 44 (10) Whether or not the crime is of an assaultive or violent nature,
45 whether in the criminal act itself or in the possible injurious
46 consequences of such behavior;
 - 47 (11) Consideration of whether or not prosecution would
48 exacerbate the social problem that led to the applicant's criminal act;

- 1 (12) The history of the use of physical violence toward others;
2 (13) Any involvement of the applicant with organized crime;
3 (14) Whether or not the crime is of such a nature that the value of
4 supervisory treatment would be outweighed by the public need for
5 prosecution;
6 (15) Whether or not the applicant's involvement with other people
7 in the crime charged or in other crime is such that the interest of the
8 State would be best served by processing his case through traditional
9 criminal justice system procedures;
10 (16) Whether or not the applicant's participation in pretrial
11 intervention will adversely affect the prosecution of codefendants; and
12 (17) Whether or not the harm done to society by abandoning
13 criminal prosecution would outweigh the benefits to society from
14 channeling an offender into a supervisory treatment program.

15 The prosecutor and the court, in formulating their
16 recommendations or decisions regarding an applicant's participation in
17 a supervisory treatment program, shall give due consideration to the
18 victim's position on whether the defendant should be admitted.

19 f. Review of Supervisory Treatment Applications; Procedure
20 Upon Denial. Each applicant for supervisory treatment shall be entitled
21 to full and fair consideration of his application. If an application is
22 denied, the program director or the prosecutor shall precisely state his
23 findings and conclusion which shall include the facts upon which the
24 application is based and the reasons offered for the denial. If the
25 applicant desires to challenge the decision of a program director not to
26 recommend, or of a prosecutor not to consent to, enrollment into a
27 supervisory treatment program, a motion shall be filed before the
28 designated judge (or assignment judge) authorized pursuant to the
29 Rules of Court to enter orders.

30 g. Limitations. (1) Supervisory treatment may occur only once
31 with respect to any defendant and any person who has previously
32 received supervisory treatment under section 27 of P.L.1970, c.226
33 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1, a
34 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et
35 al.), or was granted a dismissal due to successful participation in the
36 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
37 et al.), or the Mental Health Diversion Program pursuant to P.L. , c.
38 (C.) (pending before the Legislature as this bill), shall not be
39 eligible for supervisory treatment under this section.

40 (2) Except as otherwise provided in paragraph (3) of this
41 subsection, supervisory treatment, as provided herein, shall be
42 available to a defendant irrespective of whether the defendant contests
43 his guilt of the charge or charges against him.

44 (3) Admission into supervisory treatment shall be available to the
45 following defendants only upon entering a plea of guilty: (a) a
46 defendant charged with a first or second degree crime;

47 (b) a defendant charged with any crime if the defendant had
48 previously been convicted of a first or second degree crime; (c) a

1 defendant charged with a third or fourth degree crime involving
2 domestic violence, as defined in subsection a. of section 3 of P.L.1991,
3 c.261 (C.2C:25-19); or (d) a defendant charged with any disorderly
4 persons or petty disorderly persons offense involving domestic
5 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
6 (C.2C:25-19) if the defendant committed the offense while subject to a
7 temporary or permanent restraining order issued pursuant to the
8 provisions of the "Prevention of Domestic Violence Act of 1991,"
9 P.L.1991, c.261 (C.2C:25-17 et al.). For any such defendant, following
10 the plea of guilty the plea shall be held in an inactive status pending
11 termination of supervisory treatment pursuant to subsection d. or e. of
12 N.J.S.2C:43-13. Upon successful completion of the program of
13 supervisory treatment the charges shall be dismissed.

14 h. Termination. Termination of supervisory treatment under this
15 section shall be immediately reported to the assignment judge of the
16 county who shall forward such information to the Administrative
17 Director of the Courts.

18 i. Appointment of Program Directors; Authorized Referrals.
19 Programs of supervisory treatment and appointment of the program
20 directors require approval by the Supreme Court with the consent of
21 the assignment judge and prosecutor. Referrals of participants from
22 supervisory treatment programs may be to any public or private office
23 or agency, including but not limited to, programs within the probation
24 service of the court, offering counseling or any other social service
25 likely to aid in the rehabilitation of the participant and to deter the
26 commission of other offenses.

27 j. Health Care Professional Licensing Board Notification. The
28 program director shall promptly notify the State Board of Medical
29 Examiners when a State licensed physician or podiatrist has been
30 enrolled in a supervisory treatment program after he has been charged
31 with an offense involving drugs or alcohol.

32 The Attorney General shall develop guidelines to ensure the uniform
33 exercise of discretion by prosecutors in formulating their
34 recommendations on participation in a supervisory treatment program
35 by an applicant charged with a crime or offense involving domestic
36 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
37 (C.2C:25-19).

38 (cf: P.L.2017, c.42, s.10)

39

40 ¹**[12.] 13.**¹ (New section) ¹**[a.]**¹ The Attorney General, in
41 cooperation with the Administrative Director of the Courts,
42 Commissioner of the Department of Human Services and county
43 prosecutors shall, no later than two years after the establishment of
44 the Mental Health Diversion Program, prepare and submit a report
45 to the Governor and, pursuant to section 2 of P.L.1991, c.164
46 (C.52:14-19.1), to the Legislature regarding the program. The
47 report shall assist policymakers in determining whether the Mental
48 Health Diversion Program should be modified or expanded to

1 achieve the goals of recovery for eligible persons and public safety.
2 The report shall include statistics regarding the number of
3 applications, the number of eligible persons accepted into the
4 Mental Health Diversion Program and the number who successfully
5 completed this program; and other relevant information and
6 recommendations at the discretion of the Attorney General.

7 ¹**【b.** If the Attorney General fails to submit the report required
8 pursuant to subsection a. of this section, the Attorney General, or a
9 designee, shall appear before the Senate Judiciary Committee or the
10 Assembly Judiciary Committee, or their successor reference
11 committees, or other reference committee, at the direction of the
12 presiding officer, to explain why the report has not been issued.**】**¹

13

14 ¹14. (New section) There is created in the Department of the
15 Treasury a special, non-lapsing fund to be known as the “Mental
16 Health Diversion Program Support Fund.” There shall be deposited
17 into the fund the amounts made available for the purposes of the
18 fund and any interest earned thereon. Monies deposited in the fund
19 shall be dedicated to the purposes of defraying the costs and
20 expenses associated with the administration and operation of the
21 Statewide Mental Health Diversion Program established pursuant to
22 P.L. , c. (C.)(pending before the Legislature as this bill).¹

23

24 ¹**【13.】** 15.¹ This act shall take effect on the first day of the
25 seventh month next following enactment, except that the Attorney
26 General, Commissioner of Human Services, county prosecutors,
27 and the Administrative Director of the Courts may take any
28 anticipatory administrative action in advance as shall be necessary
29 for the implementation of this act.

30

31

32

33

34 Creates Mental Health Diversion Program to divert eligible
35 persons away from criminal justice system and into appropriate case
36 management and mental health services.

SENATE, No. 524

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Co-Sponsored by:

Senator Turner

SYNOPSIS

Creates Mental Illness Diversion Program to divert eligible persons away from criminal justice system and into appropriate case management and mental health services.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/29/2022)

1 AN ACT concerning offenders with mental health concerns,
2 amending various sections of the law and supplementing Title 2C
3 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) As used in this act:

9 a. "Eligible offense" means a non-violent petty disorderly persons
10 offense, disorderly persons offense, or crime of the third or fourth
11 degree.

12 c. "Eligible person" means a person who allegedly committed an
13 eligible offense and who has a prior diagnosis of mental illness or for
14 whom a law enforcement officer or prosecutor has a reasonable belief
15 that the person has a mental illness based on behaviors and symptoms
16 exhibited during the commission of the offense or while in custody,
17 or based on information provided by family members or associates
18 during the investigation of the offense.

19 d. "Mental Illness Diversion Resource Entity" means a point of
20 access or referral to case management and mental health services that
21 are currently available from federal, State and local government
22 agencies to eligible persons. The Division of Mental Health and
23 Addiction Services in the Department of Health shall prepare and
24 disseminate a directory of New Jersey Diversion Resource entities to
25 facilitate the diversion of eligible persons from the criminal justice
26 system. The department shall not be responsible for funding,
27 developing or delivering case management or mental health services
28 to eligible persons under P.L. , c. (C.) (pending before the
29 Legislature as this bill).

30 e. "Mentor" means a volunteer available to assist an eligible
31 person in accessing assistance to resolve the underlying problems
32 that led or contributed to the eligible person's involvement with the
33 criminal justice system.

34 f. "Mental illness" means a mental disorder classified within the
35 current version of the American Psychiatric Association Diagnostic
36 and Statistical Manual of Mental Disorders (DSM), including, but not
37 limited to, anxiety disorders, cognitive disorders, adjustment
38 disorders, schizophrenia and other psychotic disorders, bipolar
39 disorder, depression, and post-traumatic stress disorder (PTSD).

40
41 2. (New section) a. There is hereby established a Statewide
42 Mental Illness Diversion Program that shall have the purpose of
43 diverting eligible persons away from the criminal justice system and
44 into appropriate case management and mental health services as early
45 as possible following an interaction with law enforcement where the
46 person is alleged to have committed an eligible offense.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 b. The New Jersey Department of Human Services shall, in
2 conjunction with other federal, State, and local government agencies
3 prepare a directory of Diversion Resource entities within New Jersey.
4 Each Mental Illness Diversion Resource Entity shall serve as a point
5 of entry to facilitate the law enforcement diversion or referral of
6 eligible persons into existing case management and mental health
7 services offered by the New Jersey Department of Human Services,
8 or other appropriate case management and mental health services that
9 are available to persons with mental illness. A Mental Illness
10 Diversion Resource Entity, or an agency to which an eligible person
11 is referred by the Mental Illness Diversion Resource Entity, shall be
12 capable of providing screening, counseling, treatment and case
13 management for mental health issues and other co-occurring health
14 disorders to eligible persons, or coordinating such services through
15 the appropriate federal, State, and local government agencies that
16 offer assistance. To the extent feasible, a Mental Illness Diversion
17 Resource Entity, or an agency to which an eligible person is referred
18 to by the entity, shall be capable of accepting emergent referrals of
19 eligible persons who are being diverted from the criminal justice
20 system. A Mental Illness Diversion Resource Entity, or an agency to
21 which a eligible person is referred by the Mental Illness Diversion
22 Resource Entity, that accepts the referral of an eligible person shall
23 be capable of providing law enforcement officials with periodic
24 status reports regarding the participation and recovery progress of an
25 eligible person, when the person consents to the release of such
26 information, as a condition of diversion from prosecution. The
27 department shall provide the Attorney General, the Administrative
28 Director of the Courts, the Commissioner of the Department of
29 Corrections, and the Chairman of the State Parole Board with a
30 directory of Diversion Resource entities available within the State or
31 shall publish the directory on its departmental Internet web site.

32
33 3. (New section) a. When a person is taken into custody for an
34 eligible offense, if the law enforcement officer determines that the
35 person exhibits behavior or symptoms that may be related to a mental
36 illness, the law enforcement officer may proceed in accordance with
37 P.L. , c. (C.) (pending before the Legislature as this bill), but
38 with a preference for diversion of an eligible person to a Mental
39 Illness Diversion Resource Entity or other community-based mental
40 health services, including a screening service established pursuant to
41 the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.), in lieu of
42 filing a criminal complaint. If the alleged offense is not an eligible
43 offense or the person is resistant to diversion, the officer may file a
44 criminal complaint.

45 b. Law enforcement officers may divert an eligible person who
46 appears to have a mental illness to a Mental Illness Diversion
47 Resource Entity or other community-based mental health services,
48 including a screening service established pursuant to the provisions

1 of P.L.1987, c.116 (C.30:4-27.1 et seq.), in lieu of filing a criminal
2 complaint against the person. A law enforcement officer shall not
3 divert an eligible person prior to the filing of a criminal complaint if
4 the crime or offense involves restitution for damages, if the crime or
5 offense involves violence or the threat of violence, if the crime or
6 offense involves the violation of any restraining order or protective
7 order involving another person, or where a victim of the offense
8 objects to the diversion. For the purposes of this subsection, a crime
9 or offense involves violence or the threat of violence if the victim
10 sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1,
11 or the actor is armed with and uses a deadly weapon or threatens by
12 word or gesture to use a deadly weapon as defined in subsection c. of
13 N.J.S.2C:11-1, or threatens to inflict bodily injury. If an eligible
14 person is not diverted, the officer may proceed with the filing of a
15 complaint-summons or complaint-warrant pursuant to law, the Rules
16 of Court, and the directives of the Attorney General.

17 c. If a law enforcement officer diverts an eligible person to a
18 Mental Illness Diversion Resource entity or other mental health
19 service provider without filing a criminal complaint, the law
20 enforcement officer may subsequently file the complaint, subject to
21 the time limitations of N.J.S.2C:1-6, if the person fails to cooperate
22 with the service provider or has subsequent interactions with law
23 enforcement.

24
25 4. (New section) a. At any time after the filing of a criminal
26 complaint, but prior to the disposition of such complaint, an eligible
27 person, the public defender assigned to the eligible person, or the
28 person's own legal counsel may make an application to the prosecutor
29 to participate in the Mental Illness Diversion Program. The
30 prosecutor may approve or conditionally approve an eligible person's
31 admission into the Diversion Program. An eligible person may be
32 conditionally approved for admission into the program pending
33 review of the person's criminal history, and consideration of the
34 findings of a clinical assessment of the person's mental health. Once
35 admitted to the program, the prosecutor may move before the court
36 to postpone proceedings while an eligible person obtains a mental
37 health assessment or participates in case management and mental
38 health services. The court may grant the postponement of
39 proceedings and release the person on the person's own recognizance
40 subject to compliance with the conditions specified in the
41 prosecutor's diversion agreement. If the prosecutor's review of the
42 person's records and the clinical assessment reveals that the person
43 does not qualify for the program or if the person does not comply
44 with the requirements of the diversion agreement, the prosecutor may
45 notify the court that the State is prepared to proceed with the
46 prosecution of the offense and the court shall schedule court
47 proceedings as appropriate.

1 b. (1) Except as provided in paragraph (2) of this subsection, the
2 prosecutor shall have the sole discretion to determine if an eligible
3 person qualifies for and is admitted to the Mental Illness Diversion
4 Program pursuant to P.L. , c. (C.) (pending before the Legislature
5 as this bill) after consideration of the nature of the eligible offense,
6 the causative relationship between the person's diagnosed or apparent
7 mental illness and the commission of the offense, the amenability of
8 the person to participation in the services of the program, the
9 availability of case management and mental health services, the
10 desires of any victim, the person's history of prior convictions, and
11 the probability that diversion will promote the person's recovery,
12 prevent future criminal behavior, and protect public safety. A
13 prosecutor may also consider and approve other diversion
14 alternatives for persons in lieu of the Mental Illness Diversion
15 Program pursuant to P.L. , c. (C.) (pending before the Legislature
16 as this bill).

17 (2) No eligible person shall be admitted to the Mental Illness
18 Diversion Program if the person has criminal charges pending for a
19 crime of the second degree or higher, if the crime or offense involved
20 violence or the threat of violence, or if the person was previously
21 convicted of a violent crime enumerated in subsection d. of section 2
22 of P.L.1997, c.117 (C.2C:43-7.2). There shall be a presumption
23 against admission into the Mental Illness Diversion Program, subject
24 to the discretion of the prosecutor after consulting with any victim,
25 for a person charged with any crime or offense involving domestic
26 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
27 (C.2C:25-19) if the defendant committed the crime or offense while
28 subject to a temporary or permanent restraining order issued pursuant
29 to the provisions of the "Prevention of Domestic Violence Act of
30 1991," P.L.1991, c.261 (C.2C:25-17 et al.). For purposes of this
31 paragraph, a crime or offense involves violence or the threat of
32 violence if the victim sustains bodily injury as defined in subsection
33 a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly
34 weapon or threatens by word or gesture to use a deadly weapon as
35 defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict
36 bodily injury.

37 (3) The prosecutor shall consult with victims of an eligible
38 offense prior to approving an eligible person's admission into the
39 Mental Illness Diversion Program. Nothing in this subsection shall
40 be construed to alter or limit the authority or discretion of the
41 prosecutor to admit an eligible person into the Mental Illness
42 Diversion Program which the prosecutor deems appropriate.

43 c. The prosecutor's approval of an application for admission into
44 the Mental Illness Diversion Program pursuant to this section shall
45 not be conditioned on an admission or plea of guilt by an eligible
46 person.

- 1 d. To qualify for prosecutorial diversion under this section, an
2 eligible person shall agree in writing to the following terms, where
3 relevant to the eligible offense:
- 4 (1) Participate in case management and mental health services
5 initiated through the Mental Illness Diversion Resource Entity or
6 other similar services and to cooperate with any recommended course
7 of treatment, including the use of medications as prescribed and
8 participation in counseling;
- 9 (2) Authorize the case management or mental health service
10 provider to release to the prosecutor periodic status reports regarding
11 the person's participation, cooperation, and recovery progress with
12 case management and mental health services;
- 13 (3) Cooperate with case management service providers to procure
14 housing, education, and employment services, where appropriate;
- 15 (4) Pay restitution for damages that have resulted from the
16 offense;
- 17 (5) Refrain from the use of alcohol or illegal drugs or frequent
18 any place where alcohol or illegal drugs are sold and used;
- 19 (6) Refrain from the possession or use of firearms or other
20 weapons;
- 21 (7) Refrain from further criminal activity;
- 22 (8) Refrain from any contact with a victim of the offense;
- 23 (9) Cooperate with a mentor, where assigned;
- 24 (10) Suspend the tolling of time for the purposes of the person's
25 right to a speedy trial while the person is participating in the program;
- 26 (11) Advise the prosecutor of any change in the person's
27 residential address or any change in the provider of case management
28 and mental health services; and
- 29 (12) Any other terms and conditions related to the person's
30 recovery and public safety deemed appropriate by the prosecutor.
- 31 e. The prosecutor shall determine the duration of the person's
32 participation in the Mental Illness Diversion Program, except that the
33 person's participation in the program shall not exceed two years from
34 the date of the diversion agreement. The term of the person's
35 participation shall be based on the initial clinical evaluation and
36 recommendations, status reports of the person's participation, and
37 progress reports from the case management and mental health service
38 providers, and, where assigned, the person's mentor.
- 39 f. The eligible person shall be responsible for coordinating with
40 the Mental Illness Diversion Resource Entity or other case
41 management and mental health service provider to ensure that the
42 prosecutor receives periodic reports on the person's participation,
43 cooperation and recovery progress. The person shall contact the
44 Mental Illness Diversion Resource Entity or other case management
45 and mental health service provider within seven days of the date of
46 the diversion agreement.
- 47 g. The court shall review the status of the deferred prosecution
48 of the person no later than six months from the date on which the

1 court approved the prosecutor's initial request for a postponement of
2 the proceedings, and, thereafter, every six months from the most
3 recent review, to consider, based on information provided by the
4 prosecutor, whether the postponement of court proceedings as
5 requested by the prosecutor should continue.

6 h. To the extent that a sufficient number of mentors are
7 available, the prosecutor or the case management provider on behalf
8 of the prosecutor, shall assign a mentor to the eligible person.

9 i. If, after a minimum of six months from the date of the
10 diversion agreement, the prosecutor is satisfied that the person has
11 complied with the terms and conditions of the diversion agreement,
12 has not been the subject of any subsequent criminal charges, and,
13 based on clinical reports, continues to make progress with case
14 management services and mental health recovery, the prosecutor may
15 move before the court for the dismissal of the criminal charge
16 pending against the person and terminate the person's participation in
17 the Mental Illness Diversion Program. Alternatively, the prosecutor
18 may require that the person continue participation in the program
19 until sufficient evidence of progress toward recovery is available,
20 except that continued participation shall not exceed the two-year time
21 limit as provided in subsection e. of this section.

22 j. If, at any time, the prosecutor finds that the person has failed
23 to comply with any term or condition of the diversion agreement, the
24 prosecutor may notify the court that the State is prepared to proceed
25 with the prosecution of the offense and the court shall schedule court
26 proceedings as appropriate.

27 k. No fee shall be assessed to a person for participation in the
28 Mental Illness Diversion Program.

29 l. An eligible person may be admitted to the Mental Illness
30 Diversion Program one or more times at the discretion of the
31 prosecutor, subject to the restrictions in this section, if such diversion
32 promotes the person's recovery, prevents the commission of future
33 offenses, and protects the safety of the public. Nothing in P.L. , c.
34 (C.) (pending before the Legislature as this bill) shall preclude an
35 eligible person from applying for admission to a criminal justice
36 diversion program, including a program of supervisory treatment
37 pursuant to N.J.S.2C:43-12, conditional discharge pursuant to
38 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of
39 P.L.2013, c.158 (C.2C:43-13.1), as an alternative to the Mental
40 Illness Diversion Program to the extent that the person meets the
41 eligibility criteria and qualifies for those programs. A dismissal of a
42 criminal complaint resulting from successful participation in a
43 Mental Illness Diversion Program pursuant to this section shall bar a
44 person's subsequent eligibility for a program of supervisory treatment
45 pursuant to N.J.S.2C:43-12, conditional discharge pursuant to
46 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of
47 P.L.2013, c.158 (C.2C:43-13.1); however an eligible person may

1 seek subsequent admission to the Mental Illness Diversion Program
2 and may be admitted at the sole discretion of the prosecutor.

3 m. The dismissal of charges based on a person's successful
4 participation in the Mental Illness Diversion Program pursuant to this
5 section shall not be deemed:

6 (1) a conviction for purposes of disqualifications or disabilities,
7 if any, imposed by law upon conviction of a petty disorderly persons
8 or disorderly persons offense or a crime, but shall be reported to the
9 State Bureau of Identification criminal history record information
10 files for purposes of determining future eligibility or exclusion from
11 other diversion programs; or

12 (2) a conviction for the purpose of determining whether a second
13 or subsequent offense has occurred under any law of this State.

14

15 5. (New section) Nothing in P.L. , c. (C.) (pending before
16 the Legislature as this bill) shall be construed to limit or constrain in
17 any way the authority or discretion of a prosecutor to divert,
18 prosecute or pursue any other disposition of a criminal matter
19 involving a defendant who is an eligible person. When considering
20 the diversion of an eligible person from the criminal justice system,
21 a prosecutor may use the Mental Illness Diversion Program
22 established pursuant to P.L. , c. (C.) (pending before the
23 Legislature as this bill), any other diversion mechanism authorized
24 by law, or a county-based law enforcement diversion program after
25 considering each program's restrictions, the relief available to the
26 person, and the safety of any victim and the public.

27

28 6. (New section) The Administrative Director of the Courts
29 shall develop a differentiated mental health supervision case type
30 within the Probation Division of the Superior Court for eligible
31 persons who are sentenced to a term of probation supervision. To the
32 extent that sufficient resources are available, probation officers
33 assigned to the specialized caseload shall be experienced in
34 behavioral health and evidence-based therapeutic interventions and
35 shall coordinate with mentors as well as federal and State case
36 management and health care providers available to persons to
37 promote their recovery, compliance with the terms of probation and
38 re-integration into the community. Eligible persons who are
39 sentenced to a term of probation supervision shall be screened and
40 assigned to a differentiated mental health supervision case type
41 pursuant to procedures developed by the Administrative Director of
42 the Courts. A person who is assigned to a differentiated mental health
43 supervision case type shall provide written authorization for any case
44 management or mental health service provider to release to the
45 Probation Division and the court periodic status reports regarding the
46 person's participation, cooperation, and recovery progress.

47

48 7. N.J.S.2C:52-6 is amended to read as follows:

1 2C:52-6. Arrest not resulting in conviction. a. When a person
2 has been arrested or held to answer for a crime, disorderly persons
3 offense, petty disorderly persons offense, or municipal ordinance
4 violation under the laws of this State or of any governmental entity
5 thereof and proceedings against the person were dismissed, the
6 person was acquitted, or the person was discharged without a
7 conviction or finding of guilt, the Superior Court shall, at the time of
8 dismissal, acquittal, or discharge, or, in any case set forth in
9 paragraph (1) of this subsection, upon receipt of an application from
10 the person, order the expungement of all records and information
11 relating to the arrest or charge.

12 (1) If proceedings took place in municipal court, the municipal
13 court shall provide the person, upon request, with appropriate
14 documentation to transmit to the Superior Court to request
15 expungement pursuant to procedures developed by the
16 Administrative Office of the Courts. Upon receipt of the
17 documentation, the Superior Court shall enter an ex parte order
18 expunging all records and information relating to the person's arrest
19 or charge.

20 (2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14
21 shall not apply to an expungement pursuant to this subsection and no
22 fee shall be charged to the person making such application.

23 (3) An expungement under this subsection shall not be ordered
24 where the dismissal, acquittal, or discharge resulted from a plea
25 bargaining agreement involving the conviction of other charges. This
26 bar, however, shall not apply once the conviction is itself expunged.

27 (4) The Superior Court shall forward a copy of the expungement
28 order to the appropriate court and to the prosecutor. The prosecutor
29 shall promptly distribute copies of the expungement order to
30 appropriate law enforcement agencies and correctional institutions
31 who have custody and control of the records specified in the order so
32 that they may comply with the requirements of N.J.S.2C:52-15.

33 (5) An expungement related to a dismissal, acquittal, or discharge
34 ordered pursuant to this subsection shall not bar any future
35 expungement.

36 (6) Where a dismissal of an offense is based on an eligible
37 servicemember's successful participation in a Veterans Diversion
38 Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), the county
39 prosecutor, on behalf of the eligible servicemember, may move
40 before the court for the expungement of all records and information
41 relating to the arrest or charge, and the diversion at the time of
42 dismissal pursuant to this section.

43 (7) Where a dismissal of an offense is based on an eligible
44 person's successful participation in a Mental Illness Diversion
45 Program pursuant to P.L. , c. (C.) (pending before the Legislature
46 as this bill), the county prosecutor, on behalf of the eligible person,
47 may move before the court for the expungement of all records and

1 information relating to the arrest or charge, and the diversion at the
2 time of dismissal pursuant to this section.

3 b. When a person did not apply or a prosecutor did not move on
4 behalf of an eligible person or eligible servicemember for an
5 expungement of an arrest or charge not resulting in a conviction
6 pursuant to subsection a. of this section, the person may at any time
7 following the disposition of proceedings, present a duly verified
8 petition as provided in N.J.S.2C:52-7 to the Superior Court in the
9 county in which the disposition occurred praying that records of such
10 arrest and all records and information pertaining thereto be
11 expunged. No fee shall be charged to the person for applying for an
12 expungement of an arrest or charge not resulting in a conviction
13 pursuant to this subsection.

14 c. (1) Any person who has had charges dismissed against him
15 pursuant to a program of supervisory treatment pursuant to
16 N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-
17 1, or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-
18 13.1 et al.), shall be barred from the relief provided in this section
19 until six months after the entry of the order of dismissal.

20 (2) A servicemember who has successfully participated in a
21 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
22 et al.) may apply for expungement pursuant to this section at any time
23 following the order of dismissal if an expungement was not granted
24 at the time of dismissal.

25 (3) An eligible person who has successfully participated in a
26 Mental Illness Diversion Program pursuant to P.L. , c. (C.)
27 (pending before the Legislature as this bill), may apply for
28 expungement pursuant to this section at any time following the order
29 of dismissal if an expungement was not granted at the time of
30 dismissal.

31 d. Any person who has been arrested or held to answer for a
32 crime shall be barred from the relief provided in this section where
33 the dismissal, discharge, or acquittal resulted from a determination
34 that the person was insane or lacked the mental capacity to commit
35 the crime charged.

36 (cf: P.L. 2017, c.42, s.7)

37

38 8. Section 1 of P.L.2013, c.158 (C.2C:43-13.1) is amended to read
39 as follows:

40 1. Eligibility and Application. a. Whenever any defendant who
41 has not been previously convicted of any petty disorderly persons
42 offense, disorderly persons offense or crime under any law of the
43 United States, this State or any other state, and who has not
44 previously participated in conditional discharge under N.J.S.2C:36A-
45 1, supervisory treatment under N.J.S.2C:43-12, or conditional
46 dismissal under P.L.2013, c.158 (C.2C:43-13.1 et al.), **[or]** a
47 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
48 et al.), or a Mental Illness Diversion Program pursuant to P.L. , c.

1 (C.) (pending before the Legislature as this bill), is charged with a
2 petty disorderly offense or disorderly persons offense except as
3 provided in subsection b. of this section, the defendant may, after a
4 plea of guilty or a finding of guilt, but prior to the entry of a judgment
5 of conviction and with appropriate notice to the prosecutor, apply to
6 the court for entry into the conditional dismissal program pursuant to
7 the requirements of P.L.2013, c.158 (C.2C:43-13.1 et al.). As a
8 condition of such application, the defendant shall submit to the
9 fingerprint identification procedures as provided in R.S.53:1-15
10 before making such application to the court to allow sufficient time
11 for verification of the defendant's criminal history by the prosecutor.

12 b. (1) A defendant shall not be eligible for participation in the
13 conditional dismissal program if the offense for which the person is
14 charged involved: (a) organized criminal or gang activity; (b) a
15 continuing criminal business or enterprise; (c) a breach of the public
16 trust by a public officer or employee; (d) domestic violence as
17 defined by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-
18 19); (e) an offense against an elderly, disabled or minor person; (f)
19 an offense involving driving or operating a motor vehicle while under
20 the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic
21 or habit-producing drug; (g) a violation of animal cruelty laws; or (h)
22 any disorderly persons offense or petty disorderly persons offense
23 under chapter 35 or 36 of Title 2C.

24 (2) Nothing in this act shall preclude a defendant charged with
25 any disorderly persons offense or petty disorderly persons offense
26 under chapter 35 or 36 of Title 2C from applying to the court for
27 admission into the conditional discharge program in accordance with
28 N.J.S.2C:36A-1.

29 c. In addition to the eligibility criteria enumerated in this
30 section, the court shall consider the following factors:

- 31 (1) The nature and circumstances of the offense;
- 32 (2) The facts surrounding the commission of the offense;
- 33 (3) The motivation, age, character and attitude of the defendant;
- 34 (4) The desire of the complainant or victim to forego prosecution;
- 35 (5) The needs and interests of the victim and the community;
- 36 (6) The extent to which the defendant's offense constitutes part of
37 a continuing pattern of anti-social behavior;
- 38 (7) Whether the offense is of an assaultive or violent nature,
39 whether in the act itself or in the possible injurious consequences of
40 such behavior;
- 41 (8) Whether the applicant's participation will adversely affect the
42 prosecution of codefendants;
- 43 (9) Whether diversion of the defendant from prosecution is
44 consistent with the public interest; and
- 45 (10) Any other factors deemed relevant by the court.

46 (cf: P.L.2017, c.42, s.8)

47

48 9. N.J.S.2C:36A-1 is amended to read as follows:

1 2C:36A-1. Conditional discharge for certain first offenses.

2 a. Whenever any person who has not previously been convicted
3 of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or
4 a disorderly persons or petty disorderly persons offense defined in
5 chapter 35 or 36 of this title or, subsequent to the effective date of
6 this title, under any law of the United States, this State or any other
7 state relating to marijuana, or stimulant, depressant, or
8 hallucinogenic drugs, and who has not previously participated in a
9 program of supervisory treatment pursuant to N.J.S.2C:43-12 or
10 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et
11 al.), **[or]** a Veterans Diversion Program pursuant to P.L.2017, c.42
12 (C.2C:43-23 et al.), or a Mental Illness Diversion Program pursuant
13 to P.L. , c. (C.) (pending before the Legislature as this bill), is
14 charged with or convicted of any disorderly persons offense or petty
15 disorderly persons offense under chapter 35 or 36 of this title, the
16 court upon notice to the prosecutor and subject to subsection c. of
17 this section, may on motion of the defendant or the court:

18 (1) Suspend further proceedings and with the consent of the
19 person after reference to the State Bureau of Identification criminal
20 history record information files, place him under supervisory
21 treatment upon such reasonable terms and conditions as it may
22 require; or

23 (2) After a plea of guilty or finding of guilty, and without entering
24 a judgment of conviction, and with the consent of the person after
25 proper reference to the State Bureau of Identification criminal history
26 record information files, place him on supervisory treatment upon
27 reasonable terms and conditions as it may require, or as otherwise
28 provided by law.

29 b. In no event shall the court require as a term or condition of
30 supervisory treatment under this section, referral to any residential
31 treatment facility for a period exceeding the maximum period of
32 confinement prescribed by law for the offense for which the
33 individual has been charged or convicted, nor shall any term of
34 supervisory treatment imposed under this subsection exceed a period
35 of three years. If a person is placed under supervisory treatment
36 under this section after a plea of guilty or finding of guilt, the court
37 as a term and condition of supervisory treatment shall suspend the
38 person's driving privileges for a period to be fixed by the court at not
39 less than six months or more than two years unless the court finds
40 compelling circumstances warranting an exception. For the purposes
41 of this subsection, compelling circumstances warranting an exception
42 exist if the suspension of the person's driving privileges will result in
43 extreme hardship and alternative means of transportation are not
44 available. In the case of a person who at the time of placement under
45 supervisory treatment under this section is less than 17 years of age,
46 the period of suspension of driving privileges authorized herein,
47 including a suspension of the privilege of operating a motorized
48 bicycle, shall commence on the day the person is placed on

1 supervisory treatment and shall run for a period as fixed by the court
2 of not less than six months or more than two years after the day the
3 person reaches the age of 17 years.

4 If the driving privilege of a person is under revocation,
5 suspension, or postponement for a violation of this title or Title 39 of
6 the Revised Statutes at the time of the person's placement on
7 supervisory treatment under this section, the revocation, suspension
8 or postponement period imposed herein shall commence as of the
9 date of the termination of the existing revocation, suspension or
10 postponement. The court which places a person on supervisory
11 treatment under this section shall collect and forward the person's
12 driver's license to the New Jersey Motor Vehicle Commission and
13 file an appropriate report with the commission in accordance with the
14 procedure set forth in N.J.S.2C:35-16. The court shall also inform the
15 person of the penalties for operating a motor vehicle during the
16 period of license suspension or postponement as required in
17 N.J.S.2C:35-16.

18 Upon violation of a term or condition of supervisory treatment the
19 court may enter a judgment of conviction and proceed as otherwise
20 provided, or where there has been no plea of guilty or finding of
21 guilty, resume proceedings. Upon fulfillment of the terms and
22 conditions of supervisory treatment the court shall terminate the
23 supervisory treatment and dismiss the proceedings against him.
24 Termination of supervisory treatment and dismissal under this
25 section shall be without court adjudication of guilt and shall not be
26 deemed a conviction for purposes of disqualifications or disabilities,
27 if any, imposed by law upon conviction of a crime or disorderly
28 persons offense but shall be reported by the clerk of the court to the
29 State Bureau of Identification criminal history record information
30 files. Termination of supervisory treatment and dismissal under this
31 section may occur only once with respect to any person. Imposition
32 of supervisory treatment under this section shall not be deemed a
33 conviction for the purposes of determining whether a second or
34 subsequent offense has occurred under section 29 of P.L.1970, c.226
35 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

36 c. Proceedings under this section shall not be available to any
37 defendant unless the court in its discretion concludes that:

38 (1) The defendant's continued presence in the community, or in a
39 civil treatment center or program, will not pose a danger to the
40 community; or

41 (2) That the terms and conditions of supervisory treatment will be
42 adequate to protect the public and will benefit the defendant by
43 serving to correct any dependence on or use of controlled substances
44 which he may manifest; and

45 (3) The person has not previously received supervisory treatment
46 under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or
47 the provisions of this chapter.

1 d. A person seeking conditional discharge pursuant to this
2 section shall pay to the court a fee of \$75 which shall be paid to the
3 Treasurer of the State of New Jersey for deposit in the General Fund.
4 The defendant shall also be required to pay restitution, costs and
5 other assessments as provided by law. A person may apply for a
6 waiver of this fee, by reason of poverty, pursuant to the Rules
7 Governing the Courts of the State of New Jersey, or the court may
8 permit the defendant to pay the conditional discharge fee and other
9 assessments in installments or may order other alternatives pursuant
10 to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

11 (cf: P.L.2017, c.42, s.9)

12

13 10. N.J.S.2C:43-12 is amended to read as follows:

14 2C:43-12. Supervisory Treatment--Pretrial Intervention.

15 a. Public policy. The purpose of N.J.S.2C:43-12 through
16 N.J.S.2C:43-22 is to effectuate a Statewide program of Pretrial
17 Intervention. It is the policy of the State of New Jersey that
18 supervisory treatment should ordinarily be limited to persons who
19 have not previously been convicted of any criminal offense under the
20 laws of New Jersey, or under any criminal law of the United States,
21 or any other state when supervisory treatment would:

22 (1) Provide applicants, on an equal basis, with opportunities to
23 avoid ordinary prosecution by receiving early rehabilitative services
24 or supervision, when such services or supervision can reasonably be
25 expected to deter future criminal behavior by an applicant, and when
26 there is apparent causal connection between the offense charged and
27 the rehabilitative or supervisory need, without which cause both the
28 alleged offense and the need to prosecute might not have occurred;
29 or

30 (2) Provide an alternative to prosecution for applicants who might
31 be harmed by the imposition of criminal sanctions as presently
32 administered, when such an alternative can be expected to serve as
33 sufficient sanction to deter criminal conduct; or

34 (3) Provide a mechanism for permitting the least burdensome
35 form of prosecution possible for defendants charged with
36 "victimless" offenses, other than defendants who were public officers
37 or employees charged with offenses that involved or touched their
38 office or employment; or

39 (4) Provide assistance to criminal calendars in order to focus
40 expenditure of criminal justice resources on matters involving
41 serious criminality and severe correctional problems; or

42 (5) Provide deterrence of future criminal or disorderly behavior
43 by an applicant in a program of supervisory treatment.

44 b. (1) Admission of an applicant into a program of supervisory
45 treatment shall be measured according to the applicant's amenability
46 to correction, responsiveness to rehabilitation and the nature of the
47 offense.

1 (2) There shall be a presumption against admission into a
2 program of supervisory treatment for:

3 (a) a defendant who was a public officer or employee whose
4 offense involved or touched upon his public office or employment;
5 and

6 (b) a defendant charged with any crime or offense involving
7 domestic violence, as defined in subsection a. of section 3 of
8 P.L.1991, c.261 (C.2C:25-19) if the defendant committed the crime
9 or offense while subject to a temporary or permanent restraining
10 order issued pursuant to the provisions of the "Prevention of
11 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.)
12 or if the crime or offense charged involved violence or the threat of
13 violence. For purposes of this subparagraph, a crime or offense
14 involves violence or the threat of violence if the victim sustains
15 serious or significant bodily injury as defined in subsection b. or d.
16 of N.J.S.2C:11-1, or the actor is armed with and uses a deadly
17 weapon or threatens by word or gesture to use a deadly weapon as
18 defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict
19 serious or significant bodily injury.

20 c. The decision and reasons therefor made by the designated
21 judges (or assignment judges), prosecutors and program directors in
22 granting or denying applications for supervisory treatment, in
23 recommending and ordering termination from the program or
24 dismissal of charges, in all cases shall be reduced to writing and
25 disclosed to the applicant.

26 d. If an applicant desires to challenge the decision of the
27 prosecutor or program director not to recommend enrollment in a
28 program of supervisory treatment the proceedings prescribed under
29 N.J.S.2C:43-14 and in accordance with the Rules of Court shall be
30 followed.

31 e. Referral. At any time prior to trial but after the filing of a
32 criminal complaint, or the filing of an accusation or the return of an
33 indictment, with the consent of the prosecutor and upon written
34 recommendation of the program director, the assignment judge or a
35 judge designated by him may postpone all further proceedings
36 against an applicant and refer said applicant to a program of
37 supervisory treatment approved by the Supreme Court. Prosecutors
38 and program directors shall consider in formulating their
39 recommendation of an applicant's participation in a supervisory
40 treatment program, among others, the following criteria:

- 41 (1) The nature of the offense;
- 42 (2) The facts of the case;
- 43 (3) The motivation and age of the defendant;
- 44 (4) The desire of the complainant or victim to forego prosecution;
- 45 (5) The existence of personal problems and character traits which
46 may be related to the applicant's crime and for which services are
47 unavailable within the criminal justice system, or which may be
48 provided more effectively through supervisory treatment and the

- 1 probability that the causes of criminal behavior can be controlled by
2 proper treatment;
- 3 (6) The likelihood that the applicant's crime is related to a
4 condition or situation that would be conducive to change through his
5 participation in supervisory treatment;
- 6 (7) The needs and interests of the victim and society;
- 7 (8) The extent to which the applicant's crime constitutes part of a
8 continuing pattern of anti-social behavior;
- 9 (9) The applicant's record of criminal and penal violations and the
10 extent to which he may present a substantial danger to others;
- 11 (10) Whether or not the crime is of an assaultive or violent nature,
12 whether in the criminal act itself or in the possible injurious
13 consequences of such behavior;
- 14 (11) Consideration of whether or not prosecution would
15 exacerbate the social problem that led to the applicant's criminal act;
- 16 (12) The history of the use of physical violence toward others;
- 17 (13) Any involvement of the applicant with organized crime;
- 18 (14) Whether or not the crime is of such a nature that the value of
19 supervisory treatment would be outweighed by the public need for
20 prosecution;
- 21 (15) Whether or not the applicant's involvement with other people
22 in the crime charged or in other crime is such that the interest of the
23 State would be best served by processing his case through traditional
24 criminal justice system procedures;
- 25 (16) Whether or not the applicant's participation in pretrial
26 intervention will adversely affect the prosecution of codefendants;
27 and
- 28 (17) Whether or not the harm done to society by abandoning
29 criminal prosecution would outweigh the benefits to society from
30 channeling an offender into a supervisory treatment program.
- 31 The prosecutor and the court, in formulating their
32 recommendations or decisions regarding an applicant's participation
33 in a supervisory treatment program, shall give due consideration to
34 the victim's position on whether the defendant should be admitted.
- 35 f. Review of Supervisory Treatment Applications; Procedure
36 Upon Denial. Each applicant for supervisory treatment shall be
37 entitled to full and fair consideration of his application. If an
38 application is denied, the program director or the prosecutor shall
39 precisely state his findings and conclusion which shall include the
40 facts upon which the application is based and the reasons offered for
41 the denial. If the applicant desires to challenge the decision of a
42 program director not to recommend, or of a prosecutor not to consent
43 to, enrollment into a supervisory treatment program, a motion shall
44 be filed before the designated judge (or assignment judge) authorized
45 pursuant to the Rules of Court to enter orders.
- 46 g. Limitations. (1) Supervisory treatment may occur only once
47 with respect to any defendant and any person who has previously
48 received supervisory treatment under section 27 of P.L.1970, c.226

1 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1, a
2 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-
3 13.1 et al.), or was granted a dismissal due to successful participation
4 in the Veterans Diversion Program pursuant to P.L.2017, c.42
5 (C.2C:43-23 et al.), or the Mental Illness Diversion Program pursuant
6 to P.L. , c. (C.) (pending before the Legislature as this bill),
7 shall not be eligible for supervisory treatment under this section.

8 (2) Except as otherwise provided in paragraph (3) of this
9 subsection, supervisory treatment, as provided herein, shall be
10 available to a defendant irrespective of whether the defendant
11 contests his guilt of the charge or charges against him.

12 (3) Admission into supervisory treatment shall be available to the
13 following defendants only upon entering a plea of guilty: (a) a
14 defendant charged with a first or second degree crime; (b) a
15 defendant charged with any crime if the defendant had previously
16 been convicted of a first or second degree crime; (c) a defendant
17 charged with a third or fourth degree crime involving domestic
18 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
19 (C.2C:25-19); or (d) a defendant charged with any disorderly persons
20 or petty disorderly persons offense involving domestic violence, as
21 defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19)
22 if the defendant committed the offense while subject to a temporary
23 or permanent restraining order issued pursuant to the provisions of
24 the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
25 (C.2C:25-17 et al.). For any such defendant, following the plea of
26 guilty the plea shall be held in an inactive status pending termination
27 of supervisory treatment pursuant to subsection d. or e. of
28 N.J.S.2C:43-13. Upon successful completion of the program of
29 supervisory treatment the charges shall be dismissed.

30 h. Termination. Termination of supervisory treatment under this
31 section shall be immediately reported to the assignment judge of the
32 county who shall forward such information to the Administrative
33 Director of the Courts.

34 i. Appointment of Program Directors; Authorized Referrals.
35 Programs of supervisory treatment and appointment of the program
36 directors require approval by the Supreme Court with the consent of
37 the assignment judge and prosecutor. Referrals of participants from
38 supervisory treatment programs may be to any public or private
39 office or agency, including but not limited to, programs within the
40 probation service of the court, offering counseling or any other social
41 service likely to aid in the rehabilitation of the participant and to deter
42 the commission of other offenses.

43 j. Health Care Professional Licensing Board Notification. The
44 program director shall promptly notify the State Board of Medical
45 Examiners when a State licensed physician or podiatrist has been
46 enrolled in a supervisory treatment program after he has been charged
47 with an offense involving drugs or alcohol.

1 The Attorney General shall develop guidelines to ensure the
2 uniform exercise of discretion by prosecutors in formulating their
3 recommendations on participation in a supervisory treatment
4 program by an applicant charged with a crime or offense involving
5 domestic violence, as defined in subsection a. of section 3 of
6 P.L.1991, c.261 (C.2C:25-19).
7 (cf: P.L.2017, c.42, s.10)

8
9 11. (New section) a. The Department of Human Services shall
10 provide county prosecutors with a registry of volunteer mentors to
11 facilitate the assignment of mentors to eligible persons who have
12 been admitted by the prosecutor into the Mental Health Diversion
13 Program established pursuant to P.L. , c. (C.) (pending before
14 the Legislature as this bill). A copy of the registry shall also be
15 provided to the Administrative Director of the Courts to facilitate the
16 assignment of mentors to eligible persons who have been sentenced
17 to a term of probation supervision. The registry of mentors shall be
18 periodically updated by the Department of Human Services.

19 b. The Department of Human Services shall also prepare and
20 disseminate a directory of Mental Illness Diversion Resource
21 Program entities currently available within New Jersey.

22
23 12. (New section) The Attorney General, in cooperation with the
24 Administrative Director of the Courts, shall prepare an annual report
25 to the Governor and, pursuant to section 2 of P.L.1991, c.164
26 (C.52:14-19.1), to the Legislature regarding the Mental Health
27 Diversion Program and other statutory and county-based law
28 enforcement programs used to divert eligible persons from the
29 criminal justice system. The report shall assist policymakers in
30 determining whether these diversion programs should be modified or
31 expanded to achieve the goals of recovery for eligible persons and
32 public safety. The report shall include statistics regarding the number
33 of arrests where the person indicates mental illness status; the number
34 of eligible persons accepted into the Mental Illness Diversion
35 Program or other diversion programs; the number of eligible persons
36 who successfully completed these programs; the number of eligible
37 persons who were found guilty at court proceedings; the number of
38 eligible persons who, subsequent to admission in the Mental Health
39 Diversion Program or other diversion programs, were sentenced to a
40 term of incarceration or probation; and other relevant information
41 and recommendations at the discretion of the Attorney General.

42
43 13. (New section) The Attorney General and the Administrative
44 Director of the Courts shall publish on their respective websites
45 information regarding diversion programs and government-based
46 resources available to assist justice-involved eligible persons.

1 counseling, treatment and case management for mental health issues
2 and other co-occurring health disorders to or coordinating these
3 services through the appropriate federal, State and local government
4 agencies that offer assistance.

5 A Mental Illness Diversion Resource Entity or an agency which
6 accepts the referral of an eligible person would be required to provide
7 law enforcement officials with periodic status reports regarding the
8 eligible person's participation and recovery progress, provided the
9 person consents to the release of such information.

10 Intake procedures. Under the bill, when a person is taken into
11 custody for an eligible offense, if the person exhibits behavior that
12 may be related to a mental illness, the law enforcement officer may
13 continue processing the individual with a preference for diversion to
14 a Mental Illness Diversion Resource Entity or other community-
15 based mental health services in lieu of filing a criminal complaint. If
16 the alleged offense is not an eligible offense or the person is resistant
17 to diversion, the officer may file a criminal complaint. Under the bill,
18 a law enforcement officer cannot divert an eligible person prior to the
19 filing of a criminal complaint if the crime or offense involves
20 restitution for damages, if the crime or offense involves violence or
21 the threat of violence, if the crime or offense involves the violation
22 of any restraining order or protective order of another person, or
23 where a victim of the offense objects to the diversion. If the person
24 is not diverted, the law enforcement officer may proceed with the
25 filing of a criminal complaint and indicate the person's status as an
26 eligible person.

27 At any time after the filing of a criminal complaint, but prior to
28 the disposition of such complaint, an eligible person, the assigned
29 public defender, or the individual's own legal counsel may make an
30 application to the prosecutor to participate in the Mental Illness
31 Diversion Program. The prosecutor may approve or conditionally
32 approve an eligible person's admission into the Mental Illness
33 Diversion Program. The prosecutor would have the sole discretion to
34 determine if an eligible person qualifies for and is admitted to the
35 Mental Illness Diversion Program after consideration of the nature of
36 the eligible offense, the causative relationship between the person's
37 diagnosed or apparent mental illness and the commission of the
38 offense, the amenability of the person to participation in the services
39 of the program, the availability of case management and mental
40 health services, the desires of any victim, the person's history of prior
41 convictions and the probability that diversion will promote the
42 person's recovery, prevent future criminal behavior and protect
43 public safety. The prosecutor would consult with the victim prior to
44 approving an admission into the program. The prosecutor's approval
45 of an application would not be conditioned on an admission or guilty
46 plea.

47 Disqualification. The bill prohibits admission into the Mental
48 Illness Diversion Program: (1) if the person has criminal charges

1 pending for a crime of the second degree or higher; (2) if the crime
2 or offense involved violence or the threat of violence; or (3) if the
3 person was previously convicted of a violent crime enumerated in
4 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) such as
5 murder, vehicular homicide, kidnapping, aggravated assault, sexual
6 assault, robbery, carjacking, or firearms trafficking. In addition, the
7 bill provides a presumption against admission into the Mental Illness
8 Diversion Program if the person is charged with any crime or offense
9 involving domestic violence or if the person committed the crime or
10 offense while subject to a temporary or permanent restraining order.

11 Program requirements. To qualify for the Mental Illness Diversion
12 Program, an eligible person shall agree in writing to certain terms and
13 conditions. The prosecutor would determine the duration of the
14 person's participation in the program, except that the participation in
15 the program could not exceed two years from the date of the diversion
16 agreement.

17 The bill requires the eligible person to be responsible for
18 coordinating with the Mental Illness Diversion Resource entities to
19 ensure that the prosecutor receives periodic reports on the person's
20 participation, cooperation, and recovery progress. The person would
21 be required to contact the Mental Illness Diversion Resource Entity
22 or other case management and mental health service provider within
23 seven days of the date of the diversion agreement.

24 The court would review the status of the deferred prosecution no
25 later than six months from the date on which the court approved the
26 prosecutor's initial request for a postponement of the proceedings,
27 and, thereafter, every six months from the most recent review, to
28 consider whether the postponement of court proceedings should
29 continue. If, after a minimum of six months from the date of the
30 diversion agreement, the prosecutor is satisfied that the eligible
31 person has complied with the diversion agreement, has not been the
32 subject of any subsequent criminal charges, and continues to make
33 progress with case management services and mental health recovery,
34 the prosecutor may move for the dismissal of the criminal charge and
35 terminate the eligible person's participation. If, at any time, the
36 prosecutor finds that the eligible person has failed to comply with the
37 diversion agreement, the prosecutor may notify the court that the
38 State is prepared to proceed with the prosecution. The bill provides
39 that no fee would be assessed to an eligible person for participation
40 in the Mental Illness Diversion Program. An eligible person may be
41 admitted to the Mental Illness Diversion Program one or more times
42 at the discretion of the prosecutor.

43 The dismissal of charges based on successful participation in the
44 Mental Illness Diversion Program would not be deemed: (1) a
45 conviction for purposes of disqualifications or disabilities but would
46 be reported to the State Bureau of Identification criminal history
47 record information files for purposes of determining future eligibility
48 or exclusion from other diversion programs; or (2) a conviction for

1 the purpose of determining whether a second or subsequent offense
2 has occurred under any law of this State.

3 When considering the diversion of an eligible person from the
4 criminal justice system, a prosecutor may use the Mental Illness
5 Diversion Program established under the bill, any other diversion
6 mechanism authorized by law, or a county-based law enforcement
7 diversion program after considering each program's restrictions, the
8 relief available to the eligible person, and the safety of any victim
9 and the public.

10 Training. The bill would require the Administrative Director of
11 the Courts to develop a differentiated mental health supervision case
12 type within the Probation Division of the Superior Court for eligible
13 persons who are sentenced to a term of probation supervision. To the
14 extent that sufficient resources are available, probation officers
15 assigned to the specialized caseload should be experienced in
16 behavioral health and evidence-based therapeutic interventions. The
17 probation officers would coordinate with mentors as well as federal
18 and State case management and health care providers to promote
19 their recovery, compliance with the terms of probation.

20 Amendatory sections. The bill amends N.J.S.2C:52-6 to allow for
21 expungement of all records and information relating to the arrest or
22 charge dismissed based on an eligible person's successful
23 participation in the Mental Illness Diversion Program. In addition,
24 the bill amends the PTI statute (N.J.S.2C:43-12), conditional
25 discharge statute (N.J.S.2C:36A-1) and the conditional dismissal
26 statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross
27 reference the Mental Illness Diversion Program established by the
28 bill. Under the bill, successful completion of the Mental Illness
29 Diversion Program bars the person's eligibility for PTI, conditional
30 dismissal and conditional discharge programs; however an eligible
31 person may seek subsequent admission to the Mental Illness
32 Diversion Program and may be admitted at the sole discretion of the
33 prosecutor.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 524

STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 524.

This Senate Committee Substitute would facilitate the expansion and growth of programming for individuals with mental illness involved in the criminal justice system. The committee substitute establishes a Mental Health Diversion Program (“MHDP”) in three judicial vicinages: one each in the northern, central and southern regions of the State, to divert eligible persons with serious mental illness who have committed certain offenses away from the criminal justice system and into appropriate case management and mental health services.

MHDP Objectives

The objectives of the program include: (1) reducing incarceration rates for the appropriate target population through effective diversion away from the criminal justice system; (2) increasing quality of life for the target population through efficient linkage to available social entitlements and community based mental health treatment providers, in conjunction with supportive monitoring to ensure compliance; (3) increasing community awareness and understanding through cross training of law enforcement and mental health communities; and (4) reducing recidivism and re-hospitalization rates for the target population leading to an increase in public safety.

Definitions

Key terms used in the committee substitute include the following: “Eligible offense” means a crime of the third or fourth degree that does not involve violence. A crime of the third or fourth degree involving violence or the threat of violence shall be considered by the prosecutor on a case by case basis.

An “eligible person” is one who is (1) mentally competent as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an eligible offense and is not otherwise disqualified by the provisions of this act; and (3) has been diagnosed with a mental illness, either previously or through a mental health evaluation conducted through the program, and there is a nexus between the person’s mental illness and the

commission of the alleged crime as determined by a certified mental health professional.

The “Mental Health Diversion Program” (“MHDP”) is a criminal diversionary program designed to divert eligible persons away from the criminal justice system and into appropriate case management and mental health services following interaction with law enforcement where the person is alleged to have committed an offense.

A “Mental Health Diversion Team” (“MHDT”) is a collaboration of professionals led by a Superior Court judge and comprised of Assistant Prosecutors, designated Public Defenders, a certified mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor should be included as a member of the diversion team.

A “clinical partner” is an entity designated to provide or coordinate case management or mental health services, or both, to eligible persons in conjunction with participation in a MHDP, which services may include screening, counseling, treatment, medication management, and case management for mental health issues and other co-occurring health disorders.

“Mental illness” means a serious mental disorder, other than a personality disorder, classified within the current version of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, psychotic disorder, bipolar disorder, major depressive disorder, post-traumatic stress disorder (PTSD), and co-occurring substance use disorders.

Responsibilities of the Attorney General

Under the committee substitute, within one year of the bill’s effective date, the Attorney General, in consultation with the Administrative Office of the Courts is required to establish a MHDP in one vicinage in each of the northern, central, and southern regions of the State, to accept eligible persons from within the vicinage. Similar programs in operation at that time may be deemed to comply with the requirements of this committee substitute and may be selected for inclusion in the MHDP. One regional MHDT is required to be designated for each region.

Referral to MHDP and the Application Process

A prosecutor may refer a person for diversion to the MHDP at any time after the filing of a criminal complaint, but prior to the disposition of the complaint. In addition, an eligible person, or their defense counsel, may make an application to the prosecutor for diversion within the same time frames.

Involvement in the MHDP entails, among other criteria, an application process, a legal determination of eligibility, prosecutorial discretion, a clinical determination, any additional terms of the specific

program, and a determination of length of stay. Conditions for the dismissal of charges are enumerated.

An eligible person who applies for admission to the MHDP is required to agree to postpone their speedy trial rights.

Legal Determination

A legal determination of eligibility is made by the prosecutor within a “reasonable time frame,” and no more than 30 days of “excludable time,” reserved for competency examination, for persons who are detained. The legal determination is required to be made following consideration of the following factors: the nature of the eligible offense; the causative relationship between the person’s diagnosed or apparent mental illness and the commission of the offense as determined by a mental health professional; the amenability of the person to participation in the services of the program; the availability of case management and mental health services; the desires of any victim; the person’s history of prior convictions; any accompanying violations of probation; and the probability that diversion will promote the person’s recovery, prevent future criminal behavior, and protect public safety.

Ineligibility and Case Specific Determinations

Under the committee substitute, persons who commit offenses that include violence or the threat of violence are presumptively ineligible for participation in the MHDP, unless the prosecutor determines, on a case-by-case basis, that mental health treatment will benefit the eligible person, and no increased danger to the community will result from the person being admitted into the program.

The committee substitute also includes in the case-by-case determination, persons who previously committed violent crimes enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), which are various serious crimes requiring the mandatory service of 85% of the sentence imposed. Specifically, the bill considers a crime or offense under that section to be one involving violence or the threat of violence if the victim sustains bodily injury as defined in N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in N.J.S.2C:11-1, or threatens to inflict bodily injury.

Offenses involving the unlawful possession of weapons are presumptively ineligible. However, each application may be considered by the prosecutor on a case-by-case basis subject to prosecutorial discretion. Also, a person charged with a sexual offense that is subject to Megan’s Law requirements, and a person currently charged with an arson offense are ineligible unless the prosecutor determines on a case-by-case basis that an exception is warranted.

A prosecutor is required to consult with victims of an eligible offense prior to approving an eligible person’s admission into the

MHDP, and give due consideration to the victims' position. The prosecutor has the discretion to determine whether to approve, disapprove, or conditionally approve a person for diversion into the MHDP and the determination is not subject to review by any court.

Clinical Determination

Following a legal determination by a prosecutor, a clinical determination of eligibility is required to be made by a certified mental health professional who holds a current, valid social worker's license. The certified mental health professional is required to conduct an interview with an applicant to determine clinical appropriateness and may also conduct interviews with family members, where the applicant has completed a release authorizing such communications.

The certified mental health professionals should have training or certification in co-occurring diagnoses, treatment, and services. The certified mental health professional is also required to assess whether there is a nexus between the person's mental illness and the alleged crime. The clinical interview may be done in-person or remotely. If conducted remotely, the interview must be conducted through technology that enables the interviewer and applicant to see one another.

The certified mental health professional is required to submit a psychosocial evaluation to aid the prosecutorial determination of the applicant's eligibility for the MHDP. Psychosocial reports should be returned to the prosecutor's office and applicant's legal counsel simultaneously within a reasonable period of time following clinical interviews so as to not prejudice the prosecutor's office or the defendant's interests. The evaluation is prohibited from being shared outside of the MHDP evaluation process within the prosecutor's office. Defense counsel's use of the psychosocial evaluation is limited to the MHDP application process, and cannot be used in any other proceeding. The psychosocial evaluation is also required to be provided to the judge presiding over the MHDP diversion calendar prior to the issuance of any orders of acceptance or guilty pleas.

Additional Requirements for Program Participation

In addition to the terms set forth in the application, an eligible person is required to agree in writing to terms related to: participation in case management and mental health services through the MHDP; provide, through defense counsel, mental health records; and cooperate with any recommended course of treatment, including medication and counseling; authorize the release of periodic status reports to the prosecutor and defense counsel regarding participation, cooperation, and recovery progress with case management and mental health services; case management services related to housing, education, and employment services; refraining from the use of alcohol, recreational

drugs, or illegal drugs; refraining from the possession or use of firearms or other weapons; refraining from further criminal activity; refraining from any contact with a victim of the offense unless otherwise permitted; the tolling of time for the purposes of the person's right to a speedy trial while the person is participating in the program; advising the prosecutor of any change in the person's residential address or any change in the provider of case management and mental health services; and any other terms and conditions related to the person's recovery and public safety deemed appropriate by the prosecutor.

Duration of Participation

The prosecutor determines the duration of the person's participation in the MHDP, whether their acceptance into the MHDP requires a guilty plea, or whether a person may be accepted without having to enter a plea of guilty. The length of the person's participation in the program is not to exceed two years from the date of the Order of Acceptance issued by the court.

Consequences for Failure to Comply

Under the committee substitute, if the prosecutor finds that the person has willfully failed to comply with any term or condition of the MHDP agreement, the prosecutor is required to file a notice with the court and defense counsel alleging willful failure to comply with the conditions of the MHDP. The court is required to afford the person notice and an opportunity to be heard on the issue of the defendant's continued participation in the MHDP. All actions taken to terminate an eligible person's participation in a MHDP is required to be carried out in full compliance with due process laws and the Rules Governing the Courts of the State of New Jersey.

Fees

No fee is to be assessed for applying to, participating in, or receiving treatment through the MHDP. Treatment costs are required to be covered by the Department of Mental Health and Addiction Services.

Multiple Admissions

An eligible person may be admitted to the MHDP one or more times at the discretion of the prosecutor, subject to the certain restrictions enumerated in the bill as heretofore described, if diversion promotes the person's recovery, prevents the commission of future offenses, and protects the safety of the public.

Dismissal of Charges

The dismissal of charges based on successful participation in the MHDP would not be deemed: (1) a conviction for purposes of

disqualifications or disabilities but would be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other diversion programs; or (2) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.

Other Programs

When considering the diversion of an eligible person from the criminal justice system, a prosecutor may use the MHDP established under the committee substitute, any other diversion mechanism authorized by law, or a county-based law enforcement diversion program after considering each program's restrictions, the relief available to the eligible person, and the safety of any victim and the public.

Training

The committee substitute would require the Administrative Director of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would also coordinate with federal and State case management and mental health care providers to promote recovery and compliance with the terms of probation.

Amendatory Sections

The committee substitute amends N.J.S.2C:52-6 to allow for expungement of all records and information relating to the arrest or charge dismissed based on an eligible person's successful participation in the MHDP. In addition, the committee substitute amends the pretrial intervention (PTI) statute (N.J.S.2C:43-12), conditional discharge statute (N.J.S.2C:36A-1) and the conditional dismissal statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross reference the MHDP established by the committee substitute. Under the committee substitute, successful completion of the MHDP bars the person's subsequent eligibility for the PTI, conditional dismissal and conditional discharge programs. However, an eligible person who participated in any of those diversion programs may seek subsequent admission to the MHDP and may be admitted at the sole discretion of the prosecutor.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 524**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 20, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 524 (SCS), with committee amendments.

As amended, this Senate Committee Substitute would facilitate the expansion and growth of programming for individuals with mental disorder, who due to their mental health issues, engage in conduct that results in involvement in the criminal justice system. The committee substitute establishes a Mental Health Diversion Program (“MHDP”) to divert eligible persons with serious mental disorder who have committed certain offenses away from the criminal justice system and into appropriate case management and mental health services.

MHDP Objectives

The objectives of the program include: (1) reducing incarceration rates for the appropriate target population through effective diversion away from the criminal justice system; (2) increasing quality of life for the target population through efficient linkage to available social entitlements and community based mental health treatment providers, in conjunction with supportive monitoring to ensure compliance; (3) increasing community awareness and understanding through cross training of law enforcement and mental health communities; and (4) reducing recidivism and re-hospitalization rates for the target population leading to an increase in public safety.

This committee substitute initially establishes the MHDP in three vicinages of the State, with the intention to eventually expand the MHDP State-wide to all vicinages.

Definitions

Key terms used in the committee substitute include the following:

An “eligible offense” is a crime of the third or fourth degree that does not involve violence or the threat of violence. A crime or offense does not involve violence or threat of violence if none of the following apply: the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by word or

gesture to use a deadly weapon or threatens to inflict bodily injury. “Eligible offense” shall not include a crime of the first degree or a presumptively ineligible offense.

An “eligible person” is one who is (1) mentally competent as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an eligible offense, or allegedly committed a presumptively ineligible offense but is approved for participation by the prosecutor, and is not otherwise disqualified by the provisions of this act; and (3) has been diagnosed with a mental disorder, either previously or through a mental health evaluation conducted through the program, and there is a nexus between the person’s mental disorder and the commission of the alleged crime as determined by a licensed mental health professional.

The “Mental Health Diversion Program” (“MHDP”) is a criminal diversionary program designed to divert eligible persons away from the criminal justice system and into appropriate case management and mental health services following interaction with law enforcement and where there is a nexus between the commission of the alleged offense and the eligible person’s mental disorder.

A “Mental Health Diversion Team” (“MHDT”) is a collaboration of professionals led by a Superior Court judge and comprised of Assistant Prosecutors, designated Public Defenders, a licensed mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor should be included as a member of the diversion team.

A “Mental disorder” is a serious mental disorder, other than a personality disorder, classified within the current version of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, psychotic disorder, bipolar disorder, major depressive disorder, post-traumatic stress disorder (PTSD), and co-occurring substance use disorders.

A “presumptively ineligible offense” is a crime of second degree, a crime of the third or fourth degree that involves violence or the threat of violence, an offense enumerated in subsection a., b., c., or e. of N.J.S.2C:39-5, sexual offenses subject to Megan’s Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of Title 2C of the New Jersey Statutes or an arson offense as defined in chapter 17 of Title 2C of the New Jersey Statutes. A crime or offense involves violence or threat of violence if the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by word or gesture to use a deadly weapon or threatens to inflict bodily injury. A crime of the first degree shall be ineligible under all circumstances.

Responsibilities of the Attorney General

Under the committee substitute, within one year of the bill's effective date, the Attorney General, in consultation with the Administrative Office of the Courts is required to establish a MHDP in one vicinage in each of the northern, central, and southern regions of the State, to accept eligible persons from within the vicinage. Similar programs in operation at that time may be deemed to comply with the requirements of this committee substitute and may be selected for inclusion in the MHDP. One regional MHDT is required to be designated for each region.

Responsibilities of the MHDP Judge

The program leader in a selected vicinage is the judge of the Superior Court who presides over all participant appearances, regularly held MHDT meetings, and all related court proceedings. The judge shall meet with each participant individually along with all members of the MHDT in a location, such as the court well, which is suitable to facilitate private conversations, to review and discuss the participant's progress, problems, and goal achievements.

Court proceedings include but are not limited to Orders of Acceptance, guilty pleas, sentencings, sanctions, recognitions, notice of terminations, termination hearings, graduations, withdrawals, and violations of probation.

Three months prior to any participant moving on, the judge shall review a formal goal attainment log with the participant and MHDT members. At the conclusion of the court supervision term, a "moving on" or graduation ceremony shall be held where an individual, their family or friends, and other participants recognize the achievement of completion.

Referral to MHDP and the Application Process

A prosecutor may refer a person for diversion to the MHDP at any time after the filing of a criminal complaint, but prior to the disposition of the complaint. In addition, an eligible person, or their defense counsel, may make an application to the prosecutor for diversion within the same time frames.

Involvement in the MHDP entails, among other criteria, an application process, a legal determination of eligibility, prosecutorial discretion, a clinical determination, any additional terms of the specific program, and a determination of length of stay. Conditions for the dismissal of charges are enumerated.

An eligible person who applies for admission to the MHDP is required to agree to postpone their speedy trial rights.

Legal Determination

A legal determination of eligibility is made by the prosecutor within a "reasonable time frame," and no more than 30 days of

“excludable time,” reserved for competency examination, for persons who are detained. The legal determination is required to be made following consideration of the following factors: the nature of the eligible offense; the causative relationship between the person’s diagnosed or apparent mental disorder and the commission of the offense as determined by a mental health professional; the amenability of the person to participation in the services of the program; the availability of case management and mental health services; the desires of any victim; the person’s history of prior convictions; any accompanying violations of probation; and the probability that diversion will promote the person’s recovery, prevent future criminal behavior, and protect public safety.

Presumptive Ineligibility and Case Specific Determinations

Under the committee substitute, persons who commit offenses that include violence or the threat of violence are presumptively ineligible for participation in the MHDP, unless the prosecutor determines, on a case-by-case basis, that mental health treatment will benefit the eligible person, and no increased danger to the community will result from the person being admitted into the program.

The committee substitute also includes in the case-by-case determination, persons who previously committed violent crimes enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), which are various serious crimes requiring the mandatory service of 85% of the sentence imposed. Specifically, the bill considers a crime or offense under that section to be one involving violence or the threat of violence if the victim sustains bodily injury as defined in N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in N.J.S.2C:11-1, or threatens to inflict bodily injury.

Offenses involving the unlawful possession of weapons are presumptively ineligible. However, each application may be considered by the prosecutor on a case-by-case basis subject to prosecutorial discretion. Also, a person charged with a sexual offense that is subject to Megan’s Law requirements, and a person currently charged with an arson offense are ineligible unless the prosecutor determines on a case-by-case basis that an exception is warranted.

A prosecutor is required to consult with victims of an eligible offense prior to approving an eligible person’s admission into the MHDP, and give due consideration to the victims’ position. The prosecutor has the discretion to determine whether to approve, disapprove, or conditionally approve a person for diversion into the MHDP and the determination is not subject to review by any court.

Clinical Determination

Following a legal determination by a prosecutor, a clinical determination of eligibility is required to be made by a licensed

mental health professional who holds a current, valid social worker's license. The licensed mental health professional is required to conduct an interview with an applicant to determine clinical appropriateness and may also conduct interviews with family members, where the applicant has completed a release authorizing such communications.

The licensed mental health professionals should have training or certification in co-occurring diagnoses, treatment, and services. The licensed mental health professional is also required to assess whether there is a nexus between the person's mental disorder and the alleged crime. The clinical interview may be done in-person or remotely. If conducted remotely, the interview must be conducted through technology that enables the interviewer and applicant to see one another.

The licensed mental health professional is required to submit a psychosocial evaluation to aid the prosecutorial determination of the applicant's eligibility for the MHDP. Psychosocial reports should be returned to the prosecutor's office and applicant's legal counsel simultaneously within a reasonable period of time following clinical interviews so as to not prejudice the prosecutor's office or the defendant's interests. The evaluation is prohibited from being shared outside of the MHDP evaluation process within the prosecutor's office. Defense counsel's use of the psychosocial evaluation is limited to the MHDP application process, and cannot be used in any other proceeding. The psychosocial evaluation is also required to be provided to the judge presiding over the MHDP diversion calendar prior to the issuance of any orders of acceptance or guilty pleas.

Additional Requirements for Program Participation

In addition to the terms set forth in the application, an eligible person is required to agree in writing to terms related to: participation in case management and mental health services through the MHDP; provide, through defense counsel, mental health records; and cooperate with any recommended course of treatment, including medication and counseling; authorize the release of periodic status reports to the prosecutor and defense counsel regarding participation, cooperation, and recovery progress with case management and mental health services; case management services related to housing, education, and employment services; refraining from the use of alcohol, recreational drugs, or illegal drugs; refraining from the possession or use of firearms or other weapons; refraining from further criminal activity; refraining from any contact with a victim of the offense unless otherwise permitted; the tolling of time for the purposes of the person's right to a speedy trial while the person is participating in the program; advising the prosecutor of any change in the person's residential address or any change in the provider of case management and mental health services; and any other terms and conditions related

to the person's recovery and public safety deemed appropriate by the prosecutor.

Duration of Participation

The prosecutor determines the duration of the person's participation in the MHDP, whether their acceptance into the MHDP requires a guilty plea, or whether a person may be accepted without having to enter a plea of guilty. The length of the person's participation in the program is not to exceed two years from the date of the Order of Acceptance issued by the court unless the prosecutor requests that the person's participation in the program be extended based on the person's treatment needs and progress, and the court grants the request for good cause.

Consequences for Failure to Comply

Under the committee substitute, if the prosecutor finds that the person has willfully failed to comply with any term or condition of the MHDP agreement, the prosecutor is required to file a notice with the court and defense counsel alleging willful failure to comply with the conditions of the MHDP. The court is required to afford the person notice and an opportunity to be heard on the issue of the defendant's continued participation in the MHDP. All actions taken to terminate an eligible person's participation in a MHDP is required to be carried out in full compliance with due process laws and the Rules Governing the Courts of the State of New Jersey.

Fees

No fee is to be assessed for applying to, participating in, or receiving treatment through the MHDP. MHDP participants shall not be required to pay for treatment and services as a condition of participating in the MHDP. The mental health diversion team is required to assist program participants in applying for all federal and State benefits that may cover or offset the cost of necessary treatment and services, including medication. The Department of Human Services is also required to assist mental health diversion teams in identifying available resources, programs, and benefits.

Multiple Admissions

An eligible person may be admitted to the MHDP one or more times at the discretion of the prosecutor, subject to the certain restrictions enumerated in the bill as heretofore described, if diversion promotes the person's recovery, prevents the commission of future offenses, and protects the safety of the public.

Dismissal of Charges

The dismissal of charges based on successful participation in the MHDP would not be deemed: (1) a conviction for purposes of

disqualifications or disabilities but would be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other diversion programs; or (2) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.

Other Programs

When considering the diversion of an eligible person from the criminal justice system, a prosecutor may use the MHDP established under the committee substitute, any other diversion mechanism authorized by law, or a county-based law enforcement diversion program after considering each program's restrictions, the relief available to the eligible person, and the safety of any victim and the public.

Training

The committee substitute would require the Administrative Director of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would also coordinate with federal and State case management and mental health care providers to promote recovery and compliance with the terms of probation.

Amendatory Sections

The committee substitute amends N.J.S.2C:52-6 to allow for expungement of all records and information relating to the arrest or charge dismissed based on an eligible person's successful participation in the MHDP. In addition, the committee substitute amends the pretrial intervention (PTI) statute (N.J.S.2C:43-12), conditional discharge statute (N.J.S.2C:36A-1) and the conditional dismissal statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross reference the MHDP established by the committee substitute. Under the committee substitute, successful completion of the MHDP bars the person's subsequent eligibility for the PTI, conditional dismissal and conditional discharge programs. However, an eligible person who participated in any of those diversion programs may seek subsequent admission to the MHDP and may be admitted at the sole discretion of the prosecutor.

"Mental Health Diversion Program Support Fund"

The committee substitute establishes a special, non-lapsing fund to be known as the "Mental Health Diversion Program Support Fund."

The fund shall be a depository for amounts made available for the purpose of the fund, and dedicated to the purpose of defraying the costs and expenses associated with the MHDP.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- Include a definition of “presumptively ineligible offense” and amend the definition of “eligible offense” and “eligible person”;
- Provide that crimes of the first degree are ineligible from program eligibility under all circumstances;
- Revise the definition of the Mental Health Diversion Program;
- Remove references to “mental illness” to replace it with “mental disorder;”
- Provide that the Mental Health Diversion Team consist of a license mental health professional, instead of a certified mental health professional;
- Provide that the duration of the Mental Health Diversion Program can exceed two years based on the person’s treatment needs and progress upon a request by the prosecutor and order of the court;
- Clarify the role of judge in in Mental Health Diversion Program;
- Remove the requirement that the Division of Mental Health and Addiction Services be the sole source of funding for treatment and services;
- Provide that the mental health diversion teams and the Department of Human is required to assist program participants in applying for all federal and State benefits and in identifying available resources, programs, and benefits; and
- Establish a special, non-lapsing fund to be known as the “Mental Health Diversion Program Support Fund.”

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that this bill will result in indeterminate increases in State expenditures. In response to an OLS request for fiscal information, the Judiciary noted that setting up a Mental Health Diversion Program in three judicial vicinages would cost approximately \$4 million the first year and approximately \$3 million for the following two years. Additionally, the OLS notes that there will be an indeterminate increase in expenditures for the Department of Law and Public Safety; the Department of Human Services; the Office of the Public Defender; and county prosecutor’s offices. A Statewide rollout would add to the costs. The OLS notes that there may be State cost savings in the short-term from diverting individuals from incarceration to mental health services programs, and from reduced recidivism in the long-term.

LEGISLATIVE FISCAL ESTIMATE
 [First Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 524
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 29, 2023

SUMMARY

- Synopsis:** Creates Mental Health Diversion Program to divert eligible persons away from criminal justice system and into appropriate case management and mental health services.
- Type of Impact:** Annual State expenditure increase.
- Agencies Affected:** The Judiciary; Department of Human Services; Department of Law and Public Safety; Office of the Public Defender; county prosecutor’s offices.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026 & After</u>
Administrative Office of the Courts Cost Increase	\$4.1 million	\$3.1 million	At least \$3.2 million
Other State Entities - Administrative and Operational Costs	Indeterminate	Indeterminate	Indeterminate

- The Office of Legislative Services (OLS) determines that this bill would result in an annual increase in State expenditures to the Judiciary and several State agencies. In response to an OLS request for fiscal information, the Judiciary noted that its costs to establish and operate a Mental Health Diversion Program in three judicial vicinages in FY 2024 would be \$4.1 million, which includes start up costs, \$3.1 million in FY 2025, and \$3.2 million in FY 2026.
- The Department of Law and Public Safety, the Department of Human Services, the Office of the Public Defender, and county prosecutor’s offices will each incur some degree of administrative and operational costs under the diversion program. These costs are not currently discernable and can only be known once the program is being implemented and becomes operational.



- No later than two years following its establishment, the program may be expanded to additional vicinages, subject to the availability of funding. The annual State expenditure increase following the second year of the program will depend on the number of vicinages into which the program is expanded.
- The OLS notes that annual State costs to the Judiciary to operate the program are approximately \$1 million per vicinage and that additional State costs will accrue to various State agencies if the program is expanded to additional vicinages.

BILL DESCRIPTION

This bill establishes a Mental Health Diversion Program to divert eligible persons with serious mental disorders who have committed certain offenses away from the criminal justice system and into appropriate managed mental health services. This bill initially establishes the diversion program in three vicinages of the State, with the intention to expand the program to all vicinages in the State eventually.

Within one year of the bill's effective date, the Attorney General, in consultation with the Administrative Office of the Courts, is required to establish a diversion program in one vicinage in each of the northern, central, and southern regions of the State that will accept eligible persons from within the vicinage. Similar programs in operation at that time may be deemed to comply with the requirements of this bill and may be selected for inclusion in this diversion program. One regional mental health diversion team is required to be designated for each region.

The mental health diversion team is a collaboration of professionals led by a Superior Court judge and comprised of assistant prosecutors, designated public defenders, a licensed mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor should be included as a member of the diversion team.

Involvement in the diversion program entails, among other criteria, an application process, a legal determination of eligibility, which is to be made by the prosecutor, a clinical determination, any additional terms of the specific program, and a determination of length of program participation.

No fee is to be assessed for applying to, participating in, or receiving treatment through the diversion program. Program participants are not to pay for treatment and services as a condition of participating in the diversion program. The mental health diversion team is required to assist program participants in applying for all federal and State benefits that may cover or offset the cost of necessary treatment and services, including medication. The Department of Human Services is also required to assist mental health diversion teams in identifying available resources, programs, and benefits.

The bill would require the Administrative Office of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would also coordinate with federal and State case management and mental health care providers to promote recovery and compliance with the terms of probation.

The bill establishes a special, non-lapsing fund to be known as the Mental Health Diversion Program Support Fund. The fund shall be a depository for amounts made available for the program and are to be dedicated to defraying the costs and expenses associated with the diversion program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Information received from the Judiciary on a substantively similar bill indicates that the Judiciary would incur costs of \$4.1 million in FY 2024, which includes start up costs, \$3.1 million in in FY 2025, and \$3.2 million in FY 2026 under the Mental Health Diversion Program. In FY 2024, these costs include \$1.8 million for administrative and operating costs of the regional mental health diversion teams to manage the program, including salaries, fringe benefits, office and courtroom space, and start up costs. Program development costs for application and system development for the type of differentiated mental health supervision case to be implemented is estimated at \$800,000. Client service costs related to probation supervision of the mental health diversion cases by probation officers are estimated at \$1.5 million. Adjusting for start up costs the Judiciary will incur and one-time costs for creating the differentiated case type, costs to the Judiciary in FY 2025 are estimated at \$3.1 million, and \$3.2 million in FY 2026, as shown in the table below.

	FY 2024	FY 2025	FY 2026
Regional Mental Health Diversion Teams	\$1,826,079	\$1,746,500	\$1,833,821
Creation of New Case Type	\$800,000	\$0	\$0
Probation Supervision of Mental Health Diversion Case Type	\$1,500,191	\$1,316,274	\$1,382,086
Total	\$4,126,270	\$3,062,774	\$3,215,907

The Department of Law and Public Safety, the Department of Human Services, the Office of the Public Defender, and county prosecutor’s offices will each incur some degree of administrative and operational costs under the diversion program. These costs are not currently discernable and can only be known once the program is being implemented and becomes operational. Under the bill, the mental health diversion team is required to assist program participants in applying for federal and State benefits that may cover or offset the cost of treatment and services, including medication. To the extent a program participant qualifies for additional State benefits, State costs would increase to provide them. State revenues may also increase if these additional State expenses are eligible for federal reimbursement.

No later than two years following the establishment of the diversion program, the program may be expanded to additional vicinages, subject to the availability of funding. The annual State expenditure increase following the second year of the program will depend on the number of vicinages into which the program is expanded. The OLS notes that annual State costs to the Judiciary to operate the program are approximately \$1 million per vicinage and that additional State costs will accrue to various State agencies if the program is expanded to additional vicinages.

The OLS also notes that there may be State cost savings in the short-term from diverting individuals from incarceration to mental health service programs, and from reduced recidivism in the long-term.

Section: Judiciary

Analyst: Anuja Pande Joshi
Senior Fiscal Analyst

Approved: Thomas Koenig
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 1700

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

SYNOPSIS

Creates Mental Illness Diversion Program to divert eligible persons away from criminal justice system and into appropriate case management and mental health services.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning offenders with mental health concerns,
2 amending various sections of the law and supplementing Title 2C
3 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) As used in this act:

9 a. "Eligible offense" means a non-violent petty disorderly
10 persons offense, disorderly persons offense, or crime of the third or
11 fourth degree.

12 b. "Eligible person" means a person who allegedly committed
13 an eligible offense and who has a prior diagnosis of mental illness
14 or for whom a law enforcement officer or prosecutor has a
15 reasonable belief that the person has a mental illness based on
16 behaviors and symptoms exhibited during the commission of the
17 offense or while in custody, or based on information provided by
18 family members or associates during the investigation of the
19 offense.

20 c. "Mental Illness Diversion Resource Entity" means a point of
21 access or referral to case management and mental health services
22 that are currently available from federal, State and local government
23 agencies to eligible persons. The Division of Mental Health and
24 Addiction Services in the Department of Health shall prepare and
25 disseminate a directory of New Jersey Diversion Resource entities
26 to facilitate the diversion of eligible persons from the criminal
27 justice system. The department shall not be responsible for
28 funding, developing or delivering case management or mental
29 health services to eligible persons under P.L. , c. (C.)
30 (pending before the Legislature as this bill).

31 d. "Mentor" means a volunteer available to assist an eligible
32 person in accessing assistance to resolve the underlying problems
33 that led or contributed to the eligible person's involvement with the
34 criminal justice system.

35 e. "Mental illness" means a mental disorder classified within
36 the current version of the American Psychiatric Association
37 Diagnostic and Statistical Manual of Mental Disorders (DSM),
38 including, but not limited to, anxiety disorders, cognitive disorders,
39 adjustment disorders, schizophrenia and other psychotic disorders,
40 bipolar disorder, depression, and post-traumatic stress disorder
41 (PTSD).

42
43 2. (New section) a. There is hereby established a Statewide
44 Mental Illness Diversion Program that shall have the purpose of
45 diverting eligible persons away from the criminal justice system and

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 into appropriate case management and mental health services as
2 early as possible following an interaction with law enforcement
3 where the person is alleged to have committed an eligible offense.

4 b. The New Jersey Department of Human Services shall, in
5 conjunction with other federal, State, and local government
6 agencies prepare a directory of Diversion Resource entities within
7 New Jersey. Each Mental Illness Diversion Resource Entity shall
8 serve as a point of entry to facilitate the law enforcement diversion
9 or referral of eligible persons into existing case management and
10 mental health services offered by the New Jersey Department of
11 Human Services, or other appropriate case management and mental
12 health services that are available to persons with mental illness. A
13 Mental Illness Diversion Resource Entity, or an agency to which an
14 eligible person is referred by the Mental Illness Diversion Resource
15 Entity, shall be capable of providing screening, counseling,
16 treatment and case management for mental health issues and other
17 co-occurring health disorders to eligible persons, or coordinating
18 such services through the appropriate federal, State, and local
19 government agencies that offer assistance. To the extent feasible, a
20 Mental Illness Diversion Resource Entity, or an agency to which an
21 eligible person is referred to by the entity, shall be capable of
22 accepting emergent referrals of eligible persons who are being
23 diverted from the criminal justice system. A Mental Illness
24 Diversion Resource Entity, or an agency to which a eligible person
25 is referred by the Mental Illness Diversion Resource Entity, that
26 accepts the referral of an eligible person shall be capable of
27 providing law enforcement officials with periodic status reports
28 regarding the participation and recovery progress of an eligible
29 person, when the person consents to the release of such information,
30 as a condition of diversion from prosecution. The department shall
31 provide the Attorney General, the Administrative Director of the
32 Courts, the Commissioner of the Department of Corrections, and
33 the Chairman of the State Parole Board with a directory of
34 Diversion Resource entities available within the State or shall
35 publish the directory on its departmental Internet web site.

36
37 3. (New section) a. When a person is taken into custody for an
38 eligible offense, if the law enforcement officer determines that the
39 person exhibits behavior or symptoms that may be related to a
40 mental illness, the law enforcement officer may proceed in
41 accordance with P.L. , c. (C.) (pending before the Legislature
42 as this bill), but with a preference for diversion of an eligible person
43 to a Mental Illness Diversion Resource Entity or other community-
44 based mental health services, including a screening service
45 established pursuant to the provisions of P.L.1987, c.116 (C.30:4-
46 27.1 et seq.), in lieu of filing a criminal complaint. If the alleged
47 offense is not an eligible offense or the person is resistant to
48 diversion, the officer may file a criminal complaint.

1 b. Law enforcement officers may divert an eligible person who
2 appears to have a mental illness to a Mental Illness Diversion
3 Resource Entity or other community-based mental health services,
4 including a screening service established pursuant to the provisions
5 of P.L.1987, c.116 (C.30:4-27.1 et seq.), in lieu of filing a criminal
6 complaint against the person. A law enforcement officer shall not
7 divert an eligible person prior to the filing of a criminal complaint if
8 the crime or offense involves restitution for damages, if the crime or
9 offense involves violence or the threat of violence, if the crime or
10 offense involves the violation of any restraining order or protective
11 order involving another person, or where a victim of the offense
12 objects to the diversion. For the purposes of this subsection, a
13 crime or offense involves violence or the threat of violence if the
14 victim sustains bodily injury as defined in subsection a. of
15 N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon
16 or threatens by word or gesture to use a deadly weapon as defined
17 in subsection c. of N.J.S.2C:11-1, or threatens to inflict bodily
18 injury. If an eligible person is not diverted, the officer may proceed
19 with the filing of a complaint-summons or complaint-warrant
20 pursuant to law, the Rules of Court, and the directives of the
21 Attorney General.

22 c. If a law enforcement officer diverts an eligible person to a
23 Mental Illness Diversion Resource entity or other mental health
24 service provider without filing a criminal complaint, the law
25 enforcement officer may subsequently file the complaint, subject to
26 the time limitations of N.J.S.2C:1-6, if the person fails to cooperate
27 with the service provider or has subsequent interactions with law
28 enforcement.

29
30 4. (New section) a. At any time after the filing of a criminal
31 complaint, but prior to the disposition of such complaint, an eligible
32 person, the public defender assigned to the eligible person, or the
33 person's own legal counsel may make an application to the
34 prosecutor to participate in the Mental Illness Diversion Program.
35 The prosecutor may approve or conditionally approve an eligible
36 person's admission into the Diversion Program. An eligible person
37 may be conditionally approved for admission into the program
38 pending review of the person's criminal history, and consideration
39 of the findings of a clinical assessment of the person's mental
40 health. Once admitted to the program, the prosecutor may move
41 before the court to postpone proceedings while an eligible person
42 obtains a mental health assessment or participates in case
43 management and mental health services. The court may grant the
44 postponement of proceedings and release the person on the person's
45 own recognizance subject to compliance with the conditions
46 specified in the prosecutor's diversion agreement. If the
47 prosecutor's review of the person's records and the clinical
48 assessment reveals that the person does not qualify for the program

1 or if the person does not comply with the requirements of the
2 diversion agreement, the prosecutor may notify the court that the
3 State is prepared to proceed with the prosecution of the offense and
4 the court shall schedule court proceedings as appropriate.

5 b. (1) Except as provided in paragraph (2) of this subsection, the
6 prosecutor shall have the sole discretion to determine if an eligible
7 person qualifies for and is admitted to the Mental Illness Diversion
8 Program pursuant to P.L. , c. (C.) (pending before the
9 Legislature as this bill) after consideration of the nature of the
10 eligible offense, the causative relationship between the person's
11 diagnosed or apparent mental illness and the commission of the
12 offense, the amenability of the person to participation in the
13 services of the program, the availability of case management and
14 mental health services, the desires of any victim, the person's
15 history of prior convictions, and the probability that diversion will
16 promote the person's recovery, prevent future criminal behavior,
17 and protect public safety. A prosecutor may also consider and
18 approve other diversion alternatives for persons in lieu of the
19 Mental Illness Diversion Program pursuant to P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21 (2) No eligible person shall be admitted to the Mental Illness
22 Diversion Program if the person has criminal charges pending for a
23 crime of the second degree or higher, if the crime or offense
24 involved violence or the threat of violence, or if the person was
25 previously convicted of a violent crime enumerated in subsection d.
26 of section 2 of P.L.1997, c.117 (C.2C:43-7.2). There shall be a
27 presumption against admission into the Mental Illness Diversion
28 Program, subject to the discretion of the prosecutor after consulting
29 with any victim, for a person charged with any crime or offense
30 involving domestic violence, as defined in subsection a. of section 3
31 of P.L.1991, c.261 (C.2C:25-19) if the defendant committed the
32 crime or offense while subject to a temporary or permanent
33 restraining order issued pursuant to the provisions of the
34 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
35 (C.2C:25-17 et al.). For purposes of this paragraph, a crime or
36 offense involves violence or the threat of violence if the victim
37 sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1,
38 or the actor is armed with and uses a deadly weapon or threatens by
39 word or gesture to use a deadly weapon as defined in subsection c.
40 of N.J.S.2C:11-1, or threatens to inflict bodily injury.

41 (3) The prosecutor shall consult with victims of an eligible
42 offense prior to approving an eligible person's admission into the
43 Mental Illness Diversion Program. Nothing in this subsection shall
44 be construed to alter or limit the authority or discretion of the
45 prosecutor to admit an eligible person into the Mental Illness
46 Diversion Program which the prosecutor deems appropriate.

47 c. The prosecutor's approval of an application for admission
48 into the Mental Illness Diversion Program pursuant to this section

1 shall not be conditioned on an admission or plea of guilt by an
2 eligible person.

3 d. To qualify for prosecutorial diversion under this section, an
4 eligible person shall agree in writing to the following terms, where
5 relevant to the eligible offense:

6 (1) Participate in case management and mental health services
7 initiated through the Mental Illness Diversion Resource Entity or
8 other similar services and to cooperate with any recommended
9 course of treatment, including the use of medications as prescribed
10 and participation in counseling;

11 (2) Authorize the case management or mental health service
12 provider to release to the prosecutor periodic status reports
13 regarding the person's participation, cooperation, and recovery
14 progress with case management and mental health services;

15 (3) Cooperate with case management service providers to
16 procure housing, education, and employment services, where
17 appropriate;

18 (4) Pay restitution for damages that have resulted from the
19 offense;

20 (5) Refrain from the use of alcohol or illegal drugs or frequent
21 any place where alcohol or illegal drugs are sold and used;

22 (6) Refrain from the possession or use of firearms or other
23 weapons;

24 (7) Refrain from further criminal activity;

25 (8) Refrain from any contact with a victim of the offense;

26 (9) Cooperate with a mentor, where assigned;

27 (10) Suspend the tolling of time for the purposes of the person's
28 right to a speedy trial while the person is participating in the
29 program;

30 (11) Advise the prosecutor of any change in the person's
31 residential address or any change in the provider of case
32 management and mental health services; and

33 (12) Any other terms and conditions related to the person's
34 recovery and public safety deemed appropriate by the prosecutor.

35 e. The prosecutor shall determine the duration of the person's
36 participation in the Mental Illness Diversion Program, except that
37 the person's participation in the program shall not exceed two years
38 from the date of the diversion agreement. The term of the person's
39 participation shall be based on the initial clinical evaluation and
40 recommendations, status reports of the person's participation, and
41 progress reports from the case management and mental health
42 service providers, and, where assigned, the person's mentor.

43 f. The eligible person shall be responsible for coordinating
44 with the Mental Illness Diversion Resource Entity or other case
45 management and mental health service provider to ensure that the
46 prosecutor receives periodic reports on the person's participation,
47 cooperation and recovery progress. The person shall contact the
48 Mental Illness Diversion Resource Entity or other case management

- 1 and mental health service provider within seven days of the date of
2 the diversion agreement.
- 3 g. The court shall review the status of the deferred prosecution
4 of the person no later than six months from the date on which the
5 court approved the prosecutor's initial request for a postponement of
6 the proceedings, and, thereafter, every six months from the most
7 recent review, to consider, based on information provided by the
8 prosecutor, whether the postponement of court proceedings as
9 requested by the prosecutor should continue.
- 10 h. To the extent that a sufficient number of mentors are
11 available, the prosecutor or the case management provider on behalf
12 of the prosecutor, shall assign a mentor to the eligible person.
- 13 i. If, after a minimum of six months from the date of the
14 diversion agreement, the prosecutor is satisfied that the person has
15 complied with the terms and conditions of the diversion agreement,
16 has not been the subject of any subsequent criminal charges, and,
17 based on clinical reports, continues to make progress with case
18 management services and mental health recovery, the prosecutor
19 may move before the court for the dismissal of the criminal charge
20 pending against the person and terminate the person's participation
21 in the Mental Illness Diversion Program. Alternatively, the
22 prosecutor may require that the person continue participation in the
23 program until sufficient evidence of progress toward recovery is
24 available, except that continued participation shall not exceed the
25 two-year time limit as provided in subsection e. of this section.
- 26 j. If, at any time, the prosecutor finds that the person has failed
27 to comply with any term or condition of the diversion agreement,
28 the prosecutor may notify the court that the State is prepared to
29 proceed with the prosecution of the offense and the court shall
30 schedule court proceedings as appropriate.
- 31 k. No fee shall be assessed to a person for participation in the
32 Mental Illness Diversion Program.
- 33 l. An eligible person may be admitted to the Mental Illness
34 Diversion Program one or more times at the discretion of the
35 prosecutor, subject to the restrictions in this section, if such
36 diversion promotes the person's recovery, prevents the commission
37 of future offenses, and protects the safety of the public. Nothing in
38 P.L. , c. (C.) (pending before the Legislature as this bill) shall
39 preclude an eligible person from applying for admission to a
40 criminal justice diversion program, including a program of
41 supervisory treatment pursuant to N.J.S.2C:43-12, conditional
42 discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal
43 pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1), as an
44 alternative to the Mental Illness Diversion Program to the extent
45 that the person meets the eligibility criteria and qualifies for those
46 programs. A dismissal of a criminal complaint resulting from
47 successful participation in a Mental Illness Diversion Program
48 pursuant to this section shall bar a person's subsequent eligibility

1 for a program of supervisory treatment pursuant to N.J.S.2C:43-12,
2 conditional discharge pursuant to N.J.S.2C:36A-1, or conditional
3 dismissal pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1);
4 however an eligible person may seek subsequent admission to the
5 Mental Illness Diversion Program and may be admitted at the sole
6 discretion of the prosecutor.

7 m. The dismissal of charges based on a person's successful
8 participation in the Mental Illness Diversion Program pursuant to
9 this section shall not be deemed:

10 (1) a conviction for purposes of disqualifications or disabilities,
11 if any, imposed by law upon conviction of a petty disorderly
12 persons or disorderly persons offense or a crime, but shall be
13 reported to the State Bureau of Identification criminal history
14 record information files for purposes of determining future
15 eligibility or exclusion from other diversion programs; or

16 (2) a conviction for the purpose of determining whether a
17 second or subsequent offense has occurred under any law of this
18 State.

19

20 5. (New section) Nothing in P.L. , c. (C.) (pending before
21 the Legislature as this bill) shall be construed to limit or constrain
22 in any way the authority or discretion of a prosecutor to divert,
23 prosecute or pursue any other disposition of a criminal matter
24 involving a defendant who is an eligible person. When considering
25 the diversion of an eligible person from the criminal justice system,
26 a prosecutor may use the Mental Illness Diversion Program
27 established pursuant to P.L. , c. (C.) (pending before the
28 Legislature as this bill), any other diversion mechanism authorized
29 by law, or a county-based law enforcement diversion program after
30 considering each program's restrictions, the relief available to the
31 person, and the safety of any victim and the public.

32

33 6. (New section) The Administrative Director of the Courts
34 shall develop a differentiated mental health supervision case type
35 within the Probation Division of the Superior Court for eligible
36 persons who are sentenced to a term of probation supervision. To
37 the extent that sufficient resources are available, probation officers
38 assigned to the specialized caseload shall be experienced in
39 behavioral health and evidence-based therapeutic interventions and
40 shall coordinate with mentors as well as federal and State case
41 management and health care providers available to persons to
42 promote their recovery, compliance with the terms of probation and
43 re-integration into the community. Eligible persons who are
44 sentenced to a term of probation supervision shall be screened and
45 assigned to a differentiated mental health supervision case type
46 pursuant to procedures developed by the Administrative Director of
47 the Courts. A person who is assigned to a differentiated mental
48 health supervision case type shall provide written authorization for

1 any case management or mental health service provider to release to
2 the Probation Division and the court periodic status reports
3 regarding the person's participation, cooperation, and recovery
4 progress.

5

6 7. N.J.S.2C:52-6 is amended to read as follows:

7 2C:52-6. Arrests not resulting in conviction. a. When a person
8 has been arrested or held to answer for a crime, disorderly persons
9 offense, petty disorderly persons offense, or municipal ordinance
10 violation under the laws of this State or of any governmental entity
11 thereof and proceedings against the person were dismissed, the
12 person was acquitted, or the person was discharged without a
13 conviction or finding of guilt, the Superior Court shall, at the time
14 of dismissal, acquittal, or discharge, or, in any case set forth in
15 paragraph (1) of this subsection, order the expungement of all
16 records and information relating to the arrest.

17 (1) If proceedings took place in municipal court, the municipal
18 court shall follow procedures developed by the Administrative
19 Director of the Courts.

20 (2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14
21 shall not apply to an expungement pursuant to this subsection.

22 (3) An expungement under this subsection shall not be ordered
23 where the dismissal, acquittal, or discharge resulted from a plea
24 bargaining agreement involving the conviction of other charges.
25 This bar, however, shall not apply once the conviction is itself
26 expunged.

27 (4) The court shall forward a copy of the expungement order to
28 the county prosecutor. The county prosecutor shall promptly
29 distribute copies of the expungement order to appropriate law
30 enforcement agencies and correctional institutions who have
31 custody and control of the records specified in the order so that they
32 may comply with the requirements of N.J.S.2C:52-15.

33 (5) An expungement related to a dismissal, acquittal, or
34 discharge ordered pursuant to this subsection shall not bar any
35 future expungement.

36 (6) Where a dismissal of an offense is based on an eligible
37 servicemember's successful participation in a Veterans Diversion
38 Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), the county
39 prosecutor, on behalf of the eligible servicemember, may move
40 before the court for the expungement of all records and information
41 relating to the arrest and the diversion at the time of dismissal
42 pursuant to this section.

43 (7) Where a dismissal of an offense is based on an eligible
44 person's successful participation in a Mental Illness Diversion
45 Program pursuant to P.L. _____, c. (C. _____) (pending before the
46 Legislature as this bill), the county prosecutor, on behalf of the
47 eligible person, may move before the court for the expungement of

1 all records and information relating to the arrest or charge, and the
2 diversion at the time of dismissal pursuant to this section.

3 b. When a person did not apply or a prosecutor did not move
4 on behalf of an eligible person or eligible servicemember for an
5 expungement of an arrest not resulting in a conviction pursuant to
6 subsection a. of this section, the person may at any time following
7 the disposition of proceedings, present a duly verified petition as
8 provided in N.J.S.2C:52-7 to the Superior Court in the county in
9 which the disposition occurred praying that records of such arrest
10 and all records and information pertaining thereto be expunged.

11 c. (1) Any person who has had charges dismissed against him
12 pursuant to a program of supervisory treatment pursuant to
13 N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-
14 1, or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-
15 13.1 et al.), shall be barred from the relief provided in this section
16 until six months after the entry of the order of dismissal.

17 (2) A servicemember who has successfully participated in a
18 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-
19 23 et al.) may apply for expungement pursuant to this section at any
20 time following the order of dismissal if an expungement was not
21 granted at the time of dismissal.

22 (3) An eligible person who has successfully participated in a
23 Mental Illness Diversion Program pursuant to P.L. , c. (C.)
24 (pending before the Legislature as this bill), may apply for
25 expungement pursuant to this section at any time following the
26 order of dismissal if an expungement was not granted at the time of
27 dismissal.

28 d. Any person who has been arrested or held to answer for a
29 crime shall be barred from the relief provided in this section where
30 the dismissal, discharge, or acquittal resulted from a determination
31 that the person was insane or lacked the mental capacity to commit
32 the crime charged.

33 (cf: P.L.2019, c.269, s.4)

34

35 8. Section 1 of P.L.2013, c.158 (C.2C:43-13.1) is amended to
36 read as follows:

37 1. Eligibility and Application. a. Whenever any defendant who
38 has not been previously convicted of any petty disorderly persons
39 offense, disorderly persons offense or crime under any law of the
40 United States, this State or any other state, and who has not
41 previously participated in conditional discharge under
42 N.J.S.2C:36A-1, supervisory treatment under N.J.S.2C:43-12, or
43 conditional dismissal under P.L.2013, c.158 (C.2C:43-13.1 et al.),
44 **[or]** a Veterans Diversion Program pursuant to P.L.2017, c.42
45 (C.2C:43-23 et al.), or a Mental Illness Diversion Program pursuant
46 to P.L. , c. (C.) (pending before the Legislature as this bill), is
47 charged with a petty disorderly offense or disorderly persons
48 offense except as provided in subsection b. of this section, the

1 defendant may, after a plea of guilty or a finding of guilt, but prior
2 to the entry of a judgment of conviction and with appropriate notice
3 to the prosecutor, apply to the court for entry into the conditional
4 dismissal program pursuant to the requirements of P.L.2013, c.158
5 (C.2C:43-13.1 et al.). As a condition of such application, the
6 defendant shall submit to the fingerprint identification procedures
7 as provided in R.S.53:1-15 before making such application to the
8 court to allow sufficient time for verification of the defendant's
9 criminal history by the prosecutor.

10 b. (1) A defendant shall not be eligible for participation in the
11 conditional dismissal program if the offense for which the person is
12 charged involved: (a) organized criminal or gang activity; (b) a
13 continuing criminal business or enterprise; (c) a breach of the public
14 trust by a public officer or employee; (d) domestic violence as
15 defined by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-
16 19); (e) an offense against an elderly, disabled or minor person; (f)
17 an offense involving driving or operating a motor vehicle while
18 under the influence of alcohol, intoxicating liquor, narcotic,
19 hallucinogenic or habit-producing drug; (g) a violation of animal
20 cruelty laws; or (h) any disorderly persons offense or petty
21 disorderly persons offense under chapter 35 or 36 of Title 2C.

22 (2) Nothing in this act shall preclude a defendant charged with
23 any disorderly persons offense or petty disorderly persons offense
24 under chapter 35 or 36 of Title 2C from applying to the court for
25 admission into the conditional discharge program in accordance
26 with N.J.S.2C:36A-1.

27 c. In addition to the eligibility criteria enumerated in this
28 section, the court shall consider the following factors:

- 29 (1) The nature and circumstances of the offense;
- 30 (2) The facts surrounding the commission of the offense;
- 31 (3) The motivation, age, character and attitude of the defendant;
- 32 (4) The desire of the complainant or victim to forego
33 prosecution;
- 34 (5) The needs and interests of the victim and the community;
- 35 (6) The extent to which the defendant's offense constitutes part
36 of a continuing pattern of anti-social behavior;
- 37 (7) Whether the offense is of an assaultive or violent nature,
38 whether in the act itself or in the possible injurious consequences of
39 such behavior;
- 40 (8) Whether the applicant's participation will adversely affect
41 the prosecution of codefendants;
- 42 (9) Whether diversion of the defendant from prosecution is
43 consistent with the public interest; and
- 44 (10) Any other factors deemed relevant by the court.

45 (cf: P.L.2017, c.42, s.8)

- 46
- 47 9. N.J.S.2C:36A-1 is amended to read as follows:
48 2C:36A-1. Conditional discharge for certain first offenses.

1 a. Whenever any person who has not previously been convicted
2 of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or
3 a disorderly persons or petty disorderly persons offense defined in
4 chapter 35 or 36 of this title or, subsequent to the effective date of
5 this title, under any law of the United States, this State or any other
6 state relating to marijuana, or stimulant, depressant, or
7 hallucinogenic drugs, and who has not previously participated in a
8 program of supervisory treatment pursuant to N.J.S.2C:43-12 or
9 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et
10 al.), **[or]** a Veterans Diversion Program pursuant to P.L.2017, c.42
11 (C.2C:43-23 et al.), or a Mental Illness Diversion Program pursuant
12 to P.L. , c. (C.) (pending before the Legislature as this bill), is
13 charged with or convicted of any disorderly persons offense or petty
14 disorderly persons offense under chapter 35 or 36 of this title, the
15 court upon notice to the prosecutor and subject to subsection c. of
16 this section, may on motion of the defendant or the court:

17 (1) Suspend further proceedings and with the consent of the
18 person after reference to the State Bureau of Identification criminal
19 history record information files, place him under supervisory
20 treatment upon such reasonable terms and conditions as it may
21 require; or

22 (2) After a plea of guilty or finding of guilty, and without
23 entering a judgment of conviction, and with the consent of the
24 person after proper reference to the State Bureau of Identification
25 criminal history record information files, place him on supervisory
26 treatment upon reasonable terms and conditions as it may require,
27 or as otherwise provided by law.

28 b. In no event shall the court require as a term or condition of
29 supervisory treatment under this section, referral to any residential
30 treatment facility for a period exceeding the maximum period of
31 confinement prescribed by law for the offense for which the
32 individual has been charged or convicted, nor shall any term of
33 supervisory treatment imposed under this subsection exceed a
34 period of three years.

35 Upon violation of a term or condition of supervisory treatment
36 the court may enter a judgment of conviction and proceed as
37 otherwise provided, or where there has been no plea of guilty or
38 finding of guilty, resume proceedings. Upon fulfillment of the terms
39 and conditions of supervisory treatment the court shall terminate the
40 supervisory treatment and dismiss the proceedings against him.
41 Termination of supervisory treatment and dismissal under this
42 section shall be without court adjudication of guilt and shall not be
43 deemed a conviction for purposes of disqualifications or
44 disabilities, if any, imposed by law upon conviction of a crime or
45 disorderly persons offense but shall be reported by the clerk of the
46 court to the State Bureau of Identification criminal history record
47 information files. Termination of supervisory treatment and
48 dismissal under this section may occur only once with respect to

1 any person. Imposition of supervisory treatment under this section
2 shall not be deemed a conviction for the purposes of determining
3 whether a second or subsequent offense has occurred under section
4 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or
5 any law of this State.

6 c. Proceedings under this section shall not be available to any
7 defendant unless the court in its discretion concludes that:

8 (1) The defendant's continued presence in the community, or in
9 a civil treatment center or program, will not pose a danger to the
10 community; or

11 (2) That the terms and conditions of supervisory treatment will
12 be adequate to protect the public and will benefit the defendant by
13 serving to correct any dependence on or use of controlled
14 substances which he may manifest; and

15 (3) The person has not previously received supervisory
16 treatment under section 27 of P.L.1970, c.226 (C.24:21-27),
17 N.J.S.2C:43-12, or the provisions of this chapter.

18 d. A person seeking conditional discharge pursuant to this
19 section shall pay to the court a fee of \$75 which shall be paid to the
20 Treasurer of the State of New Jersey for deposit in the General
21 Fund. The defendant shall also be required to pay restitution, costs
22 and other assessments as provided by law. A person may apply for a
23 waiver of this fee, by reason of poverty, pursuant to the Rules
24 Governing the Courts of the State of New Jersey, or the court may
25 permit the defendant to pay the conditional discharge fee and other
26 assessments in installments or may order other alternatives pursuant
27 to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

28 (cf: P.L.2019, c.276, s.5)

29

30 10. N.J.S.2C:43-12 is amended to read as follows:

31 2C:43-12. Supervisory Treatment--Pretrial Intervention.

32 a. Public policy. The purpose of N.J.S.2C:43-12 through
33 N.J.S.2C:43-22 is to effectuate a Statewide program of Pretrial
34 Intervention. It is the policy of the State of New Jersey that
35 supervisory treatment should ordinarily be limited to persons who
36 have not previously been convicted of any criminal offense under
37 the laws of New Jersey, or under any criminal law of the United
38 States, or any other state when supervisory treatment would:

39 (1) Provide applicants, on an equal basis, with opportunities to
40 avoid ordinary prosecution by receiving early rehabilitative services
41 or supervision, when such services or supervision can reasonably be
42 expected to deter future criminal behavior by an applicant, and
43 when there is apparent causal connection between the offense
44 charged and the rehabilitative or supervisory need, without which
45 cause both the alleged offense and the need to prosecute might not
46 have occurred; or

47 (2) Provide an alternative to prosecution for applicants who
48 might be harmed by the imposition of criminal sanctions as

- 1 presently administered, when such an alternative can be expected to
2 serve as sufficient sanction to deter criminal conduct; or
- 3 (3) Provide a mechanism for permitting the least burdensome
4 form of prosecution possible for defendants charged with
5 "victimless" offenses, other than defendants who were public
6 officers or employees charged with offenses that involved or
7 touched their office or employment; or
- 8 (4) Provide assistance to criminal calendars in order to focus
9 expenditure of criminal justice resources on matters involving
10 serious criminality and severe correctional problems; or
- 11 (5) Provide deterrence of future criminal or disorderly behavior
12 by an applicant in a program of supervisory treatment.
- 13 b. (1) Admission of an applicant into a program of supervisory
14 treatment shall be measured according to the applicant's amenability
15 to correction, responsiveness to rehabilitation and the nature of the
16 offense.
- 17 (2) There shall be a presumption against admission into a
18 program of supervisory treatment for:
- 19 (a) a defendant who was a public officer or employee whose
20 offense involved or touched upon his public office or employment;
21 and
- 22 (b) a defendant charged with any crime or offense involving
23 domestic violence, as defined in subsection a. of section 3 of
24 P.L.1991, c.261 (C.2C:25-19) if the defendant committed the crime
25 or offense while subject to a temporary or permanent restraining
26 order issued pursuant to the provisions of the "Prevention of
27 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
28 al.) or if the crime or offense charged involved violence or the
29 threat of violence. For purposes of this subparagraph, a crime or
30 offense involves violence or the threat of violence if the victim
31 sustains serious or significant bodily injury as defined in subsection
32 b. or d. of N.J.S.2C:11-1, or the actor is armed with and uses a
33 deadly weapon or threatens by word or gesture to use a deadly
34 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to
35 inflict serious or significant bodily injury.
- 36 c. The decision and reasons therefor made by the designated
37 judges (or assignment judges), prosecutors and program directors in
38 granting or denying applications for supervisory treatment, in
39 recommending and ordering termination from the program or
40 dismissal of charges, in all cases shall be reduced to writing and
41 disclosed to the applicant.
- 42 d. If an applicant desires to challenge the decision of the
43 prosecutor or program director not to recommend enrollment in a
44 program of supervisory treatment the proceedings prescribed under
45 N.J.S.2C:43-14 and in accordance with the Rules of Court shall be
46 followed.
- 47 e. Referral. At any time prior to trial but after the filing of a
48 criminal complaint, or the filing of an accusation or the return of an

1 indictment, with the consent of the prosecutor and upon written
2 recommendation of the program director, the assignment judge or a
3 judge designated by him may postpone all further proceedings
4 against an applicant and refer said applicant to a program of
5 supervisory treatment approved by the Supreme Court. Prosecutors
6 and program directors shall consider in formulating their
7 recommendation of an applicant's participation in a supervisory
8 treatment program, among others, the following criteria:

- 9 (1) The nature of the offense;
- 10 (2) The facts of the case;
- 11 (3) The motivation and age of the defendant;
- 12 (4) The desire of the complainant or victim to forego
13 prosecution;
- 14 (5) The existence of personal problems and character traits
15 which may be related to the applicant's crime and for which services
16 are unavailable within the criminal justice system, or which may be
17 provided more effectively through supervisory treatment and the
18 probability that the causes of criminal behavior can be controlled by
19 proper treatment;
- 20 (6) The likelihood that the applicant's crime is related to a
21 condition or situation that would be conducive to change through
22 his participation in supervisory treatment;
- 23 (7) The needs and interests of the victim and society;
- 24 (8) The extent to which the applicant's crime constitutes part of
25 a continuing pattern of anti-social behavior;
- 26 (9) The applicant's record of criminal and penal violations and
27 the extent to which he may present a substantial danger to others;
- 28 (10) Whether or not the crime is of an assaultive or violent
29 nature, whether in the criminal act itself or in the possible injurious
30 consequences of such behavior;
- 31 (11) Consideration of whether or not prosecution would
32 exacerbate the social problem that led to the applicant's criminal
33 act;
- 34 (12) The history of the use of physical violence toward others;
- 35 (13) Any involvement of the applicant with organized crime;
- 36 (14) Whether or not the crime is of such a nature that the value
37 of supervisory treatment would be outweighed by the public need
38 for prosecution;
- 39 (15) Whether or not the applicant's involvement with other
40 people in the crime charged or in other crime is such that the
41 interest of the State would be best served by processing his case
42 through traditional criminal justice system procedures;
- 43 (16) Whether or not the applicant's participation in pretrial
44 intervention will adversely affect the prosecution of codefendants;
45 and
- 46 (17) Whether or not the harm done to society by abandoning
47 criminal prosecution would outweigh the benefits to society from
48 channeling an offender into a supervisory treatment program.

1 The prosecutor and the court, in formulating their
2 recommendations or decisions regarding an applicant's participation
3 in a supervisory treatment program, shall give due consideration to
4 the victim's position on whether the defendant should be admitted.

5 f. Review of Supervisory Treatment Applications; Procedure
6 Upon Denial. Each applicant for supervisory treatment shall be
7 entitled to full and fair consideration of his application. If an
8 application is denied, the program director or the prosecutor shall
9 precisely state his findings and conclusion which shall include the
10 facts upon which the application is based and the reasons offered
11 for the denial. If the applicant desires to challenge the decision of a
12 program director not to recommend, or of a prosecutor not to
13 consent to, enrollment into a supervisory treatment program, a
14 motion shall be filed before the designated judge (or assignment
15 judge) authorized pursuant to the Rules of Court to enter orders.

16 g. Limitations. (1) Supervisory treatment may occur only once
17 with respect to any defendant and any person who has previously
18 received supervisory treatment under section 27 of P.L.1970, c.226
19 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1, a
20 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1
21 et al.), or was granted a dismissal due to successful participation in
22 the Veterans Diversion Program pursuant to P.L.2017, c.42
23 (C.2C:43-23 et al.), or the Mental Illness Diversion Program
24 pursuant to P.L. , c. (C.) (pending before the Legislature as
25 this bill), shall not be eligible for supervisory treatment under this
26 section.

27 (2) Except as otherwise provided in paragraph (3) of this
28 subsection, supervisory treatment, as provided herein, shall be
29 available to a defendant irrespective of whether the defendant
30 contests his guilt of the charge or charges against him.

31 (3) Admission into supervisory treatment shall be available to
32 the following defendants only upon entering a plea of guilty: (a) a
33 defendant charged with a first or second degree crime; (b) a
34 defendant charged with any crime if the defendant had previously
35 been convicted of a first or second degree crime; (c) a defendant
36 charged with a third or fourth degree crime involving domestic
37 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
38 (C.2C:25-19); or (d) a defendant charged with any disorderly
39 persons or petty disorderly persons offense involving domestic
40 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
41 (C.2C:25-19) if the defendant committed the offense while subject
42 to a temporary or permanent restraining order issued pursuant to the
43 provisions of the "Prevention of Domestic Violence Act of 1991,"
44 P.L.1991, c.261 (C.2C:25-17 et al.). For any such defendant,
45 following the plea of guilty the plea shall be held in an inactive
46 status pending termination of supervisory treatment pursuant to
47 subsection d. or e. of N.J.S.2C:43-13. Upon successful completion

1 of the program of supervisory treatment the charges shall be
2 dismissed.

3 h. Termination. Termination of supervisory treatment under
4 this section shall be immediately reported to the assignment judge
5 of the county who shall forward such information to the
6 Administrative Director of the Courts.

7 i. Appointment of Program Directors; Authorized Referrals.
8 Programs of supervisory treatment and appointment of the program
9 directors require approval by the Supreme Court with the consent of
10 the assignment judge and prosecutor. Referrals of participants from
11 supervisory treatment programs may be to any public or private
12 office or agency, including but not limited to, programs within the
13 probation service of the court, offering counseling or any other
14 social service likely to aid in the rehabilitation of the participant
15 and to deter the commission of other offenses.

16 j. Health Care Professional Licensing Board Notification. The
17 program director shall promptly notify the State Board of Medical
18 Examiners when a State licensed physician or podiatrist has been
19 enrolled in a supervisory treatment program after he has been
20 charged with an offense involving drugs or alcohol.

21 The Attorney General shall develop guidelines to ensure the
22 uniform exercise of discretion by prosecutors in formulating their
23 recommendations on participation in a supervisory treatment
24 program by an applicant charged with a crime or offense involving
25 domestic violence, as defined in subsection a. of section 3 of
26 P.L.1991, c.261 (C.2C:25-19).

27 (cf: P.L.2017, c.42, s.10)

28

29 11. (New section) a. The Department of Human Services shall
30 provide county prosecutors with a registry of volunteer mentors to
31 facilitate the assignment of mentors to eligible persons who have
32 been admitted by the prosecutor into the Mental Health Diversion
33 Program established pursuant to P.L. , c. (C.) (pending before
34 the Legislature as this bill). A copy of the registry shall also be
35 provided to the Administrative Director of the Courts to facilitate
36 the assignment of mentors to eligible persons who have been
37 sentenced to a term of probation supervision. The registry of
38 mentors shall be periodically updated by the Department of Human
39 Services.

40 b. The Department of Human Services shall also prepare and
41 disseminate a directory of Mental Illness Diversion Resource
42 Program entities currently available within New Jersey.

43

44 12. (New section) The Attorney General, in cooperation with
45 the Administrative Director of the Courts, shall prepare an annual
46 report to the Governor and, pursuant to section 2 of P.L.1991, c.164
47 (C.52:14-19.1), to the Legislature regarding the Mental Health
48 Diversion Program and other statutory and county-based law

1 enforcement programs used to divert eligible persons from the
2 criminal justice system. The report shall assist policymakers in
3 determining whether these diversion programs should be modified
4 or expanded to achieve the goals of recovery for eligible persons
5 and public safety. The report shall include statistics regarding the
6 number of arrests where the person indicates mental illness status;
7 the number of eligible persons accepted into the Mental Illness
8 Diversion Program or other diversion programs; the number of
9 eligible persons who successfully completed these programs; the
10 number of eligible persons who were found guilty at court
11 proceedings; the number of eligible persons who, subsequent to
12 admission in the Mental Health Diversion Program or other
13 diversion programs, were sentenced to a term of incarceration or
14 probation; and other relevant information and recommendations at
15 the discretion of the Attorney General.

16

17 13. (New section) The Attorney General and the Administrative
18 Director of the Courts shall publish on their respective websites
19 information regarding diversion programs and government-based
20 resources available to assist justice-involved eligible persons.

21

22 14. This act shall take effect on the first day of the seventh
23 month next following enactment, except that the Attorney General
24 and the Administrative Director of the Courts may take any
25 anticipatory administrative action in advance as shall be necessary
26 for the implementation of this act.

27

28

29

STATEMENT

30

31 In 2004 a Special Offenders Unit was created in the Union
32 County Prosecutor's Office to deal with mentally ill criminal
33 defendants. The unit has helped to initiate "a jail diversion
34 program, a court based mental health program and an ongoing
35 training program for law enforcement." The jail diversion program,
36 begun in 2006 has diverted individuals with mental illness away
37 from the criminal justice system and into appropriate treatment.
38 Since that time, county prosecutor's offices in several New Jersey
39 counties, including Ocean, Essex and as recently as 2015,
40 Gloucester, Hunterdon and Warren Counties, have initiated similar
41 diversion programs.

42 To facilitate the expansion and growth of programming for
43 individuals with mental illness involved in the criminal justice
44 system, this bill establishes a Statewide Mental Illness Diversion
45 Program to divert eligible persons who have committed certain
46 offenses away from the criminal justice system and into appropriate
47 case management and mental health services.

1 The Department of Human Services is directed, in conjunction
2 with other federal, State, and local government agencies, to prepare
3 and disseminate a directory of Mental Health Diversion Resource
4 entities within New Jersey to facilitate the diversion of eligible
5 persons from the criminal justice system. Each Mental Illness
6 Diversion Resource Entity would serve as a point of entry to
7 facilitate the law enforcement diversion or referral of eligible
8 persons into existing case management and mental health services
9 offered by the New Jersey Department of Human Services or other
10 appropriate case management and mental health services available
11 to persons with mental illness.

12 Eligibility. The bill provides that a person is eligible for
13 admission into the program if he committed an eligible offense and
14 has a prior diagnosis of mental illness or other indications of mental
15 illness. An eligible offense is defined by the bill as a non-violent
16 petty disorderly persons offense, disorderly persons offense, or
17 crime of the third or fourth degree.

18 Each Mental Illness Diversion Resource Entity would serve as a
19 point of entry to facilitate the diversion or referral of eligible
20 persons into existing case management and mental health services
21 offered to persons with mental illness. Under the bill, the Mental
22 Illness Diversion Resource Entity or any other agency to which an
23 eligible person is referred should be capable of providing screening,
24 counseling, treatment and case management for mental health issues
25 and other co-occurring health disorders to or coordinating these
26 services through the appropriate federal, State and local government
27 agencies that offer assistance.

28 A Mental Illness Diversion Resource Entity or an agency which
29 accepts the referral of an eligible person would be required to
30 provide law enforcement officials with periodic status reports
31 regarding the eligible person's participation and recovery progress,
32 provided the person consents to the release of such information.

33 Intake procedures. Under the bill, when a person is taken into
34 custody for an eligible offense, if the person exhibits behavior that
35 may be related to a mental illness, the law enforcement officer may
36 continue processing the individual with a preference for diversion
37 to a Mental Illness Diversion Resource Entity or other community-
38 based mental health services in lieu of filing a criminal complaint.
39 If the alleged offense is not an eligible offense or the person is
40 resistant to diversion, the officer may file a criminal complaint.
41 Under the bill, a law enforcement officer cannot divert an eligible
42 person prior to the filing of a criminal complaint if the crime or
43 offense involves restitution for damages, if the crime or offense
44 involves violence or the threat of violence, if the crime or offense
45 involves the violation of any restraining order or protective order of
46 another person, or where a victim of the offense objects to the
47 diversion. If the person is not diverted, the law enforcement officer

1 may proceed with the filing of a criminal complaint and indicate the
2 person's status as an eligible person.

3 At any time after the filing of a criminal complaint, but prior to
4 the disposition of such complaint, an eligible person, the assigned
5 public defender, or the individual's own legal counsel may make an
6 application to the prosecutor to participate in the Mental Illness
7 Diversion Program. The prosecutor may approve or conditionally
8 approve an eligible person's admission into the Mental Illness
9 Diversion Program. The prosecutor would have the sole discretion
10 to determine if an eligible person qualifies for and is admitted to the
11 Mental Illness Diversion Program after consideration of the nature
12 of the eligible offense, the causative relationship between the
13 person's diagnosed or apparent mental illness and the commission
14 of the offense, the amenability of the person to participation in the
15 services of the program, the availability of case management and
16 mental health services, the desires of any victim, the person's
17 history of prior convictions and the probability that diversion will
18 promote the person's recovery, prevent future criminal behavior and
19 protect public safety. The prosecutor would consult with the victim
20 prior to approving an admission into the program. The prosecutor's
21 approval of an application would not be conditioned on an
22 admission or guilty plea.

23 Disqualification. The bill prohibits admission into the Mental
24 Illness Diversion Program: (1) if the person has criminal charges
25 pending for a crime of the second degree or higher; (2) if the crime
26 or offense involved violence or the threat of violence; or (3) if the
27 person was previously convicted of a violent crime enumerated in
28 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) such as
29 murder, vehicular homicide, kidnapping, aggravated assault, sexual
30 assault, robbery, carjacking, or firearms trafficking. In addition, the
31 bill provides a presumption against admission into the Mental
32 Illness Diversion Program if the person is charged with any crime
33 or offense involving domestic violence or if the person committed
34 the crime or offense while subject to a temporary or permanent
35 restraining order.

36 Program requirements. To qualify for the Mental Illness
37 Diversion Program, an eligible person shall agree in writing to
38 certain terms and conditions. The prosecutor would determine the
39 duration of the person's participation in the program, except that the
40 participation in the program could not exceed two years from the
41 date of the diversion agreement.

42 The bill requires the eligible person to be responsible for
43 coordinating with the Mental Illness Diversion Resource entities to
44 ensure that the prosecutor receives periodic reports on the person's
45 participation, cooperation, and recovery progress. The person
46 would be required to contact the Mental Illness Diversion Resource
47 Entity or other case management and mental health service provider
48 within seven days of the date of the diversion agreement.

1 The court would review the status of the deferred prosecution no
2 later than six months from the date on which the court approved the
3 prosecutor's initial request for a postponement of the proceedings,
4 and, thereafter, every six months from the most recent review, to
5 consider whether the postponement of court proceedings should
6 continue. If, after a minimum of six months from the date of the
7 diversion agreement, the prosecutor is satisfied that the eligible
8 person has complied with the diversion agreement, has not been the
9 subject of any subsequent criminal charges, and continues to make
10 progress with case management services and mental health
11 recovery, the prosecutor may move for the dismissal of the criminal
12 charge and terminate the eligible person's participation. If, at any
13 time, the prosecutor finds that the eligible person has failed to
14 comply with the diversion agreement, the prosecutor may notify the
15 court that the State is prepared to proceed with the prosecution.
16 The bill provides that no fee would be assessed to an eligible person
17 for participation in the Mental Illness Diversion Program. An
18 eligible person may be admitted to the Mental Illness Diversion
19 Program one or more times at the discretion of the prosecutor.

20 The dismissal of charges based on successful participation in the
21 Mental Illness Diversion Program would not be deemed: (1) a
22 conviction for purposes of disqualifications or disabilities but would
23 be reported to the State Bureau of Identification criminal history
24 record information files for purposes of determining future
25 eligibility or exclusion from other diversion programs; or (2) a
26 conviction for the purpose of determining whether a second or
27 subsequent offense has occurred under any law of this State.

28 When considering the diversion of an eligible person from the
29 criminal justice system, a prosecutor may use the Mental Illness
30 Diversion Program established under the bill, any other diversion
31 mechanism authorized by law, or a county-based law enforcement
32 diversion program after considering each program's restrictions, the
33 relief available to the eligible person, and the safety of any victim
34 and the public.

35 Training. The bill would require the Administrative Director of
36 the Courts to develop a differentiated mental health supervision
37 case type within the Probation Division of the Superior Court for
38 eligible persons who are sentenced to a term of probation
39 supervision. To the extent that sufficient resources are available,
40 probation officers assigned to the specialized caseload should be
41 experienced in behavioral health and evidence-based therapeutic
42 interventions. The probation officers would coordinate with
43 mentors as well as federal and State case management and health
44 care providers to promote their recovery, compliance with the terms
45 of probation.

46 Amendatory sections. The bill amends N.J.S.2C:52-6 to allow
47 for expungement of all records and information relating to the arrest
48 or charge dismissed based on an eligible person's successful

1 participation in the Mental Illness Diversion Program. In addition,
2 the bill amends the PTI statute (N.J.S.2C:43-12), conditional
3 discharge statute (N.J.S.2C:36A-1) and the conditional dismissal
4 statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross
5 reference the Mental Illness Diversion Program established by the
6 bill. Under the bill, successful completion of the Mental Illness
7 Diversion Program bars the person's eligibility for PTI, conditional
8 dismissal and conditional discharge programs; however an eligible
9 person may seek subsequent admission to the Mental Illness
10 Diversion Program and may be admitted at the sole discretion of the
11 prosecutor.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1700

STATE OF NEW JERSEY

DATED: SEPTEMBER 29, 2022

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1700.

In 2004 a Special Offenders Unit was created in the Union County Prosecutor's Office to deal with mentally ill criminal defendants. The unit has helped to initiate "a jail diversion program, a court based mental health program and an ongoing training program for law enforcement." The jail diversion program, begun in 2006 has diverted individuals with mental illness away from the criminal justice system and into appropriate treatment. Since that time, county prosecutor's offices in several New Jersey counties, including Ocean, Essex and as recently as 2015, Gloucester, Hunterdon and Warren Counties, have initiated similar diversion programs.

To facilitate the expansion and growth of programming for individuals with mental illness involved in the criminal justice system, this bill establishes a Statewide Mental Illness Diversion Program to divert eligible persons who have committed certain offenses away from the criminal justice system and into appropriate case management and mental health services.

The Department of Human Services is directed, in conjunction with other federal, State, and local government agencies, to prepare and disseminate a directory of Mental Health Diversion Resource entities within New Jersey to facilitate the diversion of eligible persons from the criminal justice system. Each Mental Illness Diversion Resource Entity would serve as a point of entry to facilitate the law enforcement diversion or referral of eligible persons into existing case management and mental health services offered by the New Jersey Department of Human Services or other appropriate case management and mental health services available to persons with mental illness.

Eligibility. The bill provides that a person is eligible for admission into the program if he committed an eligible offense and has a prior diagnosis of mental illness or other indications of mental illness. An eligible offense is defined by the bill as a non-violent petty disorderly persons offense, disorderly persons offense, or crime of the third or fourth degree.

Each Mental Illness Diversion Resource Entity would serve as a point of entry to facilitate the diversion or referral of eligible

persons into existing case management and mental health services offered to persons with mental illness. Under the bill, the Mental Illness Diversion Resource Entity or any other agency to which an eligible person is referred should be capable of providing screening, counseling, treatment and case management for mental health issues and other co-occurring health disorders to or coordinating these services through the appropriate federal, State and local government agencies that offer assistance.

A Mental Illness Diversion Resource Entity or an agency which accepts the referral of an eligible person would be required to provide law enforcement officials with periodic status reports regarding the eligible person's participation and recovery progress, provided the person consents to the release of such information.

Intake procedures. Under the bill, when a person is taken into custody for an eligible offense, if the person exhibits behavior that may be related to a mental illness, the law enforcement officer may continue processing the individual with a preference for diversion to a Mental Illness Diversion Resource Entity or other community-based mental health services in lieu of filing a criminal complaint. If the alleged offense is not an eligible offense or the person is resistant to diversion, the officer may file a criminal complaint. Under the bill, a law enforcement officer cannot divert an eligible person prior to the filing of a criminal complaint if the crime or offense involves restitution for damages, if the crime or offense involves violence or the threat of violence, if the crime or offense involves the violation of any restraining order or protective order of another person, or where a victim of the offense objects to the diversion. If the person is not diverted, the law enforcement officer may proceed with the filing of a criminal complaint and indicate the person's status as an eligible person.

At any time after the filing of a criminal complaint, but prior to the disposition of such complaint, an eligible person, the assigned public defender, or the individual's own legal counsel may make an application to the prosecutor to participate in the Mental Illness Diversion Program. The prosecutor may approve or conditionally approve an eligible person's admission into the Mental Illness Diversion Program. The prosecutor would have the sole discretion to determine if an eligible person qualifies for and is admitted to the Mental Illness Diversion Program after consideration of the nature of the eligible offense, the causative relationship between the person's diagnosed or apparent mental illness and the commission of the offense, the amenability of the person to participation in the services of the program, the availability of case management and mental health services, the desires of any victim, the person's history of prior convictions and the probability that diversion will promote the person's recovery, prevent future criminal behavior and protect public safety. The prosecutor would consult with the victim

prior to approving an admission into the program. The prosecutor's approval of an application would not be conditioned on an admission or guilty plea.

Disqualification. The bill prohibits admission into the Mental Illness Diversion Program: (1) if the person has criminal charges pending for a crime of the second degree or higher; (2) if the crime or offense involved violence or the threat of violence; or (3) if the person was previously convicted of a violent crime enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) such as murder, vehicular homicide, kidnapping, aggravated assault, sexual assault, robbery, carjacking, or firearms trafficking. In addition, the bill provides a presumption against admission into the Mental Illness Diversion Program if the person is charged with any crime or offense involving domestic violence or if the person committed the crime or offense while subject to a temporary or permanent restraining order.

Program requirements. To qualify for the Mental Illness Diversion Program, an eligible person shall agree in writing to certain terms and conditions. The prosecutor would determine the duration of the person's participation in the program, except that the participation in the program could not exceed two years from the date of the diversion agreement.

The bill requires the eligible person to be responsible for coordinating with the Mental Illness Diversion Resource entities to ensure that the prosecutor receives periodic reports on the person's participation, cooperation, and recovery progress. The person would be required to contact the Mental Illness Diversion Resource Entity or other case management and mental health service provider within seven days of the date of the diversion agreement.

The court would review the status of the deferred prosecution no later than six months from the date on which the court approved the prosecutor's initial request for a postponement of the proceedings, and, thereafter, every six months from the most recent review, to consider whether the postponement of court proceedings should continue. If, after a minimum of six months from the date of the diversion agreement, the prosecutor is satisfied that the eligible person has complied with the diversion agreement, has not been the subject of any subsequent criminal charges, and continues to make progress with case management services and mental health recovery, the prosecutor may move for the dismissal of the criminal charge and terminate the eligible person's participation. If, at any time, the prosecutor finds that the eligible person has failed to comply with the diversion agreement, the prosecutor may notify the court that the State is prepared to proceed with the prosecution. The bill provides that no fee would be assessed to an eligible person for participation in the Mental Illness Diversion Program. An

eligible person may be admitted to the Mental Illness Diversion Program one or more times at the discretion of the prosecutor.

The dismissal of charges based on successful participation in the Mental Illness Diversion Program would not be deemed: (1) a conviction for purposes of disqualifications or disabilities but would be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other diversion programs; or (2) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.

When considering the diversion of an eligible person from the criminal justice system, a prosecutor may use the Mental Illness Diversion Program established under the bill, any other diversion mechanism authorized by law, or a county-based law enforcement diversion program after considering each program's restrictions, the relief available to the eligible person, and the safety of any victim and the public.

Training. The bill would require the Administrative Director of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would coordinate with mentors as well as federal and State case management and health care providers to promote their recovery, compliance with the terms of probation.

Amendatory sections. The bill amends N.J.S.2C:52-6 to allow for expungement of all records and information relating to the arrest or charge dismissed based on an eligible person's successful participation in the Mental Illness Diversion Program. In addition, the bill amends the PTI statute (N.J.S.2C:43-12), conditional discharge statute (N.J.S.2C:36A-1) and the conditional dismissal statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross reference the Mental Illness Diversion Program established by the bill. Under the bill, successful completion of the Mental Illness Diversion Program bars the person's eligibility for PTI, conditional dismissal and conditional discharge programs; however an eligible person may seek subsequent admission to the Mental Illness Diversion Program and may be admitted at the sole discretion of the prosecutor.

This bill was prefiled for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1700

STATE OF NEW JERSEY

DATED: JUNE 15, 2023

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1700.

This Assembly Committee Substitute would facilitate the expansion and growth of programming for individuals with mental illness involved in the criminal justice system. The committee substitute establishes a Mental Health Diversion Program (“MHDP”) in three judicial vicinages: one each in the northern, central and southern regions of the State, to divert eligible persons with serious mental illness who have committed certain offenses away from the criminal justice system and into appropriate case management and mental health services.

MHDP Objectives

The objectives of the program include: (1) reducing incarceration rates for the appropriate target population through effective diversion away from the criminal justice system; (2) increasing quality of life for the target population through efficient linkage to available social entitlements and community based mental health treatment providers, in conjunction with supportive monitoring to ensure compliance; (3) increasing community awareness and understanding through cross training of law enforcement and mental health communities; and (4) reducing recidivism and re-hospitalization rates for the target population leading to an increase in public safety.

Definitions

Key terms used in the committee substitute include the following: “Eligible offense” means a crime of the third or fourth degree that does not involve violence. A crime of the third or fourth degree involving violence or the threat of violence shall be considered by the prosecutor on a case by case basis.

An “eligible person” is one who is (1) is mentally competent as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an eligible offense and is not otherwise disqualified by the provisions of this act; and (3) has been diagnosed with a mental illness, either previously or through a mental health evaluation conducted through the program, and there is a nexus between the person’s mental illness

and the commission of the alleged crime as determined by a certified mental health professional.

The “Mental health Diversion Program” (“MHDP”) is a criminal diversionary program designed to divert eligible persons away from the criminal justice system and into appropriate case management and mental health services following interaction with law enforcement where the person is alleged to have committed an offense.

A “Mental Health Diversion Team” (“MHDT”) is a collaboration of professionals led by the Superior Court Judge and comprised of Assistant Prosecutors, designated Public Defenders, a certified mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor should be included as a member of the diversion team.

A “clinical partner” is an entity designated to provide or coordinate case management or mental health services, or both, to eligible persons in conjunction with participation in a MHDP, which services may include screening, counseling, treatment, medication management, and case management for mental health issues and other co-occurring health disorders.

“Mental illness” means a serious mental disorder, other than a personality disorder, classified within the current version of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, psychotic disorder, bipolar disorder, major depressive disorder, post-traumatic stress disorder (PTSD), and co-occurring substance use disorders.

Responsibilities of the Attorney General

Under the committee substitute, within one year of the effective date, the Attorney General, in consultation with Administrative Office of the Courts is required to establish a MHDP in one vicinage in each of the northern, central, and southern regions of the State, to accept eligible persons from within the vicinage. Similar programs in operation at that time may be deemed to comply with the requirements of this committee substitute and may be selected for inclusion in the MHDP. One regional MHDT is required to be designated for each region.

Referral to MHDP and Application Process

A prosecutor may refer a person for diversion to the MHDP at any time after the filing of a criminal complaint, but prior to the disposition of the complaint. In addition, an eligible person, or their defense counsel, may make an application to the prosecutor for diversion within the same time frames.

Involvement in the MHDP entails, among other criteria, an application process, a legal determination of eligibility, prosecutorial discretion, a clinical determination, any additional terms of the specific

program, and a determination of length of stay. Conditions for the dismissal of charges are enumerated.

An eligible person who applies for admission to the MHDP is required to agree to postpone their speedy trial rights.

Legal Determination

A legal determination of eligibility is made by the prosecutor within a “reasonable time frame,” and no more than 30 days of “excludable time,” reserved for competency examination, for persons who are detained. The legal determination is required to be made following consideration of the following factors: the nature of the eligible offense; the causative relationship between the person’s diagnosed or apparent mental illness and the commission of the offense as determined by a mental health professional; the amenability of the person to participation in the services of the program; the availability of case management and mental health services; the desires of any victim; the person’s history of prior convictions; any accompanying violations of probation; and the probability that diversion will promote the person’s recovery, prevent future criminal behavior, and protect public safety.

Ineligibility and Case Specific Determinations

Under the committee substitute, persons who commit offenses that include violence or the threat of violence are presumptively ineligible for participation in the MHDP, unless the prosecutor determines, on a case-by-case basis, that mental health treatment will benefit the eligible person, and no increased danger to the community will result from the person being admitted into the program.

The committee substitute also includes in the case-by-case determination, persons who previously committed violent crimes enumerated in subsection d. of N.J.S.A.2C:43-7.2, which are serious violent crimes requiring the mandatory service of 85% of the sentence imposed. Under this provision, a crime or offense involves violence or the threat of violence if the victim sustains bodily injury as defined in N.J.S.A.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in N.J.S.A.2C:11-1, or threatens to inflict bodily injury.

Offenses involving the unlawful possession of weapons are presumptively ineligible. However, each application may be considered by the prosecutor on a case-by-case basis subject to prosecutorial discretion. A person charged with a sexual offense that is subject to Megan’s Law requirements, and a person currently charged with an arson offense are also ineligible unless the prosecutor determines on a case-by-case basis that an exception is warranted.

A prosecutor is required to consult with victims of an eligible offense prior to approving an eligible person’s admission into the MHDP, and give due consideration to the victims’ position. The

prosecutor has the discretion to determine whether to approve, disapprove, or conditionally approve a person for diversion into the MHDP and the determination is not be subject to review by any court.

Clinical Determination

Following a legal determination by a prosecutor, a clinical determination of eligibility is required to be made by a certified mental health professional who holds a current, valid social worker's license. The certified mental health professional is required to conduct an interview with an applicant to determine clinical appropriateness and may also conduct interviews with family members, where the applicant has completed a release authorizing such communications.

The Certified mental health professionals should have training or certification in co-occurring diagnoses, treatment, and services. The certified mental health professional is also required to assess whether there is a nexus between the person's mental illness and the alleged crime. The clinical interview may be done in-person or remotely. If conducted remotely, the interview must be conducted through technology that enables the interviewer and applicant to see one another.

The certified mental health professional is required to submit a psychosocial evaluation to aid the prosecutorial determination of the applicant's eligibility for the MHDP. Psychosocial reports should be returned to the prosecutor's office and applicant's legal counsel simultaneously within a reasonable period of time following clinical interviews so as to not prejudice the prosecutor's office or the defendant's interests. The evaluation is prohibited from being shared outside of the MHDP evaluation process within the prosecutor's office. Defense counsel's use of the psychosocial evaluation is limited to the MHDP application process, and cannot be used in any other proceeding. The psychosocial evaluation are also required to be provided to the judge presiding over the MHDP calendar prior to the issuance of any orders of acceptance or guilty pleas.

Additional Requirements for Program Participation

In addition to the terms set forth in the application, an eligible person is required to agree in writing to terms related to: participation in case management and mental health services through the MHDP; provide, through their defense counsel, mental health records; and cooperate with recommended course of treatment, including medication and counseling; authorize the release of to the prosecutor and defense counsel periodic status reports regarding participation, cooperation, and recovery progress with case management and mental health services; case management services related to housing, education, and employment services; refraining from the use of alcohol, recreational drugs, or illegal drugs; refraining from the

possession or use of firearms or other weapons; refraining from further criminal activity; refraining from any contact with a victim of the offense unless otherwise permitted; the tolling of time for the purposes of the person's right to a speedy trial while the person is participating in the program; advising the prosecutor of any change in the person's residential address or any change in the provider of case management and mental health services; and any other terms and conditions related to the person's recovery and public safety deemed appropriate by the prosecutor.

Duration of Participation

The prosecutor determines the duration of the person's participation in the MHDP, whether their acceptance into the MHDP requires a guilty plea, or whether a person may be accepted without having to enter a plea of guilty. The length of the person's participation in the program is not to exceed two years from the date of the Order of Acceptance issued by the court.

Consequences for Failure to Comply.

Under the committee substitute, if the prosecutor finds that the person has willfully failed to comply with any term or condition of the MHDP agreement, the prosecutor is required to file a notice with the court and defense counsel alleging willful failure to comply with the conditions of the MHDP. The court is required to afford the person notice and an opportunity to be heard on the issue of for the defendant's continued participation in the MHDP. All actions taken to terminate an eligible person's participation in a MHDP is required to be carried out in full compliance with due process laws and the Rules Governing the Courts of the State of New Jersey.

Fees

No fee are to be assessed for participation in the MHDP for application, participation or treatment. Treatment costs are required to be covered by the Department of Mental Health and Addiction Services.

Multiple Admissions

An eligible person may be admitted to the MHDP one or more times at the discretion of the prosecutor, subject to the certain restrictions enumerated in the bill, if diversion promotes the person's recovery, prevents the commission of future offenses, and protects the safety of the public.

Dismissal of Charges

The dismissal of charges based on successful participation in the MHDP would not be deemed: (1) a conviction for purposes of disqualifications or disabilities but would be reported to the State

Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other diversion programs; or (2) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.

Other programs

When considering the diversion of an eligible person from the criminal justice system, a prosecutor may use the MHDP established under the committee substitute, any other diversion mechanism authorized by law, or a county-based law enforcement diversion program after considering each program's restrictions, the relief available to the eligible person, and the safety of any victim and the public

Training

The committee substitute would require the Administrative Director of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would coordinate with mentors as well as federal and State case management and health care providers to promote recovery, compliance with the terms of probation.

Amendatory sections

The committee substitute amends N.J.S.2C:52-6 to allow for expungement of all records and information relating to the arrest or charge dismissed based on an eligible person's successful participation in the MHDP. In addition, the committee substitute amends the PTI statute (N.J.S.2C:43-12), conditional discharge statute (N.J.S.2C:36A-1) and the conditional dismissal statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross reference the MHDP established by the committee substitute. Under the committee substitute, successful completion of the MHDP bars the person's eligibility for PTI, conditional dismissal and conditional discharge programs. However an eligible person may seek subsequent admission to the MHDP and may be admitted at the sole discretion of the prosecutor.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1700

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 22, 2023

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 1700 ACS.

As amended, this Assembly Committee Substitute would facilitate the expansion and growth of programming for individuals with mental disorder, who due to their mental health issues, engage in conduct that results in involvement in the criminal justice system. The committee substitute establishes a Mental Health Diversion Program (“MHDP”) to divert eligible persons with serious mental disorder who have committed certain offenses away from the criminal justice system and into appropriate case management and mental health services.

MHDP Objectives

The objectives of the program include: (1) reducing incarceration rates for the appropriate target population through effective diversion away from the criminal justice system; (2) increasing quality of life for the target population through efficient linkage to available social entitlements and community based mental health treatment providers, in conjunction with supportive monitoring to ensure compliance; (3) increasing community awareness and understanding through cross training of law enforcement and mental health communities; and (4) reducing recidivism and re-hospitalization rates for the target population leading to an increase in public safety.

This committee substitute initially establishes the MHDP in three vicinages of the State, with the intention to eventually expand the MHDP State-wide to all vicinages.

Definitions

Key terms used in the committee substitute include the following:

An “eligible offense” is a crime of the third or fourth degree that does not involve violence or the threat of violence. A crime or offense does not involve violence or threat of violence if none of the following apply: the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by word or gesture to use a deadly weapon or threatens to inflict bodily injury.

“Eligible offense” shall not include a crime of the first degree or a presumptively ineligible offense.

An “eligible person” is one who is (1) mentally competent as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an eligible offense, or allegedly committed a presumptively ineligible offense but is approved for participation by the prosecutor, and is not otherwise disqualified by the provisions of this act; and (3) has been diagnosed with a mental disorder, either previously or through a mental health evaluation conducted through the program, and there is a nexus between the person’s mental disorder and the commission of the alleged crime as determined by a licensed mental health professional.

The “Mental Health Diversion Program” (“MHDP”) is a criminal diversionary program designed to divert eligible persons away from the criminal justice system and into appropriate case management and mental health services following interaction with law enforcement and where there is a nexus between the commission of the alleged offense and the eligible person’s mental disorder.

A “Mental Health Diversion Team” (“MHDT”) is a collaboration of professionals led by a Superior Court judge and comprised of Assistant Prosecutors, designated Public Defenders, a licensed mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor should be included as a member of the diversion team.

A “Mental disorder” is a serious mental disorder, other than a personality disorder, classified within the current version of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, psychotic disorder, bipolar disorder, major depressive disorder, post-traumatic stress disorder (PTSD), and co-occurring substance use disorders.

A “presumptively ineligible offense” is a crime of second degree, a crime of the third or fourth degree that involves violence or the threat of violence, an offense enumerated in subsection a., b., c., or e. of N.J.S.2C:39-5, sexual offenses subject to Megan’s Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of Title 2C of the New Jersey Statutes or an arson offense as defined in chapter 17 of Title 2C of the New Jersey Statutes. A crime or offense involves violence or threat of violence if the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by word or gesture to use a deadly weapon or threatens to inflict bodily injury. A crime of the first degree shall be ineligible under all circumstances.

Responsibilities of the Attorney General

Under the committee substitute, within one year of the bill’s effective date, the Attorney General, in consultation with the Administrative Office of the Courts is required to establish a MHDP in

one vicinage in each of the northern, central, and southern regions of the State, to accept eligible persons from within the vicinage. Similar programs in operation at that time may be deemed to comply with the requirements of this committee substitute and may be selected for inclusion in the MHDP. One regional MHDT is required to be designated for each region.

Responsibilities of the MHDP Judge

The program leader in a selected vicinage is the judge of the Superior Court who presides over all participant appearances, regularly held MHDT meetings, and all related court proceedings. The judge shall meet with each participant individually along with all members of the MHDT in a location, such as the court well, which is suitable to facilitate private conversations, to review and discuss the participant's progress, problems, and goal achievements.

Court proceedings include but are not limited to Orders of Acceptance, guilty pleas, sentencings, sanctions, recognitions, notice of terminations, termination hearings, graduations, withdrawals, and violations of probation.

Three months prior to any participant moving on, the judge shall review a formal goal attainment log with the participant and MHDT members. At the conclusion of the court supervision term, a "moving on" or graduation ceremony shall be held where an individual, their family or friends, and other participants recognize the achievement of completion.

Referral to MHDP and the Application Process

A prosecutor may refer a person for diversion to the MHDP at any time after the filing of a criminal complaint, but prior to the disposition of the complaint. In addition, an eligible person, or their defense counsel, may make an application to the prosecutor for diversion within the same time frames.

Involvement in the MHDP entails, among other criteria, an application process, a legal determination of eligibility, prosecutorial discretion, a clinical determination, any additional terms of the specific program, and a determination of length of stay. Conditions for the dismissal of charges are enumerated.

An eligible person who applies for admission to the MHDP is required to agree to postpone their speedy trial rights.

Legal Determination

A legal determination of eligibility is made by the prosecutor within a "reasonable time frame," and no more than 30 days of "excludable time," reserved for competency examination, for persons who are detained. The legal determination is required to be made following consideration of the following factors: the nature of the eligible offense; the causative relationship between the person's diagnosed or apparent mental disorder and the commission of the

offense as determined by a mental health professional; the amenability of the person to participation in the services of the program; the availability of case management and mental health services; the desires of any victim; the person's history of prior convictions; any accompanying violations of probation; and the probability that diversion will promote the person's recovery, prevent future criminal behavior, and protect public safety.

Presumptive Ineligibility and Case Specific Determinations

Under the committee substitute, persons who commit offenses that include violence or the threat of violence are presumptively ineligible for participation in the MHDP, unless the prosecutor determines, on a case-by-case basis, that mental health treatment will benefit the eligible person, and no increased danger to the community will result from the person being admitted into the program.

The committee substitute also includes in the case-by-case determination, persons who previously committed violent crimes enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), which are various serious crimes requiring the mandatory service of 85% of the sentence imposed. Specifically, the bill considers a crime or offense under that section to be one involving violence or the threat of violence if the victim sustains bodily injury as defined in N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in N.J.S.2C:11-1, or threatens to inflict bodily injury.

Offenses involving the unlawful possession of weapons are presumptively ineligible. However, each application may be considered by the prosecutor on a case-by-case basis subject to prosecutorial discretion. Also, a person charged with a sexual offense that is subject to Megan's Law requirements, and a person currently charged with an arson offense are ineligible unless the prosecutor determines on a case-by-case basis that an exception is warranted.

A prosecutor is required to consult with victims of an eligible offense prior to approving an eligible person's admission into the MHDP, and give due consideration to the victims' position. The prosecutor has the discretion to determine whether to approve, disapprove, or conditionally approve a person for diversion into the MHDP and the determination is not subject to review by any court.

Clinical Determination

Following a legal determination by a prosecutor, a clinical determination of eligibility is required to be made by a licensed mental health professional who holds a current, valid social worker's license. The licensed mental health professional is required to conduct an interview with an applicant to determine clinical appropriateness and may also conduct interviews with family members, where the applicant has completed a release authorizing such communications.

The licensed mental health professionals should have training or certification in co-occurring diagnoses, treatment, and services. The licensed mental health professional is also required to assess whether there is a nexus between the person's mental disorder and the alleged crime. The clinical interview may be done in-person or remotely. If conducted remotely, the interview must be conducted through technology that enables the interviewer and applicant to see one another.

The licensed mental health professional is required to submit a psychosocial evaluation to aid the prosecutorial determination of the applicant's eligibility for the MHDP. Psychosocial reports should be returned to the prosecutor's office and applicant's legal counsel simultaneously within a reasonable period of time following clinical interviews so as to not prejudice the prosecutor's office or the defendant's interests. The evaluation is prohibited from being shared outside of the MHDP evaluation process within the prosecutor's office. Defense counsel's use of the psychosocial evaluation is limited to the MHDP application process, and cannot be used in any other proceeding. The psychosocial evaluation is also required to be provided to the judge presiding over the MHDP diversion calendar prior to the issuance of any orders of acceptance or guilty pleas.

Additional Requirements for Program Participation

In addition to the terms set forth in the application, an eligible person is required to agree in writing to terms related to: participation in case management and mental health services through the MHDP; provide, through defense counsel, mental health records; and cooperate with any recommended course of treatment, including medication and counseling; authorize the release of periodic status reports to the prosecutor and defense counsel regarding participation, cooperation, and recovery progress with case management and mental health services; case management services related to housing, education, and employment services; refraining from the use of alcohol, recreational drugs, or illegal drugs; refraining from the possession or use of firearms or other weapons; refraining from further criminal activity; refraining from any contact with a victim of the offense unless otherwise permitted; the tolling of time for the purposes of the person's right to a speedy trial while the person is participating in the program; advising the prosecutor of any change in the person's residential address or any change in the provider of case management and mental health services; and any other terms and conditions related to the person's recovery and public safety deemed appropriate by the prosecutor.

Duration of Participation

The prosecutor determines the duration of the person's participation in the MHDP, whether their acceptance into the MHDP requires a guilty plea, or whether a person may be accepted without

having to enter a plea of guilty. The length of the person's participation in the program is not to exceed two years from the date of the Order of Acceptance issued by the court unless the prosecutor requests that the person's participation in the program be extended based on the person's treatment needs and progress, and the court grants the request for good cause.

Consequences for Failure to Comply

Under the committee substitute, if the prosecutor finds that the person has willfully failed to comply with any term or condition of the MHDP agreement, the prosecutor is required to file a notice with the court and defense counsel alleging willful failure to comply with the conditions of the MHDP. The court is required to afford the person notice and an opportunity to be heard on the issue of the defendant's continued participation in the MHDP. All actions taken to terminate an eligible person's participation in a MHDP is required to be carried out in full compliance with due process laws and the Rules Governing the Courts of the State of New Jersey.

Fees

No fee is to be assessed for applying to, participating in, or receiving treatment through the MHDP. MHDP participants shall not be required to pay for treatment and services as a condition of participating in the MHDP. The mental health diversion team is required to assist program participants in applying for all federal and State benefits that may cover or offset the cost of necessary treatment and services, including medication. The Department of Human Services is also required to assist mental health diversion teams in identifying available resources, programs, and benefits.

Multiple Admissions

An eligible person may be admitted to the MHDP one or more times at the discretion of the prosecutor, subject to the certain restrictions enumerated in the bill as heretofore described, if diversion promotes the person's recovery, prevents the commission of future offenses, and protects the safety of the public.

Dismissal of Charges

The dismissal of charges based on successful participation in the MHDP would not be deemed: (1) a conviction for purposes of disqualifications or disabilities but would be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other

diversion programs; or (2) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.

Other Programs

When considering the diversion of an eligible person from the criminal justice system, a prosecutor may use the MHDP established under the committee substitute, any other diversion mechanism authorized by law, or a county-based law enforcement diversion program after considering each program's restrictions, the relief available to the eligible person, and the safety of any victim and the public.

Training

The committee substitute would require the Administrative Director of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would also coordinate with federal and State case management and mental health care providers to promote recovery and compliance with the terms of probation.

Amendatory Sections

The committee substitute amends N.J.S.2C:52-6 to allow for expungement of all records and information relating to the arrest or charge dismissed based on an eligible person's successful participation in the MHDP. In addition, the committee substitute amends the pretrial intervention (PTI) statute (N.J.S.2C:43-12), conditional discharge statute (N.J.S.2C:36A-1) and the conditional dismissal statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross reference the MHDP established by the committee substitute. Under the committee substitute, successful completion of the MHDP bars the person's subsequent eligibility for the PTI, conditional dismissal and conditional discharge programs. However, an eligible person who participated in any of those diversion programs may seek subsequent admission to the MHDP and may be admitted at the sole discretion of the prosecutor.

"Mental Health Diversion Program Support Fund"

The committee substitute establishes a special, non-lapsing fund to be known as the "Mental Health Diversion Program Support Fund." The fund shall be a depository for amounts made available for the purpose of the fund, and dedicated to the purpose of defraying the costs and expenses associated with the MHDP.

As amended and reported by the committee, this Assembly Committee Substitute is identical to Senate Bill No. 524 (SCS/1R).

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- Include a definition of “presumptively ineligible offense” and amend the definition of “eligible offense”, “eligible person” and “Mental Health Diversion Program”;
- Provide that crimes of the first degree are ineligible from program eligibility under all circumstances;
- Remove references to “mental illness” to replace it with “mental disorder;”
- Provide that the Mental Health Diversion Team consist of a license mental health professional, instead of a certified mental health professional;
- Provide that the duration of the Mental Health Diversion Program can exceed two years based on the person’s treatment needs and progress upon a request by the prosecutor and order of the court;
- Clarify the role of the judge in the Mental Health Diversion Program;
- Remove the requirement that the Division of Mental Health and Addiction Services be the sole source of funding for treatment and services;
- Provide that the mental health diversion teams and the Department of Human is required to assist program participants in applying for all federal and State benefits and in identifying available resources, programs, and benefits; and
- Establish a special, non-lapsing fund to be known as the “Mental Health Diversion Program Support Fund.”

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that this bill will result in indeterminate increases in State expenditures. In response to an OLS request for fiscal information, the Judiciary noted that setting up a Mental Health Diversion Program in three judicial vicinages would cost approximately \$4 million the first year and approximately \$3 million for the following two years. Additionally, the OLS notes that there will be an indeterminate increase in expenditures for the Department of Law and Public Safety; the Department of Human Services; the Office of the Public Defender; and county prosecutor’s offices. A Statewide rollout would add to the costs. The OLS notes that there may be State cost savings in the short-term from diverting individuals from incarceration to mental health services programs, and from reduced recidivism in the long-term.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 1700

STATE OF NEW JERSEY

220th LEGISLATURE

DATED: JUNE 30, 2023

SUMMARY

- Synopsis:** Creates Mental Health Diversion Program to divert eligible persons away from criminal justice system and into appropriate case management and mental health services.
- Type of Impact:** Annual State expenditure increase.
- Agencies Affected:** The Judiciary; Department of Human Services; Department of Law and Public Safety; Office of the Public Defender; county prosecutor's offices.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026 & After</u>
Administrative Office of the Courts Cost Increase	\$4.1 million	\$3.1 million	At least \$3.2 million
Other State Entities - Administrative and Operational Costs	Indeterminate	Indeterminate	Indeterminate

- The Office of Legislative Services (OLS) determines that this bill would result in an annual increase in State expenditures to the Judiciary and several State agencies. In response to an OLS request for fiscal information, the Judiciary noted that its costs to establish and operate a Mental Health Diversion Program in three judicial vicinages in FY 2024 would be \$4.1 million, which includes start up costs, \$3.1 million in FY 2025, and \$3.2 million in FY 2026.
- The Department of Law and Public Safety, the Department of Human Services, the Office of the Public Defender, and county prosecutor's offices will each incur some degree of administrative and operational costs under the diversion program. These costs are not currently discernable and can only be known once the program is being implemented and becomes operational.

- No later than two years following its establishment, the program may be expanded to additional vicinages, subject to the availability of funding. The annual State expenditure increase following the second year of the program will depend on the number of vicinages into which the program is expanded.
- The OLS notes that annual State costs to the Judiciary to operate the program are approximately \$1 million per vicinage and that additional State costs will accrue to various State agencies if the program is expanded to additional vicinages.

BILL DESCRIPTION

This bill establishes a Mental Health Diversion Program to divert eligible persons with serious mental disorders who have committed certain offenses away from the criminal justice system and into appropriate managed mental health services. This bill initially establishes the diversion program in three vicinages of the State, with the intention to expand the program to all vicinages in the State eventually.

Within one year of the bill's effective date, the Attorney General, in consultation with the Administrative Office of the Courts, is required to establish a diversion program in one vicinage in each of the northern, central, and southern regions of the State that will accept eligible persons from within the vicinage. Similar programs in operation at that time may be deemed to comply with the requirements of this bill and may be selected for inclusion in this diversion program. One regional mental health diversion team is required to be designated for each region.

The mental health diversion team is a collaboration of professionals led by a Superior Court judge and comprised of assistant prosecutors, designated public defenders, a licensed mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor should be included as a member of the diversion team.

Involvement in the diversion program entails, among other criteria, an application process, a legal determination of eligibility, which is to be made by the prosecutor, a clinical determination, any additional terms of the specific program, and a determination of length of program participation.

No fee is to be assessed for applying to, participating in, or receiving treatment through the diversion program. Program participants are not to pay for treatment and services as a condition of participating in the diversion program. The mental health diversion team is required to assist program participants in applying for all federal and State benefits that may cover or offset the cost of necessary treatment and services, including medication. The Department of Human Services is also required to assist mental health diversion teams in identifying available resources, programs, and benefits.

The bill would require the Administrative Office of the Courts to develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload should be experienced in behavioral health and evidence-based therapeutic interventions. The probation officers would also coordinate with federal and State case management and mental health care providers to promote recovery and compliance with the terms of probation.

The bill establishes a special, non-lapsing fund to be known as the Mental Health Diversion Program Support Fund. The fund shall be a depository for amounts made available for the program and are to be dedicated to defraying the costs and expenses associated with the diversion program.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Information received from the Judiciary on a substantively similar bill indicates that the Judiciary would incur costs of \$4.1 million in FY 2024, which includes start up costs, \$3.1 million in in FY 2025, and \$3.2 million in FY 2026 under the Mental Health Diversion Program. In FY 2024, these costs include \$1.8 million for administrative and operating costs of the regional mental health diversion teams to manage the program, including salaries, fringe benefits, office and courtroom space, and start up costs. Program development costs for application and system development for the type of differentiated mental health supervision case to be implemented is estimated at \$800,000. Client service costs related to probation supervision of the mental health diversion cases by probation officers are estimated at \$1.5 million. Adjusting for start up costs the Judiciary will incur and one-time costs for creating the differentiated case type, costs to the Judiciary in FY 2025 are estimated at \$3.1 million, and \$3.2 million in FY 2026, as shown in the table below.

	FY 2024	FY 2025	FY 2026
Regional Mental Health Diversion Teams	\$1,826,079	\$1,746,500	\$1,833,821
Creation of New Case Type	\$800,000	\$0	\$0
Probation Supervision of Mental Health Diversion Case Type	\$1,500,191	\$1,316,274	\$1,382,086
Total	\$4,126,270	\$3,062,774	\$3,215,907

The Department of Law and Public Safety, the Department of Human Services, the Office of the Public Defender, and county prosecutor’s offices will each incur some degree of administrative and operational costs under the diversion program. These costs are not currently discernable and can only be known once the program is being implemented and becomes operational. Under the bill, the mental health diversion team is required to assist program participants in applying for federal and State benefits that may cover or offset the cost of treatment and services, including medication. To the extent a program participant qualifies for additional State benefits, State costs would increase to provide them. State revenues may also increase if these additional State expenses are eligible for federal reimbursement.

No later than two years following the establishment of the diversion program, the program may be expanded to additional vicinages, subject to the availability of funding. The annual State expenditure increase following the second year of the program will depend on the number of vicinages into which the program is expanded. The OLS notes that annual State costs to the Judiciary to operate the program are approximately \$1 million per vicinage and that additional State costs will accrue to various State agencies if the program is expanded to additional vicinages.

The OLS also notes that there may be State cost savings in the short-term from diverting individuals from incarceration to mental health service programs, and from reduced recidivism in the long-term.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 524
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Committee Substitute for Senate Bill No. 524 (First Reprint) with my recommendations for reconsideration.

Senate Committee Substitute for Senate Bill No. 524 (First Reprint) establishes a Mental Health Diversion Program to divert eligible persons away from the criminal legal system and into appropriate mental health services with professional case management. This bill ensures that individuals whose criminal behaviors are a result of mental disorders are provided therapeutic services while still being held accountable for their actions. I agree with the sponsors and the intent of this bill that mental health issues should not be unnecessarily criminalized, and that efforts should be made to increase opportunities for appropriate treatment while ensuring public safety.

However, the current language of this bill only excludes first degree crimes from this program; second degree and violent crimes, including Megan's Law triggering offenses, are only presumptively ineligible, subject to prosecutor review. At the request of the prime sponsor, Senate Majority Leader Ruiz, I am recommending modest revisions to this bill so that all Megan's Law triggering crimes, not just first degree crimes, are categorically ineligible for inclusion into this Mental Health Diversion Program.

Therefore, I herewith return Senate Committee Substitute for Senate Bill No. 524 (First Reprint) and recommend that it be amended as follows:

Page 3, Section 2, Line 25:

After "degree" insert ",
sexual offenses, subject to
subsection b. of section 2 of
P.L.1994, c.133 (C.2C:7-2) or

pursuant to chapter 14 of Title 2C of the New Jersey Statutes,"

Page 5, Section 2, Lines 6-8:

Delete "sexual offenses subject to Megan's Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of Title 2C of the New Jersey Statutes"

Page 5, Section 2, Line 15:

After "degree" insert "and sexual offenses subject to Megan's Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of Title 2C of the New Jersey Statutes"

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor

Governor Murphy Takes Action on Legislation

12/21/2023

TRENTON – Today, Governor Murphy signed the following bills into law:

SCS for S-524wGR/ACS for A-1700 (Ruiz, Cunningham/Quijano, Mukherji, Atkins) - Creates Mental Health Diversion Program to divert eligible persons away from criminal justice system and into appropriate case management and mental health services

S-2818wGR/A-4394 (Turner/Kennedy) - Establishes "Working Group to Study Pricing of Motor Fuels by Retail Dealers"

SCS for S-2848wGR/A-4328 (Smith, Greenstein/DeAngelo, Karabinchak) - Revises criteria for remote net metering program established by BPU

S-3011/A-4800 (Scutari/Murphy, McKeon, Mukherji) - Concerns use of ignition interlock devices for drunk driving offenses

S-3044wGR/A-4716 (Diegnan, Greenstein/Stanley, Benson, Mukherji) - Makes supplemental appropriation of \$15 million to DEP for implementation of Electric School Bus Program

S-3153wGR/A-4548 (Codey/Kennedy, Haider, Stanley) - Authorizes schools to receive certain food waste from other schools, and provides exemption to such receiving schools for certain DEP permits, under certain conditions

S-3480wGR/A-5137 (Vitale, Pou/McKeon, Park, Murphy) – "The Small Business Health Insurance Affordability Act"; revises certain requirements for individual and small employer health benefits plans

SCS for -3756wGR/ACS for A-5363 (Scutari, Sarlo/Schaer, Wimberly) - Permits SHBP and SEHBP to award contracts for more claims administrators for each program plan; requires claims data and trend reports to be provided to certain persons

S-3839wGR/A-4061 (Greenstein, Steinhardt/Mukherji, Wirths, Space) - Requires Commissioner of Corrections to institute 10-minute shift overlap in State correctional facilities; appropriates \$13 million

S-4011wGR/A-5650 (Ruiz/Coughlin, Pintor Marin, Wimberly) - Modifies New Jersey Community-Anchored Development Program

A-5549/S-3960 (Lopez, Benson, McKnight/Vitale) - Extends eligibility for certain individuals for emergency assistance

ACS for A-5757/S-4127 (Conaway, Speight, Sumter/Gopal) - Extends certain pay parity regarding telemedicine and telehealth for one year