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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

"Drug treatment business to expand," The Record, 7-20-12

"Chris Christie: Every Life Is Precious And That Includes Drug Addicts," New Jersey101.5, 7-20-12

"Drug treatment required for low-level offenders," The Star-Ledger, 7-20-12

"N.J. Expands Its Drug Court," The Wall Street Journal, 7-20-12

"Christie cuts low-level drug offenders some slack," The Times, 7-20-12

"Christie signs drug court law," Courier-Post, 7-20-12

"Drug court program is signed into law," Courier-News, 7-20-12

"Christie changes way NJ courts treat drug users," The Trentonian, 7-20-12

"Christie Ok's expanding drug treatment program," The Press of Atlantic City, 7-20-12

LAW/KR

§§1-3 -  
C.2C:35-14.1 to  
2C:35-14.3  
§4 - T&E  
§7 - Note

(CORRECTED COPY)  
P.L.2012, CHAPTER 23, *approved July 19, 2012*  
Senate, No. 881 (*Sixth Reprint*)

1 AN ACT concerning treatment for drug and alcohol dependent  
2 persons <sup>1</sup>**[and]** <sup>1</sup> amending N.J.S.2C:35-14 <sup>4</sup>and N.J.S.2C:44-6<sup>4</sup>  
3 <sup>1</sup>, and supplementing Title 2C of the New Jersey Statutes<sup>1</sup>.  
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*  
7

8 <sup>4</sup>**[**1. N.J.S.2C:35-14 is amended to read as follows:

9 2C:35-14. Rehabilitation Program for Drug and Alcohol  
10 Dependent Persons Subject to a Presumption of Incarceration or a  
11 Mandatory Minimum Period of Parole Ineligibility; Criteria for  
12 Imposing Special Probation; Ineligible Offenders; Prosecutorial  
13 Objections; Commitment to Residential Treatment Facilities or  
14 Participation in a Nonresidential Treatment Program; Presumption  
15 of Revocation; Brief Incarceration in Lieu of Permanent  
16 Revocation.

17 a. Any person who is ineligible for probation due to a  
18 conviction for a crime which is subject to a presumption of  
19 incarceration or a mandatory minimum period of parole ineligibility  
20 may be sentenced to a term of special probation in accordance with  
21 this section, and may not apply for drug and alcohol treatment  
22 pursuant to N.J.S.2C:45-1. Nothing in this section shall be  
23 construed to prohibit a person who is eligible for probation in  
24 accordance with N.J.S.2C:45-1 due to a conviction for an offense  
25 which is not subject to a presumption of incarceration or a  
26 mandatory minimum period of parole ineligibility from applying for  
27 drug or alcohol treatment as a condition of probation pursuant to  
28 N.J.S.2C:45-1. Notwithstanding the presumption of incarceration  
29 pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and  
30 except as provided in subsection c. of this section, whenever a drug  
31 or alcohol dependent person who is subject to sentencing under this  
32 section is convicted of or adjudicated delinquent for an offense,  
33 other than one described in subsection b. of this section, the court,

**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:

<sup>1</sup>Senate SJU committee amendments adopted February 16, 2012.

<sup>2</sup>Senate SBA committee amendments adopted May 3, 2012.

<sup>3</sup>Senate floor amendments adopted May 24, 2012.

<sup>4</sup>Assembly AAP committee amendments adopted June 18, 2012.

<sup>5</sup>Assembly floor amendments adopted June 21, 2012.

<sup>6</sup>Assembly floor amendments adopted June 25, 2012.

1 upon notice to the prosecutor, may, on motion of the person, or on  
2 the court's own motion, place the person on special probation,  
3 which shall be for a term of five years. **[**, provided that the court  
4 finds on the record that **]** <sup>2</sup>[In determining whether to place the  
5 person on special probation, the court may consider the following  
6 factors:

7 (1) the **[**person has undergone a **]** results of any professional  
8 diagnostic assessment the person has undergone to determine  
9 whether and to what extent the person is drug or alcohol dependent  
10 and would benefit from treatment; and

11 (2) whether the person is a drug or alcohol dependent person  
12 within the meaning of N.J.S.2C:35-2 and whether the person was  
13 drug or alcohol dependent at the time of the commission of the  
14 present offense; and

15 (3) whether the present offense was committed while the person  
16 was under the influence of a controlled dangerous substance,  
17 controlled substance analog or alcohol or was committed to acquire  
18 property or monies in order to support the person's drug or alcohol  
19 dependency; and

20 (4) whether substance abuse treatment and monitoring will serve  
21 to benefit the person by addressing his drug or alcohol dependency  
22 and will thereby reduce the likelihood that the person will thereafter  
23 commit another offense; and

24 (5) whether the person **[did not possess]** possessed a firearm at  
25 the time of the present offense **[and did not possess]** or possessed  
26 a firearm at the time of any pending criminal charge; and

27 (6) whether the person has **[not]** been previously convicted on  
28 two or more separate occasions of crimes of the second degree **[**,  
29 other than those listed in paragraph (7)**]**; or the person has **[not]**  
30 been previously convicted on two or more separate occasions,  
31 where one of the offenses is a crime of the third degree, other than  
32 crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime  
33 of the first or second degree; and

34 (7) **[**the person has not been previously convicted or adjudicated  
35 delinquent for, and does not have a pending charge of murder,  
36 aggravated manslaughter, manslaughter, robbery, kidnapping,  
37 aggravated assault, aggravated sexual assault or sexual assault, or a  
38 similar crime under the laws of any other state or the United States;  
39 and **]** (deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_ pending before the  
40 Legislature as this bill).

41 (8) whether a suitable treatment facility licensed and approved  
42 by the Division of Addiction Services in the Department of Human  
43 Services is able and has agreed to provide appropriate treatment  
44 services in accordance with the requirements of this section; and

45 (9) whether **[no]** danger to the community will result from the  
46 person being placed on special probation pursuant to this section. **]**

1 Prior to placing a person on special probation, the court shall  
2 find on the record that: the person has undergone a professional  
3 diagnostic assessment to determine whether and to what extent the  
4 person is drug or alcohol dependent and would benefit from  
5 treatment; the person is a drug or alcohol dependent person within  
6 the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at  
7 the time of the commission of the present offense; substance abuse  
8 treatment and monitoring will serve to benefit the person by  
9 addressing his drug or alcohol dependency and will thereby reduce  
10 the likelihood that the person will thereafter commit another  
11 offense; the person has not been previously convicted on two or  
12 more separate occasions of crimes of the first degree; a suitable  
13 treatment facility licensed and approved by the Division of  
14 Addiction Services in the Department of Human Services is able  
15 and has agreed to provide appropriate treatment services in  
16 accordance with the requirements of this section; the person did not  
17 possess a firearm at the time of the present offense and did not  
18 possess a firearm at the time of any pending criminal charge; and no  
19 danger to the community will result from the person being placed  
20 on special probation pursuant to this section.

21 In determining whether to place the person on special probation,  
22 the court may additionally consider the following factors:

23 (1) whether the present offense was committed while the person  
24 was under the influence of a controlled dangerous substance,  
25 controlled substance analog or alcohol, or was committed to acquire  
26 property or monies to support the person's drug or alcohol  
27 dependency; and

28 (2) whether the person has been previously convicted on two or  
29 more occasions of crimes of the second degree; or the person has  
30 been previously convicted on two or more separate occasions,  
31 where one of the offenses is a crime of the third degree, other than  
32 crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime  
33 of the first or second degree.<sup>2</sup>

34 Notwithstanding any provision of this section or any other law to  
35 the contrary, the court shall not place on special probation any  
36 person who has been previously convicted or adjudicated delinquent  
37 for, or has a pending charge of murder, aggravated manslaughter,  
38 manslaughter, <sup>2</sup>[robbery,]<sup>2</sup> kidnapping, aggravated assault,  
39 aggravated sexual assault or sexual assault, or a similar crime under  
40 the laws of any other state or the United States.

41 In determining whether to sentence the person pursuant to this  
42 section, the court shall consider all relevant circumstances, and  
43 shall take judicial notice of any evidence, testimony or information  
44 adduced at the trial, plea hearing or other court proceedings, and  
45 shall also consider the presentence report and the results of [the]  
46 <sup>2</sup>[any] the<sup>2</sup> professional diagnostic assessment to determine  
47 whether and to what extent the person is drug or alcohol dependent

1 and would benefit from treatment. The court shall make all  
2 findings relevant to its determination on the record.

3 As a condition of special probation, the court shall order the  
4 person to enter a residential treatment program at a facility licensed  
5 and approved by the Division of Addiction Services in the  
6 Department of Human Services or a program of nonresidential  
7 treatment by a licensed and approved treatment provider, to comply  
8 with program rules and the requirements of the course of treatment,  
9 to cooperate fully with the treatment provider, and to comply with  
10 such other reasonable terms and conditions as may be required by  
11 the court or by law, pursuant to N.J.S.2C:45-1, and which shall  
12 include periodic urine testing for drug or alcohol usage throughout  
13 the period of special probation. In determining whether to order the  
14 person to participate in a nonresidential rather than a residential  
15 treatment program, the court shall follow the procedure set forth in  
16 subsection j. of this section. Subject to the requirements of  
17 subsection d. of this section, the conditions of special probation  
18 may include different methods and levels of community-based or  
19 residential supervision.

20 b. A person shall not be eligible for special probation pursuant  
21 to this section if the person is convicted of or adjudicated  
22 delinquent for:

23 (1) a crime of the first degree;

24 (2) a crime of the first or second degree enumerated in  
25 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) <sup>2</sup>, other  
26 than a crime of the second degree involving N.J.S.2C:15-1  
27 (robbery) or N.J.S.2C:18-2 (burglary)<sup>2</sup>;

28 (3) a crime, other than that defined in section 1 of P.L.1987,  
29 c.101 (C.2C:35-7), for which a mandatory minimum period of  
30 incarceration is prescribed under chapter 35 of this Title or any  
31 other law; or

32 (4) an offense that involved the distribution or the conspiracy or  
33 attempt to distribute a controlled dangerous substance or controlled  
34 substance analog to a juvenile near or on school property.

35 c. A person who is subject to sentencing under this section in  
36 accordance with subsection a. shall not be eligible for a sentence of  
37 special probation pursuant to this section if:

38 (1) the person has been:

39 (a) convicted of or adjudicated delinquent for an offense under  
40 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1  
41 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there  
42 exists a presumption of imprisonment pursuant to subsection d. of  
43 N.J.S.2C:44-1 or any other statute; or

44 (b) previously convicted of an offense under subsection a. of  
45 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
46 any other state or the United States; **[or**

1 (c) previously convicted on two or more separate occasions of  
2 crimes of the third degree, other than crimes defined in  
3 N.J.S.2C:35-10;] and

4 (2) the prosecutor objects to the person being placed on special  
5 probation. The court shall not place a person on special probation  
6 over the prosecutor's objection except upon a finding by the court of  
7 a gross and patent abuse of prosecutorial discretion. If the court  
8 makes a finding of a gross and patent abuse of prosecutorial  
9 discretion and imposes a sentence of special probation  
10 notwithstanding the objection of the prosecutor, the sentence of  
11 special probation imposed pursuant to this section shall not become  
12 final for 10 days in order to permit the appeal of such sentence by  
13 the prosecution.

14 d. Except as otherwise provided in subsection j. of this section,  
15 a person convicted of or adjudicated delinquent for a crime of the  
16 second degree or of a violation of section 1 of P.L.1987, c.101  
17 (C.2C:35-7), or who previously has been convicted of or  
18 adjudicated delinquent for an offense under subsection a. of  
19 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
20 any other state or the United States, who is placed on special  
21 probation under this section shall be committed to the custody of a  
22 residential treatment facility licensed and approved by the Division  
23 of Addiction Services in the Department of Human Services.  
24 Subject to the authority of the court to temporarily suspend  
25 imposition of all or any portion of the term of commitment to a  
26 residential treatment facility pursuant to subsection j. of this  
27 section, the person shall be committed to the residential treatment  
28 facility immediately, unless the facility cannot accommodate the  
29 person, in which case the person shall be incarcerated to await  
30 commitment to the residential treatment facility. The term of such  
31 commitment shall be for a minimum of six months, or until the  
32 court, upon recommendation of the treatment provider, determines  
33 that the person has successfully completed the residential treatment  
34 program, whichever is later, except that no person shall remain in  
35 the custody of a residential treatment facility pursuant to this  
36 section for a period in excess of five years. Upon successful  
37 completion of the required residential treatment program, the person  
38 shall complete the period of special probation, as authorized by  
39 subsection a. of this section, with credit for time served for any  
40 imprisonment served as a condition of probation and credit for each  
41 day during which the person satisfactorily complied with the terms  
42 and conditions of special probation while committed pursuant to  
43 this section to a residential treatment facility. Except as otherwise  
44 provided in subsection l. of this section, the person shall not be  
45 eligible for early discharge of special probation pursuant to  
46 N.J.S.2C:45-2, or any other provision of the law. The court, in  
47 determining the number of credits for time spent in residential

1 treatment, shall consider the recommendations of the treatment  
2 provider. A person placed into a residential treatment facility  
3 pursuant to this section shall be deemed to be subject to official  
4 detention for the purposes of N.J.S.2C:29-5 (escape).

5 e. The probation department or other appropriate agency  
6 designated by the court to monitor or supervise the person's special  
7 probation shall report periodically to the court as to the person's  
8 progress in treatment and compliance with court-imposed terms and  
9 conditions. The treatment provider shall promptly report to the  
10 probation department or other appropriate agency all significant  
11 failures by the person to comply with any court imposed term or  
12 condition of special probation or any requirements of the course of  
13 treatment, including but not limited to a positive drug or alcohol  
14 test or the unexcused failure to attend any session or activity, and  
15 shall immediately report any act that would constitute an escape.  
16 The probation department or other appropriate agency shall  
17 immediately notify the court and the prosecutor in the event that the  
18 person refuses to submit to a periodic drug or alcohol test or for any  
19 reason terminates his participation in the course of treatment, or  
20 commits any act that would constitute an escape.

21 f. (1) Upon a first violation of any term or condition of the  
22 special probation authorized by this section or of any requirements  
23 of the course of treatment, the court in its discretion may  
24 permanently revoke the person's special probation.

25 (2) Upon a second or subsequent violation of any term or  
26 condition of the special probation authorized by this section or of  
27 any requirements of the course of treatment, the court shall, subject  
28 only to the provisions of subsection g. of this section, permanently  
29 revoke the person's special probation unless the court finds on the  
30 record that there is a substantial likelihood that the person will  
31 successfully complete the treatment program if permitted to  
32 continue on special probation, and the court is clearly convinced,  
33 considering the nature and seriousness of the violations, that no  
34 danger to the community will result from permitting the person to  
35 continue on special probation pursuant to this section. The court's  
36 determination to permit the person to continue on special probation  
37 following a second or subsequent violation pursuant to this  
38 paragraph may be appealed by the prosecution.

39 (3) In making its determination whether to revoke special  
40 probation, and whether to overcome the presumption of revocation  
41 established in paragraph (2) of this subsection, the court shall  
42 consider the nature and seriousness of the present infraction and any  
43 past infractions in relation to the person's overall progress in the  
44 course of treatment, and shall also consider the recommendations of  
45 the treatment provider. The court shall give added weight to the  
46 treatment provider's recommendation that the person's special  
47 probation be permanently revoked, or to the treatment provider's



1 opinion that the person is not amenable to treatment or is not likely  
2 to complete the treatment program successfully.

3 (4) If the court permanently revokes the person's special  
4 probation pursuant to this subsection, the court shall impose any  
5 sentence that might have been imposed, or that would have been  
6 required to be imposed, originally for the offense for which the  
7 person was convicted or adjudicated delinquent. The court shall  
8 conduct a de novo review of any aggravating and mitigating factors  
9 present at the time of both original sentencing and resentencing. If  
10 the court determines or is required pursuant to any other provision  
11 of this chapter or any other law to impose a term of imprisonment,  
12 the person shall receive credit for any time served in custody  
13 pursuant to N.J.S.2C:45-1 or while awaiting placement in a  
14 treatment facility pursuant to this section, and for each day during  
15 which the person satisfactorily complied with the terms and  
16 conditions of special probation while committed pursuant to this  
17 section to a residential treatment facility. The court, in determining  
18 the number of credits for time spent in a residential treatment  
19 facility, shall consider the recommendations of the treatment  
20 provider.

21 (5) Following a violation, if the court permits the person to  
22 continue on special probation pursuant to this section, the court  
23 shall order the person to comply with such additional terms and  
24 conditions, including but not limited to more frequent drug or  
25 alcohol testing, as are necessary to deter and promptly detect any  
26 further violation.

27 (6) Notwithstanding any other provision of this subsection, if  
28 the person at any time refuses to undergo urine testing for drug or  
29 alcohol usage as provided in subsection a. of this section, the court  
30 shall, subject only to the provisions of subsection g. of this section,  
31 permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at  
32 any time while committed to the custody of a residential treatment  
33 facility pursuant to this section commits an act that would constitute  
34 an escape, the court shall forthwith permanently revoke the person's  
35 special probation.

36 (7) An action for a violation under this section may be brought  
37 by a probation officer or prosecutor or on the court's own motion.  
38 Failure to complete successfully the required treatment program  
39 shall constitute a violation of the person's special probation. A  
40 person who fails to comply with the terms of his special probation  
41 pursuant to this section and is thereafter sentenced to imprisonment  
42 in accordance with this subsection shall thereafter be ineligible for  
43 entry into the Intensive Supervision Program, provided however  
44 that this provision shall not affect the person's eligibility for entry  
45 into the Intensive Supervision Program for a subsequent conviction.  
46

1 g. When a person on special probation is subject to a  
2 presumption of revocation on a second or subsequent violation  
3 pursuant to paragraph (2) of subsection f. of this section, or when  
4 the person refuses to undergo drug or alcohol testing pursuant to  
5 paragraph (6) of subsection f. of this section, the court may, in lieu  
6 of permanently revoking the person's special probation, impose a  
7 term of incarceration for a period of not less than 30 days nor more  
8 than six months, after which the person's term of special probation  
9 pursuant to this section may be reinstated. In determining whether  
10 to order a period of incarceration in lieu of permanent revocation  
11 pursuant to this subsection, the court shall consider the  
12 recommendations of the treatment provider with respect to the  
13 likelihood that such confinement would serve to motivate the  
14 person to make satisfactory progress in treatment once special  
15 probation is reinstated. This disposition may occur only once with  
16 respect to any person unless the court is clearly convinced that there  
17 are compelling and extraordinary reasons to justify reimposing this  
18 disposition with respect to the person. Any such determination by  
19 the court to reimpose this disposition may be appealed by the  
20 prosecution. Nothing in this subsection shall be construed to limit  
21 the authority of the court at any time during the period of special  
22 probation to order a person on special probation who is not subject  
23 to a presumption of revocation pursuant to paragraph (2) of  
24 subsection f. of this section to be incarcerated over the course of a  
25 weekend, or for any other reasonable period of time, when the court  
26 in its discretion determines that such incarceration would help to  
27 motivate the person to make satisfactory progress in treatment.

28 h. The court, as a condition of its order, and after considering  
29 the person's financial resources, shall require the person to pay that  
30 portion of the costs associated with his participation in any  
31 rehabilitation program, nonresidential treatment program or period  
32 of residential treatment imposed pursuant to this section which, in  
33 the opinion of the court, is consistent with the person's ability to  
34 pay, taking into account the court's authority to order payment or  
35 reimbursement to be made over time and in installments.

36 i. The court shall impose, as a condition of the special  
37 probation, any fine, penalty, fee or restitution applicable to the  
38 offense for which the person was convicted or adjudicated  
39 delinquent.

40 j. Where the court finds that a person has satisfied all of the  
41 eligibility criteria for special probation and would otherwise be  
42 required to be committed to the custody of a residential treatment  
43 facility pursuant to the provisions of subsection d. of this section,  
44 the court may temporarily suspend imposition of all or any portion  
45 of the term of commitment to a residential treatment facility and  
46 may instead order the person to enter a nonresidential treatment  
47 program, provided that the court finds on the record that:

1 (1) the person conducting the diagnostic assessment required  
2 pursuant to paragraph (1) of subsection a. of this section has  
3 recommended in writing that the proposed course of nonresidential  
4 treatment services is clinically appropriate and adequate to address  
5 the person's treatment needs; and

6 (2) no danger to the community would result from the person  
7 participating in the proposed course of nonresidential treatment  
8 services; and

9 (3) a suitable treatment provider is able and has agreed to  
10 provide clinically appropriate nonresidential treatment services.

11 If the prosecutor objects to the court's decision to suspend the  
12 commitment of the person to a residential treatment facility  
13 pursuant to this subsection, the sentence of special probation  
14 imposed pursuant to this section shall not become final for ten days  
15 in order to permit the appeal by the prosecution of the court's  
16 decision.

17 After a period of six months of nonresidential treatment, if the  
18 court, considering all available information including but not  
19 limited to the recommendation of the treatment provider, finds that  
20 the person has made satisfactory progress in treatment and that  
21 there is a substantial likelihood that the person will successfully  
22 complete the nonresidential treatment program and period of special  
23 probation, the court, on notice to the prosecutor, may permanently  
24 suspend the commitment of the person to the custody of a  
25 residential treatment program, in which event the special  
26 monitoring provisions set forth in subsection k. of this section shall  
27 no longer apply.

28 Nothing in this subsection shall be construed to limit the  
29 authority of the court at any time during the term of special  
30 probation to order the person to be committed to a residential or  
31 nonresidential treatment facility if the court determines that such  
32 treatment is clinically appropriate and necessary to address the  
33 person's present treatment needs.

34 k. (1) When the court temporarily suspends the commitment of  
35 the person to a residential treatment facility pursuant to subsection  
36 j. of this section, the court shall, in addition to ordering  
37 participation in a prescribed course of nonresidential treatment and  
38 any other appropriate terms or conditions authorized or required by  
39 law, order the person to undergo urine testing for drug or alcohol  
40 use not less than once per week unless otherwise ordered by the  
41 court. The court-ordered testing shall be conducted by the  
42 probation department or the treatment provider. The results of all  
43 tests shall be reported promptly to the court and to the prosecutor.  
44 In addition, the court shall impose appropriate curfews or other  
45 restrictions on the person's movements, and may order the person to  
46 wear electronic monitoring devices to enforce such curfews or other  
47 restrictions as a condition of special probation.

1 (2) The probation department or other appropriate agency shall  
2 immediately notify the court and the prosecutor in the event that the  
3 person fails or refuses to submit to a drug or alcohol test, knowingly  
4 defrauds the administration of a drug test, terminates his  
5 participation in the course of treatment, or commits any act that  
6 would constitute absconding from parole. If the person at any time  
7 while entered in a nonresidential treatment program pursuant to  
8 subsection j. of this section knowingly defrauds the administration  
9 of a drug test, goes into hiding or leaves the State with a purpose of  
10 avoiding supervision, the court shall permanently revoke the  
11 person's special probation.

12 1. If the court finds that the person has made exemplary  
13 progress in the course of treatment, the court may, upon  
14 recommendation of the person's supervising probation officer or on  
15 the court's own motion, and upon notice to the prosecutor, grant  
16 early discharge from a term of special probation provided that the  
17 person: (1) has satisfactorily completed the treatment program  
18 ordered by the court; (2) has served at least two years of special  
19 probation; (3) did not commit a substantial violation of any term or  
20 condition of special probation, including but not limited to a  
21 positive urine test, within the preceding 12 months; and (4) is not  
22 likely to relapse or commit an offense if probation supervision and  
23 related services are discontinued.

24 (cf: P.L.2008, c.15, s.1)]<sup>4</sup>

25

26 <sup>4</sup>[<sup>1</sup>2. (New section) a. <sup>2</sup>[The Supreme Court shall develop and  
27 establish a] A<sup>2</sup> two-year pilot program <sup>2</sup>is established in two  
28 vicinages<sup>2</sup> to determine the effectiveness of mandatory sentencing  
29 of qualified offenders to special probation under N.J.S.2C:35-14  
30 <sup>2</sup>[.] as well as to assess the feasibility of expanding this program  
31 Statewide. The Administrative Office of the Courts shall select the  
32 pilot vicinages and shall administer and evaluate the pilot programs  
33 in accordance with this section.<sup>2</sup>

34 b. <sup>2</sup>[The Supreme Court shall select one vicinage from the  
35 northern region of the State and one vicinage from the southern  
36 region of the State to participate in the program. In selecting the  
37 pilot program vicinages, the Supreme Court may consider whether a  
38 vicinage has requested to participate in the pilot program. For the  
39 purposes of this section, "northern" means vicinages 2 (Bergen), 5  
40 (Essex), 6 (Hudson), 8 (Middlesex), 10 (Morris/Sussex), 11  
41 (Passaic), 12 (Union) and 13 (Somerset/Hunterdon/Warren); and  
42 "southern" means vicinages 1 (Atlantic/Cape May), 3 (Burlington),  
43 4 (Camden), 7 (Mercer), 9 (Monmouth), 14 (Ocean) and 15  
44 (Gloucester/Cumberland/Salem).] During the period that the pilot  
45 program is in effect, any defendant who is: (1) reasonably suspected  
46 to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible  
47 for probation due to a conviction for a crime which is subject to a

1 presumption of incarceration or a mandatory minimum period of  
2 parole ineligibility; and (3) meets the legal criteria for eligibility for  
3 special probation under the provisions of subsections a. and b. of  
4 N.J.S.2C:35-14 shall be ordered to undergo a professional  
5 diagnostic assessment as provided in subsection a. of N.J.S.2C:35-  
6 14 to determine if the defendant is drug dependent.<sup>2</sup>

7 c. <sup>2</sup>[A court located in a vicinage participating in the pilot  
8 program established under this section shall sentence any person  
9 who is eligible for special probation under the provisions of  
10 subsections a. and b. of N.J.S.2C:35-14 to special probation.] If,  
11 based on the results of a professional diagnostic assessment, the  
12 court determines that the defendant is drug dependent and is  
13 otherwise eligible for special probation pursuant to the provisions  
14 of subsections a. and b. of N.J.S.2C:35-14, the court shall,  
15 notwithstanding any other provision of N.J.S.2C:35-14, sentence  
16 the defendant to special probation, unless the court finds that a  
17 sentence of imprisonment must be imposed pursuant to chapters 43  
18 and 44 of Title 2C of the New Jersey Statutes, in which case the  
19 court shall impose a sentence of imprisonment.<sup>2</sup> Subsection c. of  
20 N.J.S.2C:35-14 shall not apply in sentencing a person under this  
21 subsection.

22 d. Not later than one year following the effective date of this  
23 act, and <sup>2</sup>[thereafter]<sup>2</sup> annually <sup>2</sup>thereafter for five years<sup>2</sup> , the  
24 Administrative Director of the Courts shall submit to the Governor,  
25 and to the Legislature pursuant to section 2 of P.L.1991, c.164  
26 (C.52:14-19.1), a report containing an evaluation of the pilot  
27 program. The report shall include the rates of completion and  
28 revocation for people admitted to mandatory special probation, the  
29 recidivism rates for graduates of mandatory special probation, the  
30 costs associated with implementing mandatory special probation,  
31 and any other information that may indicate the effectiveness of  
32 mandatory special probation <sup>2</sup>[, and shall]. The evaluation shall  
33 include comparative retention and recidivism data for non-  
34 mandatory special probation participants. The Administrative  
35 Director of the Courts may<sup>2</sup> make recommendations concerning the  
36 practicability and feasibility of expanding the pilot program  
37 Statewide <sup>2</sup>[. The Administrative Director of the Courts may  
38 accompany this report with] and may provide<sup>2</sup> recommendations  
39 for legislation or other action appropriate for adoption or  
40 consideration by the Legislature.

41 e. The Supreme Court may establish such rules and procedures  
42 as may be necessary to effectuate the purpose of this act.<sup>1</sup><sup>4</sup>

43  
44 <sup>4</sup><sup>3</sup>3. (New section) a. Notwithstanding any court rule limiting  
45 the time period within which a motion to reduce or change a  
46 sentence may be filed, any person described in subsection b. who,

1 on the effective date of this act, is serving a sentence of  
2 imprisonment and who has not had his sentence suspended or been  
3 paroled or discharged may move to have his sentence reviewed by  
4 the court. If the court finds the person would, on the effective date  
5 of this act, be eligible for a sentence to special probation pursuant to  
6 N.J.S.2C:35-14 and that such sentence would serve the interests of  
7 justice, the judge may re-sentence the defendant to special  
8 probation pursuant to N.J.S.2C:35-14.

9 b. A person may move the court to have his sentence reviewed  
10 under this section if:

11 (1) The person was not eligible for a sentence to special  
12 probation under N.J.S.2C:35-14 at the time of sentencing; and

13 (2) The person would be eligible for a sentence to special  
14 probation if sentenced on or after the effective date of  
15 P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending before the Legislature as this bill).<sup>3</sup><sup>4</sup>

16  
17 <sup>4</sup>[<sup>3</sup>4. Any person who has been convicted but not sentenced as  
18 of the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (pending before the  
19 Legislature as this bill) may move to be sentenced to special  
20 probation pursuant to N.J.S.2C:35-14. If the court finds the person  
21 is, on the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before  
22 the Legislature as this bill), eligible for a sentence to special  
23 probation pursuant to N.J.S.2C:35-14, the judge may place the  
24 person on special probation.<sup>3</sup><sup>4</sup>

25  
26 <sup>4</sup>1. (New section) a. Except as provided in subsection c., the  
27 court shall require a defendant to submit to a professional  
28 diagnostic assessment if:

29 (1) there is a reasonable basis to believe that the defendant may  
30 be a drug dependent person as defined in N.J.S.2C:35-2;

31 (2) the defendant is charged with:

32 (a) a crime that is subject to a presumption of imprisonment  
33 pursuant to subsection d. of N.J.S.2C:44-1; or

34 (b) any crime of the third degree if the defendant has previously  
35 been convicted of a crime subject to the presumption of  
36 imprisonment or that resulted in imposition of a State prison term;  
37 and

38 (3) the defendant is eligible to be considered for a sentence to  
39 special probation pursuant to the provisions of N.J.S.2C:35-14.

40 b. For the purposes of this section, any of the following  
41 circumstances shall provide a reasonable basis to believe that a  
42 person may be drug dependent:

43 (1) the present offense involves a controlled dangerous  
44 substance;

45 (2) the defendant has previously been convicted of an offense  
46 involving a controlled dangerous substance, was admitted to pretrial

1 intervention or supervisory treatment, or received a conditional  
2 discharge for a charge involving a controlled dangerous substance;

3 (3) the defendant has any other pending charge in this State, any  
4 other state, or a federal court involving a controlled dangerous  
5 substance;

6 (4) the defendant has any time previously received any form of  
7 drug treatment or counseling;

8 (5) the defendant appears to have been under the influence of a  
9 controlled dangerous substance during the commission of the  
10 present offense, or it reasonably appears that the present offense  
11 may have been committed to acquire property or monies to  
12 purchase a controlled dangerous substance for the defendant's  
13 personal use;

14 (6) the defendant admits to the unlawful use of a controlled  
15 dangerous substance within the year preceding the arrest for the  
16 present offense;

17 (7) the defendant has had a positive drug test within the last 12  
18 months; or

19 (8) there is information, other than the circumstances  
20 enumerated in paragraphs (1) through (7) of this subsection, which  
21 indicates that the defendant may be a drug dependent person or  
22 would otherwise benefit by undergoing a professional diagnostic  
23 assessment within the meaning of paragraph (1) of subsection a. of  
24 N.J.S.2C:35-14.

25 c. The court shall not be required to order a diagnostic  
26 assessment pursuant to subsection a. of this section if it is clearly  
27 convinced that such assessment will not serve any useful purpose.  
28 If the court does not order a diagnostic assessment, the court shall  
29 place on the record the reasons for its decision.

30 d. Nothing in this section shall be construed to limit or  
31 constrain the court's authority and discretion to order drug testing,  
32 drug screening, or a professional diagnostic assessment at any  
33 time.<sup>4</sup>

34  
35 <sup>4</sup>2. (New section) a. In all cases where a professional  
36 diagnostic assessment within the meaning of paragraph (1) of  
37 subsection a. of N.J.S.2C:35-14 has been ordered and completed  
38 pursuant to section 1 of P.L. , c. (C. ) (pending before  
39 the Legislature as this bill), the court shall make a determination at  
40 sentencing or prior to sentencing whether the defendant may be a  
41 drug dependent person as defined in N.J.S.2C:35-2.

42 b. Notwithstanding any law to the contrary, where the court  
43 finds that a defendant is a person in need of treatment as defined in  
44 subsection f. of this section and that the defendant additionally  
45 meets all the requirements of N.J.S.2C:35-14, the court shall  
46 sentence a defendant to special probation pursuant to the provisions  
47 of N.J.S.2C:35-14 for the purpose of participating in a court-

1 supervised drug treatment program, regardless of whether the  
2 defendant has sought or consents to such a sentence, unless:

3 (1) the court finds that a sentence of imprisonment must be  
4 imposed consistent with the provisions of chapters 43 and 44 of  
5 Title 2C of the New Jersey Statutes, in which case a sentence of  
6 imprisonment shall be imposed; or

7 (2) the court is clearly convinced that:

8 (a) the treatment, monitoring, and supervision services that will  
9 be provided under N.J.S.2C:45-1 are adequate to address the  
10 defendant's clinical needs;

11 (b) the defendant's treatment needs would not be better  
12 addressed by sentencing the defendant to special probation pursuant  
13 to N.J.S.2C:35-14;

14 (c) no danger to the community would result from placing the  
15 person on regular probation pursuant to N.J.S.2C:45-1; and

16 (d) a sentence of probation authorized under N.J.S.2C:45-1  
17 would be consistent with the provisions of chapters 43 and 44 of  
18 Title 2C of the New Jersey Statutes.

19 c. In making the findings and determinations required by this  
20 section, the court shall consider all relevant circumstances, and  
21 shall take judicial notice of any evidence, testimony, or information  
22 adduced at the trial, plea hearing, or other court proceedings, and  
23 also shall also consider the presentence report and the results of any  
24 professional diagnostic assessment. The court shall place on the  
25 record the reasons for its decision.

26 d. If, pursuant to paragraph (2) of subsection b. of this section,  
27 the court imposes a sentence of probation authorized by  
28 N.J.S.2C:45-1, such sentence shall not become final for 10 days in  
29 order to permit the appeal of the sentence by the prosecution.

30 e. Nothing in this section shall be construed to alter the  
31 presumption of imprisonment contained in subsection d. of  
32 N.J.S.2C:44-1 or to require or authorize the reduction or waiver of a  
33 mandatory period of parole ineligibility required by law, or to  
34 modify the exceptions to such requirements provided for by law,  
35 including but not limited to those provided in N.J.S.2C:35-12 and  
36 N.J.S.2C:35-14.

37 f. For the purposes of this section, the term "person in need of  
38 treatment" means a defendant who:

39 (1) the court has determined to be a drug dependent person as  
40 defined in N.J.S.2C:35-2;

41 (2) has been convicted of:

42 (a) a crime that is subject to a presumption of imprisonment  
43 pursuant to subsection d. of N.J.S.2C:44-1; or

44 (b) any other crime of the third degree if the person has  
45 previously been convicted of a crime subject to a presumption of  
46 imprisonment or a crime that resulted in the imposition of a State  
47 prison term; and



1       (3) is eligible to be considered for a sentence to special  
2 probation pursuant to the provisions of N.J.S.2C:35-14.<sup>4</sup>

3  
4       <sup>4</sup>3. (New section) The Administrative Director of the Courts is  
5 authorized to phase-in the implementation of the provisions of  
6 P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill)  
7 related to a program of mandatory sentencing and treatment of  
8 qualified offenders to special probation based on monies annually  
9 appropriated from the General Fund. Within 60 days of the effective  
10 date of this act, the program shall be established in no fewer than  
11 three court vicinages, and with further implementation occurring in  
12 no less than three additional vicinages in each fiscal year thereafter  
13 in a manner to be determined by the Administrative Director of the  
14 Courts provided that sufficient State funds have been appropriated.  
15 The Administrative Director of the Courts shall select appropriate  
16 vicinages for the implementation of the program. The program shall  
17 be fully implemented in the State no later than the fifth fiscal year  
18 following enactment provided that sufficient State funds have been  
19 appropriated.<sup>4</sup>

20  
21       <sup>4</sup>4. (New section) Not later than one year following the  
22 effective date of this act, and annually thereafter for five years, the  
23 Administrative Director of the Courts shall submit to the Governor,  
24 and to the Legislature pursuant to section 2 of P.L.1991, c.164  
25 (C.52:14-19.1), a report containing an evaluation of mandatory  
26 <sup>5</sup>[sentencing to]<sup>5</sup> special probation. The report shall include the  
27 rates of completion and revocation for people admitted to  
28 mandatory special probation, the recidivism rates for graduates of  
29 mandatory special probation, the costs associated with  
30 implementing mandatory special probation, and any other  
31 information that may indicate the effectiveness of mandatory  
32 special probation. Additionally, the evaluation shall include a  
33 comparison of data from vicinages that have phased in mandatory  
34 <sup>5</sup>[sentencing to]<sup>5</sup> special probation with those that have not,  
35 including comparative retention and recidivism data for non-  
36 mandatory special probation participants. <sup>5</sup>[The evaluation shall  
37 also include the number of cases denying admission to special  
38 probation based on a prosecutorial objection under subsection c. of  
39 N.J.S.2C:35-14 and the grounds cited for those objections.]<sup>5</sup> The  
40 Administrative Director of the Courts may make recommendations  
41 for legislation or other action appropriate for adoption or  
42 consideration by the Legislature.<sup>4</sup>

43  
44       <sup>4</sup>5. N.J.S.2C:35-14 is amended to read as follows:  
45       2C:35-14. Rehabilitation Program for Drug and Alcohol  
46       Dependent Persons Subject to a Presumption of Incarceration or a

1 Mandatory Minimum Period of Parole Ineligibility; Criteria for  
2 Imposing Special Probation; Ineligible Offenders; Prosecutorial  
3 Objections; Commitment to Residential Treatment Facilities or  
4 Participation in a Nonresidential Treatment Program; Presumption  
5 of Revocation; Brief Incarceration in Lieu of Permanent  
6 Revocation.

7 a. Any person who is ineligible for probation due to a  
8 conviction for a crime which is subject to a presumption of  
9 incarceration or a mandatory minimum period of parole ineligibility  
10 may be sentenced to a term of special probation in accordance with  
11 this section, and may not apply for drug and alcohol treatment  
12 pursuant to N.J.S.2C:45-1. Nothing in this section shall be  
13 construed to prohibit a person who is eligible for probation in  
14 accordance with N.J.S.2C:45-1 due to a conviction for an offense  
15 which is not subject to a presumption of incarceration or a  
16 mandatory minimum period of parole ineligibility from applying for  
17 drug or alcohol treatment as a condition of probation pursuant to  
18 N.J.S.2C:45-1; provided, however, that a person in need of  
19 treatment as defined in subsection f. of section 2 of  
20 P.L. , c. (C. ) (pending before the Legislature as this bill)  
21 shall be sentenced in accordance with that section. Notwithstanding  
22 the presumption of incarceration pursuant to the provisions of  
23 subsection d. of N.J.S.2C:44-1, and except as provided in  
24 subsection c. of this section, whenever a drug or alcohol dependent  
25 person who is subject to sentencing under this section is convicted  
26 of or adjudicated delinquent for an offense, other than one  
27 described in subsection b. of this section, the court, upon notice to  
28 the prosecutor, may, on motion of the person, or on the court's own  
29 motion, place the person on special probation, which shall be for a  
30 term of five years, provided that the court finds on the record that:

31 (1) the person has undergone a professional diagnostic  
32 assessment to determine whether and to what extent the person is  
33 drug or alcohol dependent and would benefit from treatment; and

34 (2) the person is a drug or alcohol dependent person within the  
35 meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the  
36 time of the commission of the present offense; and

37 (3) the present offense was committed while the person was  
38 under the influence of a controlled dangerous substance, controlled  
39 substance analog or alcohol or was committed to acquire property  
40 or monies in order to support the person's drug or alcohol  
41 dependency; and

42 (4) substance abuse treatment and monitoring will serve to  
43 benefit the person by addressing his drug or alcohol dependency  
44 and will thereby reduce the likelihood that the person will thereafter  
45 commit another offense; and

1 (5) the person did not possess a firearm at the time of the  
2 present offense and did not possess a firearm at the time of any  
3 pending criminal charge; and

4 (6) the person has not been previously convicted on two or more  
5 separate occasions of crimes of the first or second degree, other  
6 than those listed in paragraph (7); or the person has not been  
7 previously convicted on two or more separate occasions, where one  
8 of the offenses is a crime of the third degree, other than crimes  
9 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the  
10 first or second degree; and

11 (7) the person has not been previously convicted or adjudicated  
12 delinquent for, and does not have a pending charge of murder,  
13 aggravated manslaughter, manslaughter, <sup>5</sup>[robbery,]<sup>5</sup> kidnapping,  
14 aggravated assault, aggravated sexual assault or sexual assault, or a  
15 similar crime under the laws of any other state or the United States;  
16 and

17 (8) a suitable treatment facility licensed and approved by the  
18 Division of Addiction Services in the Department of Human  
19 Services is able and has agreed to provide appropriate treatment  
20 services in accordance with the requirements of this section; and

21 (9) no danger to the community will result from the person  
22 being placed on special probation pursuant to this section.

23 In determining whether to sentence the person pursuant to this  
24 section, the court shall consider all relevant circumstances, and  
25 shall take judicial notice of any evidence, testimony or information  
26 adduced at the trial, plea hearing or other court proceedings, and  
27 shall also consider the presentence report and the results of the  
28 professional diagnostic assessment to determine whether and to  
29 what extent the person is drug or alcohol dependent and would  
30 benefit from treatment. <sup>5</sup>The court shall give priority to a person  
31 who has moved to be sentenced to special probation over a person  
32 who is being considered for a sentence to special probation on the  
33 court's own motion or in accordance with the provisions of section  
34 2 of P.L. , c. (C. ) (pending before the Legislature as this  
35 bill).<sup>5</sup>

36 As a condition of special probation, the court shall order the  
37 person to enter a residential treatment program at a facility licensed  
38 and approved by the Division of Addiction Services in the  
39 Department of Human Services or a program of nonresidential  
40 treatment by a licensed and approved treatment provider, to comply  
41 with program rules and the requirements of the course of treatment,  
42 to cooperate fully with the treatment provider, and to comply with  
43 such other reasonable terms and conditions as may be required by  
44 the court or by law, pursuant to N.J.S.2C:45-1, and which shall  
45 include periodic urine testing for drug or alcohol usage throughout  
46 the period of special probation. In determining whether to order the  
47 person to participate in a nonresidential rather than a residential

1 treatment program, the court shall follow the procedure set forth in  
2 subsection j. of this section. Subject to the requirements of  
3 subsection d. of this section, the conditions of special probation  
4 may include different methods and levels of community-based or  
5 residential supervision.

6 b. A person shall not be eligible for special probation pursuant  
7 to this section if the person is convicted of or adjudicated  
8 delinquent for:

9 (1) a crime of the first degree;

10 (2) a crime of the first or second degree enumerated in  
11 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) <sup>5</sup>, other  
12 than a crime of the second degree involving N.J.S.2C:15-1  
13 (robbery) or N.J.S.2C:18-2 (burglary)<sup>5</sup>;

14 (3) a crime, other than that defined in section 1 of P.L.1987,  
15 c.101 (C.2C:35-7), for which a mandatory minimum period of  
16 incarceration is prescribed under chapter 35 of this Title or any  
17 other law; or

18 (4) an offense that involved the distribution or the conspiracy or  
19 attempt to distribute a controlled dangerous substance or controlled  
20 substance analog to a juvenile near or on school property.

21 c. <sup>5</sup>[A person who is subject to sentencing under this section in  
22 accordance with subsection a. shall not be eligible for a sentence of  
23 special probation pursuant to this section if:

24 (1) the person has been:

25 (a) convicted of or adjudicated delinquent for an offense under  
26 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1  
27 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there  
28 exists a presumption of imprisonment pursuant to subsection d. of  
29 N.J.S.2C:44-1 or any other statute;

30 (b) previously convicted of an offense under subsection a. of  
31 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
32 any other state or the United States; or

33 (c) previously convicted on two or more separate occasions of  
34 crimes of the third degree, other than crimes defined in  
35 N.J.S.2C:35-10; and

36 (2) the prosecutor objects to the person being placed on special  
37 probation. The court shall not place a person on special probation  
38 over the prosecutor's objection except upon a finding by the court of  
39 a gross and patent abuse of prosecutorial discretion. If the court  
40 makes a finding of a gross and patent abuse of prosecutorial  
41 discretion and imposes a sentence of special probation  
42 notwithstanding the objection of the prosecutor, the sentence of  
43 special probation imposed pursuant to this section shall not become  
44 final for 10 days in order to permit the appeal of such sentence by  
45 the prosecution.

46 The prosecutor's objection and the reasons therefore shall be  
47 reduced to writing and disclosed to the applicant.] (Deleted by

1 amendment, P.L. , c. (C. ) (pending before the Legislature  
2 as this bill)<sup>5</sup>

3 d. Except as otherwise provided in subsection j. of this section,  
4 a person convicted of or adjudicated delinquent for a crime of the  
5 second degree or of a violation of section 1 of P.L.1987, c.101  
6 (C.2C:35-7), or who previously has been convicted of or  
7 adjudicated delinquent for an offense under subsection a. of  
8 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
9 any other state or the United States, who is placed on special  
10 probation under this section shall be committed to the custody of a  
11 residential treatment facility licensed and approved by the Division  
12 of Addiction Services in the Department of Human Services.  
13 Subject to the authority of the court to temporarily suspend  
14 imposition of all or any portion of the term of commitment to a  
15 residential treatment facility pursuant to subsection j. of this  
16 section, the person shall be committed to the residential treatment  
17 facility immediately, unless the facility cannot accommodate the  
18 person, in which case the person shall be incarcerated to await  
19 commitment to the residential treatment facility. The term of such  
20 commitment shall be for a minimum of six months, or until the  
21 court, upon recommendation of the treatment provider, determines  
22 that the person has successfully completed the residential treatment  
23 program, whichever is later, except that no person shall remain in  
24 the custody of a residential treatment facility pursuant to this  
25 section for a period in excess of five years. Upon successful  
26 completion of the required residential treatment program, the person  
27 shall complete the period of special probation, as authorized by  
28 subsection a. of this section, with credit for time served for any  
29 imprisonment served as a condition of probation and credit for each  
30 day during which the person satisfactorily complied with the terms  
31 and conditions of special probation while committed pursuant to  
32 this section to a residential treatment facility. Except as otherwise  
33 provided in subsection l. of this section, the person shall not be  
34 eligible for early discharge of special probation pursuant to  
35 N.J.S.2C:45-2, or any other provision of the law. The court, in  
36 determining the number of credits for time spent in residential  
37 treatment, shall consider the recommendations of the treatment  
38 provider. A person placed into a residential treatment facility  
39 pursuant to this section shall be deemed to be subject to official  
40 detention for the purposes of N.J.S.2C:29-5 (escape).

41 e. The probation department or other appropriate agency  
42 designated by the court to monitor or supervise the person's special  
43 probation shall report periodically to the court as to the person's  
44 progress in treatment and compliance with court-imposed terms and  
45 conditions. The treatment provider shall promptly report to the  
46 probation department or other appropriate agency all significant  
47 failures by the person to comply with any court imposed term or

1 condition of special probation or any requirements of the course of  
2 treatment, including but not limited to a positive drug or alcohol  
3 test or the unexcused failure to attend any session or activity, and  
4 shall immediately report any act that would constitute an escape.  
5 The probation department or other appropriate agency shall  
6 immediately notify the court and the prosecutor in the event that the  
7 person refuses to submit to a periodic drug or alcohol test or for any  
8 reason terminates his participation in the course of treatment, or  
9 commits any act that would constitute an escape.

10 f. (1) Upon a first violation of any term or condition of the  
11 special probation authorized by this section or of any requirements  
12 of the course of treatment, the court in its discretion may  
13 permanently revoke the person's special probation.

14 (2) Upon a second or subsequent violation of any term or  
15 condition of the special probation authorized by this section or of  
16 any requirements of the course of treatment, the court shall, subject  
17 only to the provisions of subsection g. of this section, permanently  
18 revoke the person's special probation unless the court finds on the  
19 record that there is a substantial likelihood that the person will  
20 successfully complete the treatment program if permitted to  
21 continue on special probation, and the court is clearly convinced,  
22 considering the nature and seriousness of the violations, that no  
23 danger to the community will result from permitting the person to  
24 continue on special probation pursuant to this section. The court's  
25 determination to permit the person to continue on special probation  
26 following a second or subsequent violation pursuant to this  
27 paragraph may be appealed by the prosecution.

28 (3) In making its determination whether to revoke special  
29 probation, and whether to overcome the presumption of revocation  
30 established in paragraph (2) of this subsection, the court shall  
31 consider the nature and seriousness of the present infraction and any  
32 past infractions in relation to the person's overall progress in the  
33 course of treatment, and shall also consider the recommendations of  
34 the treatment provider. The court shall give added weight to the  
35 treatment provider's recommendation that the person's special  
36 probation be permanently revoked, or to the treatment provider's  
37 opinion that the person is not amenable to treatment or is not likely  
38 to complete the treatment program successfully.

39 (4) If the court permanently revokes the person's special  
40 probation pursuant to this subsection, the court shall impose any  
41 sentence that might have been imposed, or that would have been  
42 required to be imposed, originally for the offense for which the  
43 person was convicted or adjudicated delinquent. The court shall  
44 conduct a de novo review of any aggravating and mitigating factors  
45 present at the time of both original sentencing and resentencing. If  
46 the court determines or is required pursuant to any other provision  
47 of this chapter or any other law to impose a term of imprisonment,

1 the person shall receive credit for any time served in custody  
2 pursuant to N.J.S.2C:45-1 or while awaiting placement in a  
3 treatment facility pursuant to this section, and for each day during  
4 which the person satisfactorily complied with the terms and  
5 conditions of special probation while committed pursuant to this  
6 section to a residential treatment facility. The court, in determining  
7 the number of credits for time spent in a residential treatment  
8 facility, shall consider the recommendations of the treatment  
9 provider.

10 (5) Following a violation, if the court permits the person to  
11 continue on special probation pursuant to this section, the court  
12 shall order the person to comply with such additional terms and  
13 conditions, including but not limited to more frequent drug or  
14 alcohol testing, as are necessary to deter and promptly detect any  
15 further violation.

16 (6) Notwithstanding any other provision of this subsection, if  
17 the person at any time refuses to undergo urine testing for drug or  
18 alcohol usage as provided in subsection a. of this section, the court  
19 shall, subject only to the provisions of subsection g. of this section,  
20 permanently revoke the person's special probation.  
21 Notwithstanding any other provision of this section, if the person at  
22 any time while committed to the custody of a residential treatment  
23 facility pursuant to this section commits an act that would constitute  
24 an escape, the court shall forthwith permanently revoke the person's  
25 special probation.

26 (7) An action for a violation under this section may be brought  
27 by a probation officer or prosecutor or on the court's own motion.  
28 Failure to complete successfully the required treatment program  
29 shall constitute a violation of the person's special probation. A  
30 person who fails to comply with the terms of his special probation  
31 pursuant to this section and is thereafter sentenced to imprisonment  
32 in accordance with this subsection shall thereafter be ineligible for  
33 entry into the Intensive Supervision Program, provided however  
34 that this provision shall not affect the person's eligibility for entry  
35 into the Intensive Supervision Program for a subsequent conviction.

36 g. When a person on special probation is subject to a  
37 presumption of revocation on a second or subsequent violation  
38 pursuant to paragraph (2) of subsection f. of this section, or when  
39 the person refuses to undergo drug or alcohol testing pursuant to  
40 paragraph (6) of subsection f. of this section, the court may, in lieu  
41 of permanently revoking the person's special probation, impose a  
42 term of incarceration for a period of not less than 30 days nor more  
43 than six months, after which the person's term of special probation  
44 pursuant to this section may be reinstated. In determining whether  
45 to order a period of incarceration in lieu of permanent revocation  
46 pursuant to this subsection, the court shall consider the  
47 recommendations of the treatment provider with respect to the

1 likelihood that such confinement would serve to motivate the  
2 person to make satisfactory progress in treatment once special  
3 probation is reinstated. This disposition may occur only once with  
4 respect to any person unless the court is clearly convinced that there  
5 are compelling and extraordinary reasons to justify reimposing this  
6 disposition with respect to the person. Any such determination by  
7 the court to reimpose this disposition may be appealed by the  
8 prosecution. Nothing in this subsection shall be construed to limit  
9 the authority of the court at any time during the period of special  
10 probation to order a person on special probation who is not subject  
11 to a presumption of revocation pursuant to paragraph (2) of  
12 subsection f. of this section to be incarcerated over the course of a  
13 weekend, or for any other reasonable period of time, when the court  
14 in its discretion determines that such incarceration would help to  
15 motivate the person to make satisfactory progress in treatment.

16 h. The court, as a condition of its order, and after considering  
17 the person's financial resources, shall require the person to pay that  
18 portion of the costs associated with his participation in any  
19 rehabilitation program, nonresidential treatment program or period  
20 of residential treatment imposed pursuant to this section which, in  
21 the opinion of the court, is consistent with the person's ability to  
22 pay, taking into account the court's authority to order payment or  
23 reimbursement to be made over time and in installments.

24 i. The court shall impose, as a condition of the special  
25 probation, any fine, penalty, fee or restitution applicable to the  
26 offense for which the person was convicted or adjudicated  
27 delinquent.

28 j. Where the court finds that a person has satisfied all of the  
29 eligibility criteria for special probation and would otherwise be  
30 required to be committed to the custody of a residential treatment  
31 facility pursuant to the provisions of subsection d. of this section,  
32 the court may temporarily suspend imposition of all or any portion  
33 of the term of commitment to a residential treatment facility and  
34 may instead order the person to enter a nonresidential treatment  
35 program, provided that the court finds on the record that:

36 (1) the person conducting the diagnostic assessment required  
37 pursuant to paragraph (1) of subsection a. of this section has  
38 recommended in writing that the proposed course of nonresidential  
39 treatment services is clinically appropriate and adequate to address  
40 the person's treatment needs; and

41 (2) no danger to the community would result from the person  
42 participating in the proposed course of nonresidential treatment  
43 services; and

44 (3) a suitable treatment provider is able and has agreed to  
45 provide clinically appropriate nonresidential treatment services.

46 If the prosecutor objects to the court's decision to suspend the  
47 commitment of the person to a residential treatment facility



1 pursuant to this subsection, the sentence of special probation  
2 imposed pursuant to this section shall not become final for ten days  
3 in order to permit the appeal by the prosecution of the court's  
4 decision.

5 After a period of six months of nonresidential treatment, if the  
6 court, considering all available information including but not  
7 limited to the recommendation of the treatment provider, finds that  
8 the person has made satisfactory progress in treatment and that  
9 there is a substantial likelihood that the person will successfully  
10 complete the nonresidential treatment program and period of special  
11 probation, the court, on notice to the prosecutor, may permanently  
12 suspend the commitment of the person to the custody of a  
13 residential treatment program, in which event the special  
14 monitoring provisions set forth in subsection k. of this section shall  
15 no longer apply.

16 Nothing in this subsection shall be construed to limit the  
17 authority of the court at any time during the term of special  
18 probation to order the person to be committed to a residential or  
19 nonresidential treatment facility if the court determines that such  
20 treatment is clinically appropriate and necessary to address the  
21 person's present treatment needs.

22 k. (1) When the court temporarily suspends the commitment of  
23 the person to a residential treatment facility pursuant to subsection  
24 j. of this section, the court shall, in addition to ordering  
25 participation in a prescribed course of nonresidential treatment and  
26 any other appropriate terms or conditions authorized or required by  
27 law, order the person to undergo urine testing for drug or alcohol  
28 use not less than once per week unless otherwise ordered by the  
29 court. The court-ordered testing shall be conducted by the  
30 probation department or the treatment provider. The results of all  
31 tests shall be reported promptly to the court and to the prosecutor.  
32 In addition, the court shall impose appropriate curfews or other  
33 restrictions on the person's movements, and may order the person to  
34 wear electronic monitoring devices to enforce such curfews or other  
35 restrictions as a condition of special probation.

36 (2) The probation department or other appropriate agency shall  
37 immediately notify the court and the prosecutor in the event that the  
38 person fails or refuses to submit to a drug or alcohol test, knowingly  
39 defrauds the administration of a drug test, terminates his  
40 participation in the course of treatment, or commits any act that  
41 would constitute absconding from parole. If the person at any time  
42 while entered in a nonresidential treatment program pursuant to  
43 subsection j. of this section knowingly defrauds the administration  
44 of a drug test, goes into hiding or leaves the State with a purpose of  
45 avoiding supervision, the court shall permanently revoke the  
46 person's special probation.

1       1. If the court finds that the person has made exemplary  
2 progress in the course of treatment, the court may, upon  
3 recommendation of the person's supervising probation officer or on  
4 the court's own motion, and upon notice to the prosecutor, grant  
5 early discharge from a term of special probation provided that the  
6 person: (1) has satisfactorily completed the treatment program  
7 ordered by the court; (2) has served at least two years of special  
8 probation; (3) did not commit a substantial violation of any term or  
9 condition of special probation, including but not limited to a  
10 positive urine test, within the preceding 12 months; and (4) is not  
11 likely to relapse or commit an offense if probation supervision and  
12 related services are discontinued.<sup>4</sup>  
13 (cf: P.L.2008, c.15, s.1)

14  
15       <sup>4</sup>6. N.J.S.2C:44-6 is amended to read as follows:

16       2C:44-6 Procedure on sentence; presentence investigation and  
17 report.

18       a. The court shall not impose sentence without first ordering a  
19 presentence investigation of the defendant and according due  
20 consideration to a written report of such investigation when  
21 required by the Rules of Court. The court may order a presentence  
22 investigation in any other case.

23       b. The presentence investigation shall include an analysis of  
24 the circumstances attending the commission of the offense, the  
25 defendant's history of delinquency or criminality, family situation,  
26 financial resources, including whether or not the defendant is an  
27 enrollee or covered person under a health insurance contract, policy  
28 or plan, debts, including any amount owed for a fine, assessment or  
29 restitution ordered in accordance with the provisions of Title 2C,  
30 any obligation of child support including any child support  
31 delinquencies, employment history, personal habits, the disposition  
32 of any charge made against any codefendants, the defendant's  
33 history of civil commitment, any disposition which arose out of  
34 charges suspended pursuant to N.J.S.2C:4-6 including the records  
35 of the disposition of those charges and any acquittal by reason of  
36 insanity pursuant to N.J.S.2C:4-1, and any other matters that the  
37 probation officer deems relevant or the court directs to be included.  
38 The defendant shall disclose any information concerning any  
39 history of civil commitment. The report shall also include a  
40 medical history of the defendant and a complete psychological  
41 evaluation of the defendant in any case in which the defendant is  
42 being sentenced for a first or second degree crime involving  
43 violence and:

44       (1) the defendant has a prior acquittal by reason of insanity  
45 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to  
46 N.J.S.2C:4-6; or

1 (2) the defendant has a prior conviction for murder pursuant to  
2 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant  
3 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,  
4 endangering the welfare of a child which would constitute a crime  
5 of the second degree pursuant to N.J.S.2C:24-4, or stalking which  
6 would constitute a crime of the third degree pursuant to section 1 of  
7 P.L.1992, c.209 (C.2C:12-10); or

8 (3) the defendant has a prior diagnosis of psychosis.

9 The court, in its discretion and considering all the appropriate  
10 circumstances, may waive the medical history and psychological  
11 examination in any case in which a term of imprisonment including  
12 a period of parole ineligibility is imposed. In any case involving a  
13 conviction of N.J.S.2C:24-4, endangering the welfare of a child;  
14 N.J.S.2C:18-3, criminal trespass, where the trespass was committed  
15 in a school building or on school property; section 1 of P.L.1993,  
16 c.291 (C.2C:13-6), attempting to lure or entice a child with purpose  
17 to commit a criminal offense; section 1 of P.L.1992, c.209  
18 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the  
19 victim of the offense is a child under the age of 18, the investigation  
20 shall include a report on the defendant's mental condition.

21 The presentence investigation shall also include information  
22 regarding the defendant's history of substance abuse and substance  
23 abuse treatment, if any, including whether the defendant has sought  
24 treatment in the past. If any of the factors listed in subsection b. of  
25 section 1 of P.L. , c. (C. ) (pending before the Legislature  
26 as this bill) apply, the presentence report shall also include  
27 consideration of whether the defendant may be a drug dependent  
28 person as defined in N.J.S.2C:35-2.

29 The presentence investigation shall include an analysis of  
30 whether the defendant should be required to submit to a  
31 professional diagnostic assessment within the meaning of paragraph  
32 (1) of subsection a. of N.J.S.2C:35-14 in any case where: the  
33 defendant may be a drug dependent person as defined in  
34 N.J.S.2C:35-2; the defendant is eligible to be considered for a  
35 sentence to special probation pursuant to N.J.S.2C:35-14; and the  
36 court has not already ordered the defendant to submit to any such  
37 diagnostic assessment in regard to the pending matter.

38 The presentence report shall also include a report on any  
39 compensation paid by the Victims of Crime Compensation Agency  
40 as a result of the commission of the offense and, in any case where  
41 the victim chooses to provide one, a statement by the victim of the  
42 offense for which the defendant is being sentenced. The statement  
43 may include the nature and extent of any physical harm or  
44 psychological or emotional harm or trauma suffered by the victim,  
45 the extent of any loss to include loss of earnings or ability to work  
46 suffered by the victim and the effect of the crime upon the victim's  
47 family. The probation department shall notify the victim or nearest

1 relative of a homicide victim of his right to make a statement for  
 2 inclusion in the presentence report if the victim or relative so  
 3 desires. Any such statement shall be made within 20 days of  
 4 notification by the probation department.

5 The presentence report shall specifically include an assessment  
 6 of the gravity and seriousness of harm inflicted on the victim,  
 7 including whether or not the defendant knew or reasonably should  
 8 have known that the victim of the offense was particularly  
 9 vulnerable or incapable of resistance due to advanced age,  
 10 disability, ill-health, or extreme youth, or was for any other reason  
 11 substantially incapable of exercising normal physical or mental  
 12 power of resistance.

13 c. If, after the presentence investigation, the court desires  
 14 additional information concerning an offender convicted of an  
 15 offense before imposing sentence, it may order any additional  
 16 psychological or medical testing of the defendant.

17 d. Disclosure of any presentence investigation report or  
 18 psychiatric examination report shall be in accordance with law and  
 19 the Rules of Court, except that information concerning the  
 20 defendant's financial resources shall be made available upon request  
 21 to the Victims of Crime Compensation Agency or to any officer  
 22 authorized under the provisions of section 3 of P.L.1979, c.396  
 23 (C.2C:46-4) to collect payment on an assessment, restitution or fine  
 24 and that information concerning the defendant's coverage under any  
 25 health insurance contract, policy or plan shall be made available, as  
 26 appropriate to the Commissioner of Corrections and to the chief  
 27 administrative officer of a county jail in accordance with the  
 28 provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

29 e. The court shall not impose a sentence of imprisonment for  
 30 an extended term unless the ground therefor has been established at  
 31 a hearing after the conviction of the defendant and on written notice  
 32 to him of the ground proposed. The defendant shall have the right  
 33 to hear and controvert the evidence against him and to offer  
 34 evidence upon the issue.

35 f. (Deleted by amendment, P.L.1986, c.85).<sup>4</sup>  
 36 (cf: P.L.2009, c.328, s.2)

37  
 38 <sup>1</sup>[2.] <sup>3</sup>[3.] <sup>4</sup>[5.] <sup>7</sup>.<sup>4</sup> <sup>5</sup>[This act shall take effect]<sup>5</sup>  
 39 <sup>4</sup>[immediately] <sup>5</sup>Section 5 of this act shall take effect  
 40 <sup>6</sup>[immediately] <sup>6</sup>six months following enactment<sup>6</sup> and sections 1, 2,  
 41 3, 4, and 6 shall take effect<sup>5</sup> on the first day of the 12th month  
 42 following enactment, except that the Administrative Office of the  
 43 Courts, the Office of the Attorney General, the Office of the Public  
 44 Defender, and the Department of Human Services may take such  
 45 anticipatory administrative action in advance thereof as shall be  
 46 necessary for the implementation of this act<sup>4</sup> .

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Eliminates prosecutorial objection to admission to drug court program; expands eligibility and provides for phased-in mandatory drug court program.

**SENATE, No. 881**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**SYNOPSIS**

Amends special probation statute to give judges additional discretion to admit certain offenders to “drug court” program.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning treatment for drug and alcohol dependent  
2 persons and amending N.J.S.2C:35-14.

3

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

6

7 1. N.J.S.2C:35-14 is amended to read as follows:

8 2C:35-14. Rehabilitation Program for Drug and Alcohol  
9 Dependent Persons Subject to a Presumption of Incarceration or a  
10 Mandatory Minimum Period of Parole Ineligibility; Criteria for  
11 Imposing Special Probation; Ineligible Offenders; Prosecutorial  
12 Objections; Commitment to Residential Treatment Facilities or  
13 Participation in a Nonresidential Treatment Program; Presumption  
14 of Revocation; Brief Incarceration in Lieu of Permanent  
15 Revocation.

16 a. Any person who is ineligible for probation due to a  
17 conviction for a crime which is subject to a presumption of  
18 incarceration or a mandatory minimum period of parole ineligibility  
19 may be sentenced to a term of special probation in accordance with  
20 this section, and may not apply for drug and alcohol treatment  
21 pursuant to N.J.S.2C:45-1. Nothing in this section shall be  
22 construed to prohibit a person who is eligible for probation in  
23 accordance with N.J.S.2C:45-1 due to a conviction for an offense  
24 which is not subject to a presumption of incarceration or a  
25 mandatory minimum period of parole ineligibility from applying for  
26 drug or alcohol treatment as a condition of probation pursuant to  
27 N.J.S.2C:45-1. Notwithstanding the presumption of incarceration  
28 pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and  
29 except as provided in subsection c. of this section, whenever a drug  
30 or alcohol dependent person who is subject to sentencing under this  
31 section is convicted of or adjudicated delinquent for an offense,  
32 other than one described in subsection b. of this section, the court,  
33 upon notice to the prosecutor, may, on motion of the person, or on  
34 the court's own motion, place the person on special probation,  
35 which shall be for a term of five years, **[**, provided that the court  
36 finds on the record that] In determining whether to place the  
37 person on special probation, the court may consider the following  
38 factors:

39 (1) the **[**person has undergone a] results of any professional  
40 diagnostic assessment the person has undergone to determine  
41 whether and to what extent the person is drug or alcohol dependent  
42 and would benefit from treatment; and

43 (2) whether the person is a drug or alcohol dependent person  
44 within the meaning of N.J.S.2C:35-2 and whether the person was

**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 drug or alcohol dependent at the time of the commission of the  
2 present offense; and

3 (3) whether the present offense was committed while the person  
4 was under the influence of a controlled dangerous substance,  
5 controlled substance analog or alcohol or was committed to acquire  
6 property or monies in order to support the person's drug or alcohol  
7 dependency; and

8 (4) whether substance abuse treatment and monitoring will serve  
9 to benefit the person by addressing his drug or alcohol dependency  
10 and will thereby reduce the likelihood that the person will thereafter  
11 commit another offense; and

12 (5) whether the person ~~【did not possess】~~ possessed a firearm at  
13 the time of the present offense ~~【and did not possess】~~ or possessed a  
14 firearm at the time of any pending criminal charge; and

15 (6) whether the person has ~~【not】~~ been previously convicted on  
16 two or more separate occasions of crimes of the first or second  
17 degree ~~【, other than those listed in paragraph (7)】~~; or the person has  
18 ~~【not】~~ been previously convicted on two or more separate occasions,  
19 where one of the offenses is a crime of the third degree, other than  
20 crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime  
21 of the first or second degree; and

22 (7) ~~【the person has not been previously convicted or adjudicated~~  
23 ~~delinquent for, and does not have a pending charge of murder,~~  
24 ~~aggravated manslaughter, manslaughter, robbery, kidnapping,~~  
25 ~~aggravated assault, aggravated sexual assault or sexual assault, or a~~  
26 ~~similar crime under the laws of any other state or the United States;~~  
27 ~~and】~~ (deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) pending  
28 before the Legislature as this bill).

29 (8) whether a suitable treatment facility licensed and approved  
30 by the Division of Addiction Services in the Department of Human  
31 Services is able and has agreed to provide appropriate treatment  
32 services in accordance with the requirements of this section; and

33 (9) whether ~~【no】~~ danger to the community will result from the  
34 person being placed on special probation pursuant to this section.

35 Notwithstanding any provision of this section or any other law to  
36 the contrary, the court shall not place on special probation any  
37 person who has been previously convicted or adjudicated delinquent  
38 for, or has a pending charge of murder, aggravated manslaughter,  
39 manslaughter, robbery, kidnapping, aggravated assault, aggravated  
40 sexual assault or sexual assault, or a similar crime under the laws of  
41 any other state or the United States.

42 In determining whether to sentence the person pursuant to this  
43 section, the court shall consider all relevant circumstances, and  
44 shall take judicial notice of any evidence, testimony or information  
45 adduced at the trial, plea hearing or other court proceedings, and  
46 shall also consider the presentence report and the results of ~~【the】~~  
47 any professional diagnostic assessment to determine whether and to



1 what extent the person is drug or alcohol dependent and would  
2 benefit from treatment. The court shall make all findings relevant  
3 to its determination on the record.

4 As a condition of special probation, the court shall order the  
5 person to enter a residential treatment program at a facility licensed  
6 and approved by the Division of Addiction Services in the  
7 Department of Human Services or a program of nonresidential  
8 treatment by a licensed and approved treatment provider, to comply  
9 with program rules and the requirements of the course of treatment,  
10 to cooperate fully with the treatment provider, and to comply with  
11 such other reasonable terms and conditions as may be required by  
12 the court or by law, pursuant to N.J.S.2C:45-1, and which shall  
13 include periodic urine testing for drug or alcohol usage throughout  
14 the period of special probation. In determining whether to order the  
15 person to participate in a nonresidential rather than a residential  
16 treatment program, the court shall follow the procedure set forth in  
17 subsection j. of this section. Subject to the requirements of  
18 subsection d. of this section, the conditions of special probation  
19 may include different methods and levels of community-based or  
20 residential supervision.

21 b. A person shall not be eligible for special probation pursuant  
22 to this section if the person is convicted of or adjudicated  
23 delinquent for:

24 (1) a crime of the first degree;

25 (2) a crime of the first or second degree enumerated in  
26 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

27 (3) a crime, other than that defined in section 1 of P.L.1987,  
28 c.101 (C.2C:35-7), for which a mandatory minimum period of  
29 incarceration is prescribed under chapter 35 of this Title or any  
30 other law; or

31 (4) an offense that involved the distribution or the conspiracy or  
32 attempt to distribute a controlled dangerous substance or controlled  
33 substance analog to a juvenile near or on school property.

34 c. A person who is subject to sentencing under this section in  
35 accordance with subsection a. shall not be eligible for a sentence of  
36 special probation pursuant to this section if:

37 (1) the person has been:

38 (a) convicted of or adjudicated delinquent for an offense  
39 under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of  
40 section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which  
41 there exists a presumption of imprisonment pursuant to subsection  
42 d. of N.J.S.2C:44-1 or any other statute; or

43 (b) previously convicted of an offense under subsection  
44 a. of N.J.S.2C:35-5 or a similar offense under any other law of this  
45 State, any other state or the United States; **[or**

1 (c) previously convicted on two or more separate occasions of  
2 crimes of the third degree, other than crimes defined in  
3 N.J.S.2C:35-10;] and

4 (2) the prosecutor objects to the person being placed on special  
5 probation. The court shall not place a person on special probation  
6 over the prosecutor's objection except upon a finding by the court of  
7 a gross and patent abuse of prosecutorial discretion. If the court  
8 makes a finding of a gross and patent abuse of prosecutorial  
9 discretion and imposes a sentence of special probation  
10 notwithstanding the objection of the prosecutor, the sentence of  
11 special probation imposed pursuant to this section shall not become  
12 final for 10 days in order to permit the appeal of such sentence by  
13 the prosecution.

14 d. Except as otherwise provided in subsection j. of this section,  
15 a person convicted of or adjudicated delinquent for a crime of the  
16 second degree or of a violation of section 1 of P.L.1987, c.101  
17 (C.2C:35-7), or who previously has been convicted of or  
18 adjudicated delinquent for an offense under subsection a. of  
19 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
20 any other state or the United States, who is placed on special  
21 probation under this section shall be committed to the custody of a  
22 residential treatment facility licensed and approved by the Division  
23 of Addiction Services in the Department of Human Services.  
24 Subject to the authority of the court to temporarily suspend  
25 imposition of all or any portion of the term of commitment to a  
26 residential treatment facility pursuant to subsection j. of this  
27 section, the person shall be committed to the residential treatment  
28 facility immediately, unless the facility cannot accommodate the  
29 person, in which case the person shall be incarcerated to await  
30 commitment to the residential treatment facility. The term of such  
31 commitment shall be for a minimum of six months, or until the  
32 court, upon recommendation of the treatment provider, determines  
33 that the person has successfully completed the residential treatment  
34 program, whichever is later, except that no person shall remain in  
35 the custody of a residential treatment facility pursuant to this  
36 section for a period in excess of five years. Upon successful  
37 completion of the required residential treatment program, the person  
38 shall complete the period of special probation, as authorized by  
39 subsection a. of this section, with credit for time served for any  
40 imprisonment served as a condition of probation and credit for each  
41 day during which the person satisfactorily complied with the terms  
42 and conditions of special probation while committed pursuant to  
43 this section to a residential treatment facility. Except as otherwise  
44 provided in subsection l. of this section, the person shall not be  
45 eligible for early discharge of special probation pursuant to  
46 N.J.S.2C:45-2, or any other provision of the law. The court, in  
47 determining the number of credits for time spent in residential

1 treatment, shall consider the recommendations of the treatment  
2 provider. A person placed into a residential treatment facility  
3 pursuant to this section shall be deemed to be subject to official  
4 detention for the purposes of N.J.S.2C:29-5 (escape).

5 e. The probation department or other appropriate agency  
6 designated by the court to monitor or supervise the person's special  
7 probation shall report periodically to the court as to the person's  
8 progress in treatment and compliance with court-imposed terms and  
9 conditions. The treatment provider shall promptly report to the  
10 probation department or other appropriate agency all significant  
11 failures by the person to comply with any court imposed term or  
12 condition of special probation or any requirements of the course of  
13 treatment, including but not limited to a positive drug or alcohol  
14 test or the unexcused failure to attend any session or activity, and  
15 shall immediately report any act that would constitute an escape.  
16 The probation department or other appropriate agency shall  
17 immediately notify the court and the prosecutor in the event that the  
18 person refuses to submit to a periodic drug or alcohol test or for any  
19 reason terminates his participation in the course of treatment, or  
20 commits any act that would constitute an escape.

21 f. (1) Upon a first violation of any term or condition of the  
22 special probation authorized by this section or of any requirements  
23 of the course of treatment, the court in its discretion may  
24 permanently revoke the person's special probation.

25 (2) Upon a second or subsequent violation of any term or  
26 condition of the special probation authorized by this section or of  
27 any requirements of the course of treatment, the court shall, subject  
28 only to the provisions of subsection g. of this section, permanently  
29 revoke the person's special probation unless the court finds on the  
30 record that there is a substantial likelihood that the person will  
31 successfully complete the treatment program if permitted to  
32 continue on special probation, and the court is clearly convinced,  
33 considering the nature and seriousness of the violations, that no  
34 danger to the community will result from permitting the person to  
35 continue on special probation pursuant to this section. The court's  
36 determination to permit the person to continue on special probation  
37 following a second or subsequent violation pursuant to this  
38 paragraph may be appealed by the prosecution.

39 (3) In making its determination whether to revoke special  
40 probation, and whether to overcome the presumption of revocation  
41 established in paragraph (2) of this subsection, the court shall  
42 consider the nature and seriousness of the present infraction and any  
43 past infractions in relation to the person's overall progress in the  
44 course of treatment, and shall also consider the recommendations of  
45 the treatment provider. The court shall give added weight to the  
46 treatment provider's recommendation that the person's special  
47 probation be permanently revoked, or to the treatment provider's

1 opinion that the person is not amenable to treatment or is not likely  
2 to complete the treatment program successfully.

3 (4) If the court permanently revokes the person's special  
4 probation pursuant to this subsection, the court shall impose any  
5 sentence that might have been imposed, or that would have been  
6 required to be imposed, originally for the offense for which the  
7 person was convicted or adjudicated delinquent. The court shall  
8 conduct a de novo review of any aggravating and mitigating factors  
9 present at the time of both original sentencing and resentencing. If  
10 the court determines or is required pursuant to any other provision  
11 of this chapter or any other law to impose a term of imprisonment,  
12 the person shall receive credit for any time served in custody  
13 pursuant to N.J.S.2C:45-1 or while awaiting placement in a  
14 treatment facility pursuant to this section, and for each day during  
15 which the person satisfactorily complied with the terms and  
16 conditions of special probation while committed pursuant to this  
17 section to a residential treatment facility. The court, in determining  
18 the number of credits for time spent in a residential treatment  
19 facility, shall consider the recommendations of the treatment  
20 provider.

21 (5) Following a violation, if the court permits the person to  
22 continue on special probation pursuant to this section, the court  
23 shall order the person to comply with such additional terms and  
24 conditions, including but not limited to more frequent drug or  
25 alcohol testing, as are necessary to deter and promptly detect any  
26 further violation.

27 (6) Notwithstanding any other provision of this subsection, if  
28 the person at any time refuses to undergo urine testing for drug or  
29 alcohol usage as provided in subsection a. of this section, the court  
30 shall, subject only to the provisions of subsection g. of this section,  
31 permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at  
32 any time while committed to the custody of a residential treatment  
33 facility pursuant to this section commits an act that would constitute  
34 an escape, the court shall forthwith permanently revoke the person's  
35 special probation.

36 (7) An action for a violation under this section may be brought  
37 by a probation officer or prosecutor or on the court's own motion.  
38 Failure to complete successfully the required treatment program  
39 shall constitute a violation of the person's special probation. A  
40 person who fails to comply with the terms of his special probation  
41 pursuant to this section and is thereafter sentenced to imprisonment  
42 in accordance with this subsection shall thereafter be ineligible for  
43 entry into the Intensive Supervision Program, provided however  
44 that this provision shall not affect the person's eligibility for entry  
45 into the Intensive Supervision Program for a subsequent conviction.  
46

1 g. When a person on special probation is subject to a  
2 presumption of revocation on a second or subsequent violation  
3 pursuant to paragraph (2) of subsection f. of this section, or when  
4 the person refuses to undergo drug or alcohol testing pursuant to  
5 paragraph (6) of subsection f. of this section, the court may, in lieu  
6 of permanently revoking the person's special probation, impose a  
7 term of incarceration for a period of not less than 30 days nor more  
8 than six months, after which the person's term of special probation  
9 pursuant to this section may be reinstated. In determining whether  
10 to order a period of incarceration in lieu of permanent revocation  
11 pursuant to this subsection, the court shall consider the  
12 recommendations of the treatment provider with respect to the  
13 likelihood that such confinement would serve to motivate the  
14 person to make satisfactory progress in treatment once special  
15 probation is reinstated. This disposition may occur only once with  
16 respect to any person unless the court is clearly convinced that there  
17 are compelling and extraordinary reasons to justify reimposing this  
18 disposition with respect to the person. Any such determination by  
19 the court to reimpose this disposition may be appealed by the  
20 prosecution. Nothing in this subsection shall be construed to limit  
21 the authority of the court at any time during the period of special  
22 probation to order a person on special probation who is not subject  
23 to a presumption of revocation pursuant to paragraph (2) of  
24 subsection f. of this section to be incarcerated over the course of a  
25 weekend, or for any other reasonable period of time, when the court  
26 in its discretion determines that such incarceration would help to  
27 motivate the person to make satisfactory progress in treatment.

28 h. The court, as a condition of its order, and after considering  
29 the person's financial resources, shall require the person to pay that  
30 portion of the costs associated with his participation in any  
31 rehabilitation program, nonresidential treatment program or period  
32 of residential treatment imposed pursuant to this section which, in  
33 the opinion of the court, is consistent with the person's ability to  
34 pay, taking into account the court's authority to order payment or  
35 reimbursement to be made over time and in installments.

36 i. The court shall impose, as a condition of the special  
37 probation, any fine, penalty, fee or restitution applicable to the  
38 offense for which the person was convicted or adjudicated  
39 delinquent.

40 j. Where the court finds that a person has satisfied all of the  
41 eligibility criteria for special probation and would otherwise be  
42 required to be committed to the custody of a residential treatment  
43 facility pursuant to the provisions of subsection d. of this section,  
44 the court may temporarily suspend imposition of all or any portion  
45 of the term of commitment to a residential treatment facility and  
46 may instead order the person to enter a nonresidential treatment  
47 program, provided that the court finds on the record that:

1 (1) the person conducting the diagnostic assessment required  
2 pursuant to paragraph (1) of subsection a. of this section has  
3 recommended in writing that the proposed course of nonresidential  
4 treatment services is clinically appropriate and adequate to address  
5 the person's treatment needs; and

6 (2) no danger to the community would result from the person  
7 participating in the proposed course of nonresidential treatment  
8 services; and

9 (3) a suitable treatment provider is able and has agreed to  
10 provide clinically appropriate nonresidential treatment services.

11 If the prosecutor objects to the court's decision to suspend the  
12 commitment of the person to a residential treatment facility  
13 pursuant to this subsection, the sentence of special probation  
14 imposed pursuant to this section shall not become final for ten days  
15 in order to permit the appeal by the prosecution of the court's  
16 decision.

17 After a period of six months of nonresidential treatment, if the  
18 court, considering all available information including but not  
19 limited to the recommendation of the treatment provider, finds that  
20 the person has made satisfactory progress in treatment and that  
21 there is a substantial likelihood that the person will successfully  
22 complete the nonresidential treatment program and period of special  
23 probation, the court, on notice to the prosecutor, may permanently  
24 suspend the commitment of the person to the custody of a  
25 residential treatment program, in which event the special  
26 monitoring provisions set forth in subsection k. of this section shall  
27 no longer apply.

28 Nothing in this subsection shall be construed to limit the  
29 authority of the court at any time during the term of special  
30 probation to order the person to be committed to a residential or  
31 nonresidential treatment facility if the court determines that such  
32 treatment is clinically appropriate and necessary to address the  
33 person's present treatment needs.

34 k. (1) When the court temporarily suspends the commitment of  
35 the person to a residential treatment facility pursuant to subsection  
36 j. of this section, the court shall, in addition to ordering  
37 participation in a prescribed course of nonresidential treatment and  
38 any other appropriate terms or conditions authorized or required by  
39 law, order the person to undergo urine testing for drug or alcohol  
40 use not less than once per week unless otherwise ordered by the  
41 court. The court-ordered testing shall be conducted by the  
42 probation department or the treatment provider. The results of all  
43 tests shall be reported promptly to the court and to the prosecutor.  
44 In addition, the court shall impose appropriate curfews or other  
45 restrictions on the person's movements, and may order the person to  
46 wear electronic monitoring devices to enforce such curfews or other  
47 restrictions as a condition of special probation.

1 (2) The probation department or other appropriate agency shall  
2 immediately notify the court and the prosecutor in the event that the  
3 person fails or refuses to submit to a drug or alcohol test, knowingly  
4 defrauds the administration of a drug test, terminates his  
5 participation in the course of treatment, or commits any act that  
6 would constitute absconding from parole. If the person at any time  
7 while entered in a nonresidential treatment program pursuant to  
8 subsection j. of this section knowingly defrauds the administration  
9 of a drug test, goes into hiding or leaves the State with a purpose of  
10 avoiding supervision, the court shall permanently revoke the  
11 person's special probation.

12 1. If the court finds that the person has made exemplary  
13 progress in the course of treatment, the court may, upon  
14 recommendation of the person's supervising probation officer or on  
15 the court's own motion, and upon notice to the prosecutor, grant  
16 early discharge from a term of special probation provided that the  
17 person: (1) has satisfactorily completed the treatment program  
18 ordered by the court; (2) has served at least two years of special  
19 probation; (3) did not commit a substantial violation of any term or  
20 condition of special probation, including but not limited to a  
21 positive urine test, within the preceding 12 months; and (4) is not  
22 likely to relapse or commit an offense if probation supervision and  
23 related services are discontinued.

24 (cf: P.L.2008, c.15, s.1)

25

26 2. This act shall take effect immediately.

27

28

29

STATEMENT

30

31 This bill would modify the criteria for admission into special  
32 probation pursuant to N.J.S.2C:35-14, which is commonly referred  
33 to as the "drug court" program, to allow more persons to have  
34 access to the program. Currently, a person must satisfy certain  
35 eligibility criteria to be placed on special probation. This bill would  
36 allow courts greater discretion to place a person on special  
37 probation by making the eligibility criteria permissive, instead of  
38 mandatory, for the court. A person who does not meet all of the  
39 eligibility criteria but who would nevertheless benefit from  
40 participation in the program would thus be eligible for special  
41 probation.

42 Under the current law, a person may only be admitted into  
43 special probation if the person was convicted of a crime with a  
44 presumption of incarceration or minimum period of parole  
45 ineligibility and if the person also meets certain eligibility criteria.  
46 The court must find on the record that: 1) the person must have  
47 undergone a professional diagnostic assessment to determine

1 whether and to what extent the person is drug or alcohol dependent;  
2 2) the person must have been drug or alcohol dependent at time the  
3 offense was committed; 3) the person was under the influence of a  
4 controlled dangerous substance or alcohol at the time the person  
5 committed the offense or the person committed the offense to  
6 support the person's drug or alcohol dependency; 4) treatment and  
7 monitoring will serve to benefit the person by addressing the  
8 person's drug or alcohol dependency and will reduce the likelihood  
9 that the person will commit another offense; 5) the person did not  
10 possess a firearm at the time of the present offense or at the time of  
11 any pending criminal charge; 6) the person does not have two or  
12 more prior convictions for crimes of the first or second degree, or  
13 two or more convictions where one conviction was for a crime of  
14 the third degree, other than possession, use, or being under the  
15 influence of a controlled dangerous substance, and the other  
16 conviction was for a crime of the first or second degree; 7) the  
17 person has no prior convictions or pending charges for murder,  
18 aggravated manslaughter, manslaughter, robbery, kidnapping,  
19 aggravated assault, aggravated sexual assault, sexual assault, or a  
20 similar crime under any state or federal law; 8) a suitable treatment  
21 facility is able to and has agreed to provide treatment services; and  
22 9) no danger to community will result from the person being placed  
23 on special probation.

24 Under the bill, in determining whether to place the person on  
25 special probation the court may consider these factors; the bill  
26 eliminates the requirement that the court must make these findings  
27 in order to place the person on special probation.

28 The bill would not change the prohibition against admission to  
29 special probation for people who have a prior conviction or pending  
30 charges for murder, aggravated manslaughter, manslaughter,  
31 robbery, kidnapping, aggravated assault, aggravated sexual assault,  
32 sexual assault, or a similar crime.

33 Additionally, this bill would remove the provision that permits  
34 the prosecutor to object to special probation if the person has two or  
35 more separate prior convictions for crimes of the third degree.  
36 Under current law, the prosecutor may object to the person being  
37 placed on special probation if: 1) the present conviction or  
38 adjudication of delinquency is for an offense involving distribution  
39 of a controlled dangerous substance on or near school property,  
40 placing a booby trap on property used to manufacture, distribute, or  
41 dispense a controlled dangerous substance, or any crime for which  
42 there exists a presumption of imprisonment; 2) the person was  
43 previously convicted of or adjudicated delinquent for an offense  
44 involving the manufacture, distribution, or dispensation of a  
45 controlled dangerous substance; or 3) the person was previously  
46 convicted on two or more separate occasions of crimes of the third  
47 degree, other than crimes involving possession, use, or being under



1 the influence of a controlled dangerous substance. A court may not  
2 place a person on special probation over the prosecutor's objection  
3 except upon a finding of a gross and patent abuse of prosecutorial  
4 discretion, which finding is appealable. Under this bill, two or  
5 more prior convictions for a crime of the third degree would no  
6 longer constitute grounds for the prosecutor to object to special  
7 probation.

8 This bill would not make any changes to subsection b. of  
9 N.J.S.2C:35-14, which provides that a person is ineligible for  
10 special probation if the offense the person has been convicted of is:  
11 1) a crime of the first degree; 2) a crime of the first or second  
12 degree that is enumerated in N.J.S.A.2C:43-7.2, which is known as  
13 the "No Early Release Act;" 3) any crime involving a mandatory  
14 period of incarceration, other than distribution of a controlled  
15 dangerous substance on or near school property; or 4) distribution,  
16 or conspiracy to or attempt to distribute a controlled dangerous  
17 substance to a juvenile near or on school property.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 881**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 16, 2012

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 881.

This bill, as amended, would modify the criteria for admission into special probation pursuant to N.J.S.2C:35-14, which is commonly referred to as the “drug court” program, to allow more persons to be eligible and have access to the program. Additionally, the bill provides for the New Jersey Supreme Court to establish a two-year pilot program, to be operated in two vicinages, which would mandate admission to the program for anyone who is eligible.

The admission criteria for special probation are modified by making many of the statutorily enumerated factors for consideration by a court optional, instead of mandatory as under the current law. These optional factors for consideration would include: the results of any professional diagnostic assessment the person has undergone; the person’s dependency on drugs or alcohol, if any, and whether the person was drug or alcohol dependent at the time of committing the offense; whether the person possessed a firearm at the time of committing the offense; and whether a suitable, licensed treatment facility is able and has agreed to provide treatment services to the person.

By making such statutorily enumerated factors permissive for the eligibility review process, a court would have greater discretion to place the person on special probation, even if one or more of the enumerated factors was not satisfied when applied to a particular person. Given the greater discretion provided to the court, the bill would require that the court make a record of all its findings relevant to a determination to place a person on special probation.

Additionally, this bill would eliminate the statutory provision that permits a prosecutor to object to special probation if the person has two or more separate prior convictions for crimes of the third degree. Under current law, if a prosecutor objected based on such prior convictions, the court could not place a person on special probation except upon a finding of a gross and patent abuse of prosecutorial discretion. Removing the prosecutor’s objection would provide the

court greater discretion to make a determination of program eligibility for a person with such prior convictions.

The bill does not modify the current law's mandate prohibiting admission into special probation if a person has a prior conviction or pending charges for murder, aggravated manslaughter, manslaughter, robbery, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, or a similar crime under the laws of any other state or the United States. The bill also does not modify the prohibition against admission if the person is convicted of or adjudicated delinquent for: a first degree crime; a first or second degree crime under section 2 of P.L.1997, c.117 (C.2C:43-7.2), which is commonly referred to as the "No Early Release Act"; any crime requiring a mandatory period of incarceration, other than distribution of a controlled dangerous substance or analog on or near school property; or any offense involving distribution or the conspiracy or attempt to distribute a controlled dangerous substance or analog to a juvenile on or near school property.

In addition to modifying the eligibility criteria to allow more persons to have access to special probation, the bill provides for the New Jersey Supreme Court to establish a two-year pilot program that would mandate access to special probation in two selected vicinages, one located in the northern region of the State and one in the southern region. In selecting the vicinages, the Supreme Court may consider whether a vicinage has requested to participate in the pilot program.

Under the pilot program, a person would be admitted into special probation so long as the person was not disqualified pursuant to any of the mandatory criteria prohibiting admission. Further, a prosecutor would not be permitted to object to a person's admittance into the program on any grounds, thus eliminating a court's need to make a finding of a gross and patent abuse of prosecutorial discretion in order to admit a person who is otherwise qualified pursuant to the statutory criteria.

Beginning one year after the effective date of the bill, and annually thereafter, the Administrative Director of the Courts would submit reports to the Governor and Legislature concerning the pilot program. These reports would include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, and any other information that may indicate the effectiveness of mandatory special probation. The reports would also make recommendations concerning the practicability and feasibility of expanding the pilot program Statewide.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 881**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: APRIL 3, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 881 (1R), with committee amendments.

As amended, this bill modifies certain admission criteria for special probation pursuant to N.J.S.2C:35-14, commonly referred to as the “drug court” program, in order to permit additional offenders who may benefit from the program to be diverted into the program instead of being sentenced to a term of incarceration. The bill also establishes a two-year pilot program, to be operated in two New Jersey Superior Court vicinages, that will mandate that "drug court" program sentences be ordered for each person subject to criminal sentencing who meets the modified admission criteria. The pilot program requires the Administrative Office of the Courts (AOC) to assess the feasibility of expanding this mandated "drug court" sentencing Statewide.

The bill, as amended, extends to the discretion of the sentencing court the permissive consideration of certain admission criteria for special probation, instead of the current mandatory review and court findings of these criteria that must be entered by on the record under current law. These factors made optional for consideration include: whether the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and whether the person has been previously convicted on two or more occasions of crimes of the second degree; or the person has been previously convicted on two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.2C:35-10 (Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition of controlled dangerous substance), and one of the offenses is a crime of the first or second degree.

By making these statutorily enumerated factors a permissive part of the eligibility review process, a court will have greater discretion to

place the person on special probation, even if one or more of the enumerated discretionary factors was not met by a particular defendant. Given the greater discretion provided to the court, the bill will require that the court make a record of all its findings relevant to a determination to place a person on special probation.

Additionally the bill, as amended, would require that prior to sentencing a person to special probation, the court find on the record that: (1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; (2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present offense; (3) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; (4) the person has not been previously convicted on two or more separate occasions of crimes of the first degree; (5) a suitable treatment facility licensed and approved by the Division of Addiction Services in the Department of Human Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of the bill; (6) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and (7) no danger to the community will result from the person being placed on special probation.

The bill, as amended, will eliminate the statutory provision that permits a prosecutor to object to special probation if the person has two or more separate prior convictions for crimes of the third degree. Under current law, if a prosecutor objected based on such prior convictions, the court could not place a person on special probation except upon a finding of a gross and patent abuse of prosecutorial discretion. Removing the prosecutor's objection will provide the court greater discretion to make a determination of program eligibility for a person with such prior convictions.

The bill, as amended, prohibits admission to special probation for certain enumerated offenses for which the offender has prior convictions, prior adjudications of delinquency, and pending charges, and includes convictions under federal law and the laws of other states for the following: murder; aggravated manslaughter; manslaughter; kidnapping; aggravated assault; aggravated sexual assault; or sexual assault. This list of prohibited offenses under the program does not apply to the conviction for which the offender is currently being sentenced. However, as amended, this bill will not prohibit admission to special probations for sentencing for current convictions or adjudications of delinquency for a second degree robbery or burglary offense. The bill, as amended, does prohibit admission to special probation for sentencing for current convictions or juvenile

adjudications for: a crime of the first degree, including a burglary or robbery offense; other offenses enumerated in the "No Early Release Act" (other than second degree burglary or robbery), any crime requiring a mandatory period of incarceration (but not including distribution of a controlled dangerous substance or analog on or near school property); or any offense involving distribution or the conspiracy or attempt to distribute a controlled dangerous substance to a juvenile near or on school property.

In addition to modifying the eligibility criteria to allow more persons to have access to special probation in all counties, the bill establishes a two-year pilot program that will mandate access to special probation in two selected vicinages for each person subject to criminal sentencing who meets the modified admission criteria, and who is: (1) reasonably suspected to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible for probation due to a conviction for a crime which is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; and (3) meets the legal criteria for eligibility for special probation under the provisions of subsections a. and b. of N.J.S.2C:35-14; and who pursuant to a court order undergoes a professional diagnostic assessment to determine if the defendant is drug dependent. However, an individual will be ineligible for a "drug court" sentence if the court finds that a sentence of imprisonment must be imposed pursuant to chapters 43 and 44 of Title 2C of the New Jersey Statutes, in which case the court shall impose a sentence of imprisonment. The AOC will determine the effectiveness of mandatory sentencing of qualified offenders to special probation as well as assess the feasibility of expanding this program Statewide. The AOC will select the pilot vicinages and shall administer and evaluate the pilot programs.

Further, under the pilot program, while a prosecutor may be permitted to object to a person's admittance into the program, such objection will not have the effect of "vetoing" the offender's admission to the pilot program. A court will not need to make a finding of a gross and patent abuse of prosecutorial discretion after a prosecutor's objection in order to admit a person under the pilot program who is otherwise qualified pursuant to the statutory criteria.

Beginning one year after the effective date of the bill, and for five years annually thereafter, the Administrative Director of the Courts will submit reports to the Governor and Legislature concerning the pilot program. The reports will include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, comparative retention and recidivism data for non-mandatory special probation participants, and any other information that may indicate the effectiveness of mandatory special probation. The reports will also make recommendations concerning the practicability and feasibility of

expanding the pilot program Statewide and may include recommendations for legislation or other action appropriate for adoption of consideration by the Legislature.

COMMITTEE AMENDMENTS:

The committee amendments leave mandatory most eligibility requirements for drug court, while retaining the court's discretion to waive ruling on remaining statutory eligibility factors. The mandatory factors for which a court finding must be entered on the record are: (1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; (2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present offense; (3) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; (4) the person has not been previously convicted on two or more separate occasions of crimes of the first degree; (5) a suitable treatment facility licensed and approved by the Division of Addiction Services in the Department of Human Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of the bill; (6) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and (7) no danger to the community will result from the person being placed on special probation. The committee amendments also permit offenders with a prior robbery conviction or a current conviction for second degree robbery or burglary to be eligible for drug court.

The committee amendments also provide that under the pilot programs each person subject to criminal sentencing who meets the modified admission criteria, and who is: (1) reasonably suspected to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible for probation due to a conviction for a crime which is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; and (3) meets the legal criteria for eligibility for special probation under the provisions of subsections a. and b. of N.J.S.2C:35-14; and who pursuant to a court order undergoes a professional diagnostic assessment to determine if the defendant is drug dependent, shall receive a "drug court" sentence. However, an individual will be ineligible for a "drug court" sentence if the court finds that a sentence of imprisonment must be imposed pursuant to chapters 43 and 44 of Title 2C of the New Jersey Statutes, in which case the court shall impose a sentence of imprisonment.

The committee amendments also replace the New Jersey Supreme Court with the Administrative Office of the Courts as the body responsible for selecting the pilot vicinages, administering and

evaluating the pilot programs. Geographical-based selection criteria for the two pilot vicinages are deleted by the committee amendments as well as whether a vicinage has requested to participate in the pilot program. Under the amendments, the AOC will produce five annual reports that will include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, comparative retention and recidivism data for non-mandatory special probation participants, and any other information that may indicate the effectiveness of mandatory special probation.

**FISCAL IMPACT:**

The Administrative Office of the Courts (AOC) states that based on recent statistics, the Judiciary anticipates that between the 2 vicinages selected for the pilot program, approximately 270 additional cases would qualify for consideration. Of that amount, approximately 75% (203 cases) would require a clinical assessment and roughly 64.5% (131 cases) of those assessed cases would be reviewed by the court for enrollment in Drug Court, regardless of whether the defendant agreed to apply voluntarily.

The AOC states that if enacted, the proposed legislation would require expenditures in the amount of \$1,676,981 in the first year of enactment and \$1,443,112 in the second year of enactment as follows:

	<b>Year 1</b>	<b>Year 2</b>
Judge Team	<b>\$669,933</b>	<b>\$568,186</b>
Enrollment, Supervision and Assessment Services	<b>\$901,760</b>	<b>\$775,277</b>
Centralized Coordination	<b>\$105,288</b>	<b>\$99,648</b>
<b>TOTAL</b>	<b>\$1,676,981</b>	<b>\$1,443,111</b>

The Office of Legislative Services (OLS) notes that the estimate does not include the cost of treatment incurred by the Department of Human Services for each of the offenders admitted into the program. The OLS also notes that according to reports released by the Judiciary, the average annual cost for active Drug Court participants is approximately \$11,379 (court costs plus treatment costs). An increase of 270 offenders diverted to the drug court program would cost a total of \$3,072,330.

The OLS also notes that at an average reimbursement rate of \$105.15 per inmate per day, the cost to house a State sentenced prison inmate within the county jails totals \$38,380. Since the counties house the overflow of State sentenced inmates, the first inmates to be diverted into the expanded drug court program would be those housed in the counties. The remaining inmates would be diverted from State prison facilities which cost an average of \$49,000 per inmate annually.



As a result, the potential savings to be generated by expanding the drug court program could range between \$27,001 and \$37,621 per inmate per year.

It must be noted that the mandatory drug court program is a 5-year program. For those inmates whose sentences would be less than five years, there would be no offsetting State savings for program participation during the later years of program participation.

#### **Committee Amendments**

The AOC notes that the proposed legislation would permit individuals to be considered for the Drug Court program who would have previously been denied access to the program as a result of a prior conviction or an existing charge for second degree robbery and/or burglary. Statistics show that crimes such as robbery and/or burglary typically involve some aspect of violence. The guidelines of the Drug Court Program restrict violent crime offenders from participation in the program. However, the Judiciary estimates that the proposed amendments would result in an additional 100 offenders being admitted into the Drug Court program statewide, or about 4 per vicinage, resulting in a nominal increase in costs for the Judiciary. Because judges have discretion to determine an individual's participation in the program, the Judiciary is unable to estimate with any certainty the actual fiscal impact this aspect of the legislation would have on Judiciary expenditures.

The OLS notes that there is not enough information available to determine the additional cost of the required professional diagnostic assessment prior to sentencing the offender to the drug court program.

STATEMENT TO  
[Second Reprint]  
**SENATE, No. 881**

with Senate Floor Amendments  
(Proposed by Senator LESNIAK)

ADOPTED: MAY 25, 2012

These amendments would permit certain offenders to be sentenced or re-sentenced in light of the eligibility criteria for admission to the “drug court” program under the special probation statute, N.J.S.2C:35-14, as amended by this bill.

In the case of a person who was sentenced to a term of imprisonment who has not had that sentence suspended or been paroled or discharged, the person would be permitted to move to have the sentence reviewed by the court. If the court finds the person would be eligible for a sentence to special probation and that such sentence would serve the interests of justice, the judge would be permitted to re-sentence the person to special probation. This provision would only apply to an offender who was not eligible for a sentence to special probation at the time of sentencing but who would be eligible for a sentence to special probation if sentenced on or after the effective date.

Additionally, these amendments would permit a person who was convicted but not sentenced on or after the effective date to move the court to be sentenced to special probation.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Third Reprint]  
**SENATE, No. 881**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 18, 2012

The Assembly Appropriations Committee reports favorably Senate Bill No.881 (3R), with committee amendments.

This bill would have revised the eligibility criteria for admission to the “drug court” program under N.J.S.2C:35-14 and would have created a two-year pilot program in two vicinages requiring mandatory sentencing to the “drug court” program for certain offenders. Currently, an offender must affirmatively seek admission and meet certain statutory criteria set forth in N.J.S.2C:35-14 to be sentenced to the drug court program. This bill, as amended, would not revise the eligibility criteria for admission to the drug court program and would phase in implementation of mandatory sentencing to the program Statewide over a five-year period.

*Phase-in of the program:*

Specifically, this bill would authorize the Administrative Director of the Courts to phase-in the implementation of mandatory sentencing and treatment of qualified offenders to the “drug court” program under the special probation statute, N.J.S.2C:35-14, based on monies annually appropriated from the General Fund. Within 60 days of the effective date of this act, the program would be established in no fewer than three court vicinages, with further implementation occurring in no less than three additional vicinages in each fiscal year thereafter in a manner to be determined by the Administrative Director of the Courts provided that sufficient State funds have been appropriated. The Administrative Director of the Courts would select appropriate vicinages for the implementation of the program. The program would be fully implemented in the State no later than the fifth fiscal year following enactment provided that sufficient State funds have been appropriated.

*Professional Assessment:*

As amended, the bill would require that, unless the court is clearly convinced that a professional diagnostic assessment would not serve any purpose, the court require a person to submit to an assessment to determine whether and to what extent a person is drug dependent and

would benefit from treatment when there is a reasonable basis to believe that the defendant may be a drug dependent person as defined in N.J.S.2C:35-2, the person is charged with a crime that is subject to a presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1 or any crime of the third degree if the defendant had previously been convicted of a crime subject to the presumption of imprisonment or that resulted in imposition of a State prison term, and the defendant is eligible to be considered for a sentence to special probation pursuant to the provisions of N.J.S.2C:35-14. The bill would provide that a reasonable basis to believe that a person may be drug dependent exists when:

- (1) the present offense involves a controlled dangerous substance;
- (2) the defendant has previously been convicted of an offense involving a controlled dangerous substance, or was admitted to pretrial intervention or received a conditional discharge for a charge involving a controlled dangerous substance;
- (3) the defendant has any other pending charge in this State, any other state, or a federal court involving a controlled dangerous substance;
- (4) the defendant has any time previously received any form of drug treatment or counseling;
- (5) the defendant appears to have been under the influence of a controlled dangerous substance during the commission of the present offense, or it reasonably appears that the present offense may have been committed to acquire property or monies to purchase a controlled dangerous substance for the defendant's personal use;
- (6) the defendant admits to the unlawful use of a controlled dangerous substance within the year preceding the arrest for the present offense;
- (7) the defendant has had a positive drug test within the last 12 months;
- (8) there is information, other than the circumstances enumerated in paragraphs (1) through (7) of this subsection, which indicates that the defendant may be a drug dependent person or would otherwise benefit by undergoing a professional diagnostic assessment.

A court would have to place its reasons on the record for finding that a diagnostic assessment would not serve any useful purpose.

Once a diagnostic assessment has been ordered and completed, the court would have to determine prior to or at sentencing whether a defendant may be a drug dependent person, which is defined in N.J.S.2C:35-2 as "a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance

on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.”

Mandatory sentencing to special probation:

As amended, the bill would provide that, if the court finds a defendant is in need of treatment and the defendant meets the criteria for admission to drug court set forth in N.J.S.2C:35-14, the court would be required to sentence the person to the drug court program.

The bill as amended would define a “person in need of treatment” as a defendant who: 1) the court has determined to be a drug dependent person; 2) has been convicted of a crime with a presumption of imprisonment or any other crime of the third degree if the person was previously imprisoned following a conviction for a crime subject to a presumption of imprisonment that resulted in a State prison term; and 3) the person qualifies for sentencing to the drug court program under the provisions of N.J.S.2C:35-14.

The bill would provide two exceptions to mandatory sentencing to the drug court program: when the court finds a sentence of imprisonment should be imposed; or when the court is clearly convinced that 1) the defendant would receive adequate treatment, monitoring, and supervision under an ordinary sentence of probation pursuant to N.J.S.2C:45-1, 2) the defendant’s needs would not be better served by a sentence to the drug court program, 3) no danger to the community would result from a sentence to regular probation, and 4) a sentence to regular probation would be consistent with the sentencing provisions of the Criminal Code. A sentence to regular probation would not take effect for 10 days to permit the prosecution to appeal the sentence.

In making its findings, the court would be required to consider all relevant circumstances, take judicial notice of any evidence, testimony, or information adduced at trial, plea hearing, or other court proceedings, and consider the presentence report and any professional diagnostic assessment.

Reporting requirement:

The bill as amended would require the Administrative Director of the Courts to submit to the Governor and to the Legislature a report containing an evaluation of mandatory sentencing to special probation. The report would include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, and any other information that may indicate the effectiveness of mandatory special probation. Additionally, the evaluation would include a comparison of data from vicinages that have phased in mandatory sentencing to special probation with those that have not, including comparative retention and recidivism data for non-mandatory special probation participants. The evaluation would also include the number of cases denying admission to special probation based on a prosecutorial objection

under subsection c. of N.J.S.2C:35-14 and the grounds cited for those objections. The Administrative Director of the Courts may make recommendations for legislation or other action appropriate for adoption or consideration by the Legislature.

Special probation statute - N.J.S.2C:35-14:

The bill would amend N.J.S.2C:35-14 to require mandatory sentencing to the drug court program for a person determined to be in need of treatment. The amendments would also require that, when a prosecutor objects to admission to special probation pursuant to subsection c. of N.J.S.2C:35-14, the prosecutor's objection and the reasons therefore be reduced to writing and disclosed to the applicant.

Presentence report - N.J.S.2C:44-6:

The bill would amend N.J.S.2C:44-6 to require that a presentence report include information regarding the defendant's history of drug abuse and substance abuse treatment and a determination as to whether the defendant is a drug dependent person. The presentence report would be required to include an analysis regarding whether the defendant should be required to submit to a professional diagnostic assessment in any case where the defendant appears to be a drug dependent person, is eligible to be considered for a sentence to special probation under N.J.S.2C:35-14, and the court has not already required the defendant submit to a professional diagnostic assessment.

Effective date:

This bill would take effect on the first day of the 12th month following enactment, except that the Administrative Office of the Courts, the Office of the Attorney General, the Office of the Public Defender, and the Department of Human Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act. These amendments make this bill identical to Assembly Bill No. 2883 (1R).

COMMITTEE AMENDMENTS:

1. Replace title to include reference to N.J.S.2C:44-6.
2. Omit sections 1 through 4 in their entirety.
3. Insert new section 1 to provide for professional diagnostic assessments for new phase-in mandatory program.
4. Insert new section 2 requiring mandatory sentencing to special probation for certain offenders found to be "in need of treatment" as defined in the bill.
5. Insert new section 3 authorizing the Administrative Director of the Courts to phase-in the implementation of mandatory sentencing and treatment of qualified offenders to special probation based on monies annually appropriated from the General Fund. Within 60 days of the effective date of this act, the program would be established in no fewer than three court vicinages, with further implementation occurring in no less than three additional vicinages in each fiscal year thereafter in

a manner to be determined by the Administrative Director of the Courts provided that sufficient State funds have been appropriated. The Administrative Director of the Courts would select appropriate vicinages for the implementation of the program. The program would be fully implemented in the State no later than the fifth fiscal year following enactment provided that sufficient State funds have been appropriated.

6. Insert new section 4 requiring the Administrative Director of the Courts to report on the phase-in implementation of the program.
7. Insert new section 5 amending N.J.S.2C:35-14 to require mandatory sentencing to the drug court program for a person determined to be in need of treatment. The amendments would also require that, when a prosecutor objects to admission to special probation pursuant to subsection c. of N.J.S.2C:35-14, the prosecutor's objection and the reasons therefore be reduced to writing and disclosed to the applicant.
8. Insert new section 6 amending N.J.S.2C:44-6 to require the presentence report indicate whether an offender should undergo a professional diagnostic assessment.
9. Amend effective date to provide that the bill would take effect on the first day of the 12th month following enactment, except that anticipatory administrative action in advance thereof make be done in anticipation of the implementation of this bill.
10. Replace synopsis to more accurately reflect the provisions of the bill as amended.

STATEMENT TO  
[Fourth Reprint]  
**SENATE, No. 881**

with Assembly Floor Amendments  
(Proposed by Assemblywoman WATSON COLEMAN)

ADOPTED: JUNE 21, 2012

This bill establishes a phase-in implementation of mandatory sentencing and treatment of qualified offenders to the drug court program under the special probation statute, N.J.S.2C:35-14, based on monies annually appropriated from the General Fund.

These floor amendments modify certain admission criteria for special probation in order to permit additional offenders who may benefit from the program to be diverted into the program instead of being sentenced to a term of incarceration. Specifically, the bill, as amended, will remove the prohibition against admission to special probation for a person who has a prior conviction or pending charges for robbery, or who is currently being sentenced for a conviction for second degree robbery or burglary.

This floor amendment would provide that a court would be required to give priority to an offender who moved for admission to special probation over a person who is being considered for sentencing to special probation on the court's own motion or under the mandatory special probation provisions of this bill.

This floor amendment will eliminate subsection c. of N.J.S.2C:35-14, which permits a prosecutor to object to special probation. Under current law, if a prosecutor objects to special probation, the court may not place a person on special probation except upon a finding of a gross and patent abuse of prosecutorial discretion.

This floor amendment will also eliminate the requirement that the Administrative Office of the Courts report include the number of cases, and the grounds cited, where admission to the program was denied based on a prosecutor's objection



**FISCAL NOTE**  
 [Third Reprint]  
**SENATE, No. 881**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: JUNE 25, 2012

**SUMMARY**

**Synopsis:** Amends special probation statute to give judges additional discretion to admit certain offenders to “drug court” program; establishes pilot program for mandatory admission to special probation.

**Type of Impact:** General Fund expenditure.

**Agencies Affected:** Judiciary, Department of Corrections, Department of Human Services

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>
<b>AOC Cost</b>	Indeterminate – See comments below
<b>Corrections</b>	
<b>Cost Savings</b>	Indeterminate – See comments below

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>
<b>AOC Cost</b>	Indeterminate – See comments below	
<b>Corrections</b>	Indeterminate cost reductions due to undetermined jurisdictional	
<b>Cost Savings</b>	count with potential savings as follows:	
	\$38,380 per inmate diverted from the counties into the program	
	\$2,887 per inmate diverted from DOC facilities into program	

- The Office of Legislative Services (OLS) notes that with regards to the potential savings to be accrued by this bill, every offender who is diverted from incarceration into a treatment program would save an undetermined amount for incarceration costs ranging from \$2,887 per inmate per year to \$38,380 per inmate per year depending upon whether the bed spaces emptied are county jail beds or beds located within State operated facilities.

- The bill would modify the criteria for admission into special probation pursuant to N.J.S.2C:35-14, which is commonly referred to as the “drug court” program, to allow more persons to be eligible and have access to the program. Additionally, the bill provides for the New Jersey Supreme Court to establish a two-year pilot program, to be operated in two vicinages, which would mandate admission to the program for anyone who is eligible.
- The AOC states that the bill’s implementation would generate expenses in four areas: one new judge team; enrollment, supervision and assessment services; centralized coordination; and drug treatment at a first year cost of \$2,724,981.
- The AOC also states that additional, undetermined costs would be generated as a result of the expanded admission criteria outlined by the third reprint of the bill, and for sentencing review and resentencing of those inmates currently in jail but newly eligible for the program.
- The Department of Corrections (DOC) projects that the impact of the bill as it is currently written would be minimal to the existing department’s drug program. Additionally, there is not sufficient data to determine the impact to the department’s jurisdictional count resulting from the bill’s implementation.

## **BILL DESCRIPTION**

Senate Bill No. 881 (3R) of 2012 would modify certain admission criteria for special probation pursuant to N.J.S.2C:35-14, commonly referred to as the “drug court” program, in order to permit additional offenders who may benefit from the program to be diverted into the program instead of being sentenced to a term of incarceration. The bill also establishes a two-year pilot program, to be operated in two New Jersey Superior Court vicinages, that will mandate that "drug court" program sentences be ordered for each person subject to criminal sentencing who meets the modified admission criteria. The pilot program requires the Administrative Office of the Courts (AOC) to assess the feasibility of expanding this mandated "drug court" sentencing Statewide.

The bill extends to the discretion of the sentencing court the permissive consideration of certain admission criteria for special probation, instead of the current mandatory review and court findings of these criteria that must be entered on the record under current law. The factors made optional for consideration include: whether the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; whether the person has been previously convicted on two or more occasions of crimes of the second degree; or whether the person has been previously convicted on two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.2C:35-10 (Possession, Use or Being Under the Influence, or Failure to Make Lawful Disposition of controlled dangerous substances, and one of the offenses is a crime of the first or second degree.

Additionally the bill would require that prior to sentencing a person to special probation, the court find on the record that: (1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; (2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present

offense; (3) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; (4) the person has not been previously convicted on two or more separate occasions of crimes of the first degree; (5) a suitable treatment facility licensed and approved by the Division of Addiction Services in the Department of Human Services is able and has agreed to provide appropriate treatment services to the individual in accordance with the requirements of the bill; (6) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and (7) no danger to the community will result from the person being placed on special probation.

The bill would eliminate the statutory provision that permits a prosecutor to object to special probation if the person has two or more separate prior convictions for crimes of the third degree. Under current law, if a prosecutor objected based on such prior convictions, the court could not place a person on special probation except upon a finding of a gross and patent abuse of prosecutorial discretion.

The bill prohibits admission to special probation for certain enumerated offenses for which the offender has prior convictions, prior adjudications of delinquency, and pending charges, and includes convictions under federal law and the laws of other states for the following: murder; aggravated manslaughter; manslaughter; kidnapping; aggravated assault; aggravated sexual assault; or sexual assault. This list of prohibited offenses under the program does not apply to the conviction for which the offender is currently being sentenced. However, this bill would not prohibit admission to special probation for sentencing for current convictions or adjudications of delinquency for a second degree robbery or burglary offense. The bill does prohibit admission to special probation for sentencing for current convictions or juvenile adjudications for: a crime of the first degree, including a burglary or robbery offense; other offenses enumerated in the "No Early Release Act" (other than second degree burglary or robbery), any crime requiring a mandatory period of incarceration (but not including distribution of a controlled dangerous substance or analog on or near school property); or any offense involving distribution or the conspiracy or attempt to distribute a controlled dangerous substance to a juvenile near or on school property.

In addition to modifying the eligibility criteria to allow more persons to have access to special probation in all counties, the bill establishes a two-year pilot program that would mandate access to special probation in two selected vicinages for each person subject to criminal sentencing who meets the modified admission criteria, and who is: (1) reasonably suspected to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible for probation due to a conviction for a crime which is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; and (3) meets the legal criteria for eligibility for special probation under the provisions of subsections a. and b. of N.J.S.2C:35-14; and who pursuant to a court order undergoes a professional diagnostic assessment to determine if the defendant is drug dependent. However, an individual would be ineligible for a "drug court" sentence if the court finds that a sentence of imprisonment must be imposed pursuant to chapters 43 and 44 of Title 2C of the New Jersey Statutes, in which case the court shall impose a sentence of imprisonment.

The bill would also permit certain offenders to be sentenced or re-sentenced in light of the eligibility criteria for admission to the "drug court" program under the special probation statute, N.J.S.2C:35-14, as amended by this bill.

In the case of a person who was sentenced to a term of imprisonment who has not had that sentence suspended or been paroled or discharged, the person would be permitted to move to have the sentence reviewed by the court. If the court finds the person would be eligible for a sentence to special probation and that such sentence would serve the interests of justice, the judge would be permitted to re-sentence the person to special probation. This provision would

only apply to an offender who was not eligible for a sentence to special probation at the time of sentencing but who would be eligible for a sentence to special probation if sentenced on or after the effective date.

Additionally, the bill would permit a person who was convicted but not sentenced on or after the effective date to move the court to be sentenced to special probation.

Under the bill, the AOC would determine the effectiveness of mandatory sentencing of qualified offenders to special probation as well as assess the feasibility of expanding this program Statewide. The AOC would select the pilot vicinages and shall administer and evaluate the pilot programs.

Further, under the pilot program, while a prosecutor may be permitted to object to a person's admittance into the program, such objection will not have the effect of "vetoing" the offender's admission to the pilot program.

Beginning one year after the effective date of the bill, and for five years annually thereafter, the Administrative Director of the Courts would submit reports to the Governor and Legislature concerning the pilot program. The reports would include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, comparative retention and recidivism data for non-mandatory special probation participants, and any other information that may indicate the effectiveness of mandatory special probation. The reports would also make recommendations concerning the practicability and feasibility of expanding the pilot program Statewide and may include recommendations for legislation or other action appropriate for adoption of consideration by the Legislature.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Department of Corrections**

The DOC projects that the impact of the bill as it is currently written would be minimal to the existing department's drug program. Additionally, there is not sufficient data to determine the impact to the department's jurisdictional count resulting from the bill's implementation.

#### **Administrative Office of the Courts**

The AOC states that based on recent statistics, the Judiciary anticipates that between the 2 vicinages selected for the pilot program, approximately 270 additional cases would qualify for consideration. Of that amount, approximately 75 percent (203 cases) would require a clinical assessment and roughly 64.5 percent (131 cases) of those assessed cases would be reviewed by the court for enrollment in Drug Court, regardless of whether the defendant agreed to apply voluntarily.

Based on these assumptions, the Judiciary anticipates incurring costs in four distinct areas:

- judge team;
- enrollment, supervision and assessment services; and
- centralized coordination.
- Drug Treatment.

#### **Judge Team:**

The AOC states that the creation of a new judgeship would be necessary to maintain court supervision of those offenders ordered to enroll in the Drug Court Pilot Program. The creation

of a complete judge team consists of a Superior Court Judge, a Judge's Secretary, a Law Clerk, a Court Clerk, and an Official Court Reporter. Associated costs include salaries and fringe benefits, office and courtroom space, start up costs, recurring operating costs and optional costs.

Salary and fringe benefits costs for one judge team would equal \$489,675 during the first full year of implementation.

The AOC notes that one-time start-up costs of \$117,750, would be generated to fund office furniture, video court room capability, computers, law books, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$12,508 during the first year.

Finally, the AOC stated that for the purpose of this fiscal note, it is assumed that the Judiciary would have to rent 100 percent of the office and courtroom space necessary to facilitate the judge team. Assuming that a 2,000 square foot space is necessary, at a cost of \$25 per square foot, the annual facility rental cost would total \$50,000.

Total annual cost to the Judiciary for one new judgeship for the duration of the pilot program would amount to \$669,933 during the first year of the program's implementation.

#### **Enrollment, Supervision and Assessment:**

The AOC states that in order to ensure proper intake, case management, record maintenance, program supervision and assessment of program participants, additional staff would be needed to manage the new cases. Increased staff at both vicinages would be required to screen criminal convictions for certain offenses and offenders to determine the need for a full clinical substance abuse assessment. Based on the potential 270 additional cases that would qualify for consideration into the pilot program, an additional 3 Substance Abuse Evaluators would be needed between the two vicinages in the pilot program. In addition, for every 50 new admissions to the Drug Court program, each vicinage would need a new Probation Officer position. As the Judiciary anticipates that the pilot Drug Courts would enroll an additional 131 cases in the first year, the Judiciary would create a minimum of 4 Probation Officer positions and a Court Executive position to supervise these Probation Officers. In addition, the volume of the new cases would require a new Judiciary Clerk position in each of the vicinages to perform data entry and to process and track the applications and court events associated with Drug Court enrollment.

Based on the above, the Judiciary anticipates creating 10 new positions at annual salary and fringe benefits cost of \$670,252 during the first year of the pilot program.

The AOC notes that one-time start-up costs of \$103,846, would be generated to fund office furniture, computers, filing resources, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$42,308 during the first year of operation.

The AOC states that a vehicle would be required in each of the two vicinages where the pilot program would be operating at a first year procurement and maintenance cost of \$39,354. Second year maintenance cost would drop substantially.

Drug testing and supplies and services would total \$21,000. Mandatory training for the Probation Officers and Substance Abuse evaluators would total \$25,000.

Total annual cost to the Judiciary for enrollment, supervision and assessment services for the pilot program would amount to \$901,760 during the program's first year.

#### **Centralized Coordination:**

The AOC states that a new Administrative Specialist 4 position would be needed in the Judiciary's Central Office to oversee the implementation, continuity of operation, gathering of statistical data, and coordinate resources to meet reporting requirements of the pilot program.

Salary and fringe benefits costs for this position would total \$90,672 during the first full year of implementation.

The AOC notes that one-time start-up costs of \$10,385, would be generated to fund office furniture, computer and filing resources. Continuing operating expenses are estimated at \$4,231 annually.

Total annual cost to the Judiciary for one central office coordinator for the duration of the two-year pilot program would amount to \$105,288 during the first year of the program's implementation.

**Drug Treatment Services:**

The Judiciary anticipates funding the Division of Mental Health and Addiction Services totaling approximately \$1,048,000 in the first year of implementation to provide for drug treatment services. This amount does not reflect any costs that may be necessary to expand residential treatment infrastructure to handle additional drug court participants.

**Total Expenditure Summary:**

The AOC states that if enacted, the proposed bill would require expenditures in the amount of \$2,724,981 in the first year after the bill's enactment as follows:

	<b>Year 1</b>	<b>Year 2</b>
Judge Team	<b>\$669,933</b>	<b>\$662,619</b>
Enrollment, Supervision and Assessment Services	<b>\$901,760</b>	<b>\$927,496</b>
Centralized Coordination	<b>\$105,288</b>	<b>\$113,884</b>
Drug Treatment Services	<b>\$1,048,000</b>	<b>1,257,600</b>
<b>TOTAL</b>	<b>\$2,724,981</b>	<b>\$2,961,599</b>

The Judiciary anticipates costs related to the pilot program to increase approximately 20 percent annually due to program growth.

**Expanding Admission Criteria:**

The AOC states that the proposed bill would permit individuals to be considered for the Drug Court program who would have previously been denied access to the program as a result of a prior conviction or an existing charge for second degree robbery and/or burglary. The AOC estimates that as many as 3,000 additional defendants per year may be eligible for the Drug Court program under S-881's expanded admission criteria. However, as the legislation specifies that judges have discretion to determine an individual's participation in special probation, the AOC is unable to estimate the number of people who would apply or be admitted into the program. The elimination of prosecutorial discretion with regard to eligibility may also result in additional admissions.

**Sentencing Review and Resentencing:**

The AOC notes that the population of individuals who were not eligible for special probation under N.J.S.2C:35-14 at the time of their sentencing but would be qualified to request the court to perform a sentencing review under the proposed amendments would likely be significant. Numerous variables prevent the Judiciary from providing an estimate regarding the financial impact from this portion of the bill. The AOC estimates that as many as 3,000 offenders per year who were previously convicted and sentenced to incarceration may be eligible to apply for resentencing to special probation under S-881's expanded criteria. However the AOC cannot

project how many previously convicted offenders who are still incarcerated would apply for admission into drug court or would be resentenced to special probation. The AOC states that any amount of sentencing review would create a significant expenditure on Judiciary resources. Further, any resentencing would have an impact on the Judiciary's costs related to administering the current Drug Court program.

### ***OFFICE OF LEGISLATIVE SERVICES***

While the OLS acknowledges the potential magnitude of the administrative cost increase estimated by the Executive, the Office concurs that the total cost of implementing Senate Bill No. 881 (3R) is indeterminate due to two factors. One, due to judicial and prosecutorial discretion pertaining to the number of inmates eligible under the expanded admissions criteria of the bill, the AOC cannot estimate the total number of participants to be admitted into the special probation program. Two, as a result, the Department of Corrections does not have sufficient data to determine its jurisdictional count once inmates are diverted to the special probation program.

However, the OLS does note that with regards to the potential savings to be accrued by this bill, every offender who is diverted from incarceration into a treatment program would save an undetermined amount for incarceration costs. State sentenced inmates are currently serving time in State operated facilities, with the overflow unable to be accommodated by the State housed in the county jails. At an average county reimbursement rate of \$105.15 per inmate per day, the annual cost to house a State sentenced prison inmate within the county jails totals \$38,380. Since the counties house the overflow of State sentenced inmates, the first inmates to be diverted from jail into the expanded drug court program would be those housed in the counties. As of April 30, 2012, there were a total of 277 State prisoners housed in the county jails. The remaining inmates would be diverted from State prison facilities which cost an average of \$43,000 per inmate annually. However, due to fixed costs, savings would be closer the \$2,887 per year marginal cost of housing State sentenced inmates. The larger savings of \$43,000 per inmate would be accrued only after the State inmate population is reduced by enough to allow the department to begin to close down facilities.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

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

STATEMENT TO  
[Fifth Reprint]  
**SENATE, No. 881**

with Assembly Floor Amendments  
(Proposed by Assemblywoman WATSON COLEMAN)

ADOPTED: JUNE 25, 2012

This floor amendment delays the effective date of section 5 of the bill for six months following enactment. Section 5 amends N.J.S.2C:35-14 to: (1) modify admission criteria to the program; (2) require the court to give priority to a defendant who moves for admission to the program over a person who is being considered for the program by the court; and (3) eliminate subsection c. of N.J.S.2C:35-14, which permits a prosecutor to object to special probation.



# ASSEMBLY, No. 2883

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 10, 2012

**Sponsored by:**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Hunterdon and Mercer)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**SYNOPSIS**

Establishes pilot program for mandatory sentencing to “drug court” program under special probation statute for certain offenders.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/15/2012)**

1 AN ACT concerning treatment for drug and alcohol dependent  
2 persons and supplementing Title 2C of the New Jersey Statutes.

3

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

6

7 1. a. A two-year pilot program is established in two vicinages  
8 to determine the effectiveness of mandatory sentencing of qualified  
9 offenders to special probation under N.J.S.2C:35-14 as well as to  
10 assess the feasibility of expanding this program Statewide. The  
11 Administrative Office of the Courts shall select the pilot vicinages  
12 and shall administer and evaluate the pilot programs in accordance  
13 with this section.

14 b. During the period that the pilot program is in effect, any  
15 defendant who is: (1) reasonably suspected to be drug dependent as  
16 defined in N.J.S.2C:35-2; (2) is ineligible for probation due to a  
17 conviction for a crime which is subject to a presumption of  
18 incarceration or a mandatory minimum period of parole  
19 ineligibility; and (3) meets the legal criteria for eligibility for  
20 special probation under the provisions of subsections a. and b. of  
21 N.J.S.2C:35-14 shall be ordered to undergo a professional  
22 diagnostic assessment as provided in subsection a. of N.J.S.2C:35-  
23 14 to determine if the defendant is drug dependent.

24 c. If, based on the results of a professional diagnostic  
25 assessment, the court determines that the defendant is drug  
26 dependent and is otherwise eligible for special probation pursuant  
27 to the provisions of subsections a. and b. of N.J.S.2C:35-14, the  
28 court shall, notwithstanding any other provision of N.J.S.2C:35-14,  
29 sentence the defendant to special probation, unless the court finds  
30 that a sentence of imprisonment must be imposed pursuant to  
31 chapters 43 and 44 of Title 2C of the New Jersey Statutes, in which  
32 case the court shall impose a sentence of imprisonment. Subsection  
33 c. of N.J.S.2C:35-14 shall not apply in sentencing a person under  
34 this subsection.

35 d. Not later than one year following the effective date of this  
36 act, and annually thereafter for five years, the Administrative  
37 Director of the Courts shall submit to the Governor, and to the  
38 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),  
39 a report containing an evaluation of the pilot program. The report  
40 shall include the rates of completion and revocation for people  
41 admitted to mandatory special probation, the recidivism rates for  
42 graduates of mandatory special probation, the costs associated with  
43 implementing mandatory special probation, and any other  
44 information that may indicate the effectiveness of mandatory  
45 special probation. The evaluation shall include comparative  
46 retention and recidivism data for non-mandatory special probation  
47 participants. The Administrative Director of the Courts may make  
48 recommendations concerning the practicability and feasibility of

1 expanding the pilot program Statewide and may provide  
2 recommendations for legislation or other action appropriate for  
3 adoption or consideration by the Legislature.

4 e. The Supreme Court may establish such rules and procedures  
5 as may be necessary to effectuate the purpose of this act.

6

7 2. This act shall take effect immediately.

8

9

10 STATEMENT

11

12 This bill would establish a pilot program to determine the  
13 effectiveness of mandatory sentencing of qualified offenders to the  
14 “drug court” program under the special probation statute,  
15 N.J.S.2C:35-14, as well as to assess the feasibility of expanding the  
16 program Statewide. The pilot program would be established in two  
17 vicinages to be selected by the Administrative Office of the Courts.  
18 The Administrative Office of the Courts would administer and  
19 evaluate the program.

20 This bill would require that, in the pilot program vicinages,  
21 certain defendants be ordered to undergo a professional diagnostic  
22 assessment to determine whether and to what extent the defendant is  
23 drug dependent and would benefit from treatment. This assessment  
24 would be ordered for any defendant who: (1) is reasonably  
25 suspected to be “drug dependent” as defined in N.J.S.2C:35-2; (2) is  
26 ineligible for probation due to a conviction for a crime that is  
27 subject to a presumption of incarceration or a mandatory minimum  
28 period of parole ineligibility; and (3) meets the legal criteria for  
29 admission to the “drug court” program under N.J.S.2C:35-14.

30 If, based on the results of the professional diagnostic assessment,  
31 the court determines the defendant is drug dependent and otherwise  
32 eligible to be sentenced to the “drug court” program under the  
33 provisions of N.J.S.2C:35-14, the court would be required to  
34 sentence the defendant to the “drug court” program unless it finds it  
35 is required to impose a sentence of imprisonment pursuant to  
36 Chapters 43 and 44 of the Criminal Code.

37 This bill also provides that subsection c. of N.J.S.2C:35-14  
38 would not apply to defendants sentenced to the “drug court”  
39 program in the pilot program vicinages. Currently, under  
40 subsection c. of N.J.S.2C:35-14, the prosecutor may object to a  
41 defendant’s admission to the “drug court” program where: (1) the  
42 defendant’s current conviction is for an offense involving  
43 distribution of a controlled dangerous substance (CDS) on or within  
44 1,000 feet of school property, booby traps in a manufacturing or  
45 distribution facility, or any crime for which there exists a  
46 presumption of imprisonment; (2) the defendant was previously  
47 convicted of an offense involving manufacturing, distributing, or  
48 dispensing a CDS; or (3) the defendant was previously convicted on

1 two or more separate occasions of crimes of the third degree, other  
2 than possession, use, or being under the influence of a CDS. A  
3 court may not sentence a person to the “drug court” program over  
4 the prosecutor’s objection absent a finding of gross and patent  
5 abuse of prosecutorial discretion. Under this bill, subsection c. of  
6 N.J.S.2C:35-14 would not apply in the pilot program vicinages and  
7 a prosecutor’s objection would not operate to prevent a court from  
8 sentencing a defendant to the “drug court” program.

9 This bill would require that, within one year following the  
10 effective date and for five years thereafter, the Administrative  
11 Director of the Courts submit to the Governor and the Legislature a  
12 report containing an evaluation of the pilot program. The report  
13 would include the rates of completion and revocation for defendants  
14 admitted to the “drug court” program, recidivism rates for graduates  
15 from the “drug court” program in the pilot program vicinages, the  
16 costs associated with implementing mandatory sentencing to the  
17 “drug court” program, and any other information that may indicate  
18 the effectiveness of mandatory sentencing to the “drug court”  
19 program. The evaluation would include comparative retention and  
20 recidivism data for non-mandatory special probation vicinages, and  
21 the Administrative Director of the Courts would be permitted to  
22 include recommendations concerning the practicability and  
23 feasibility of expanding the pilot program Statewide, as well as  
24 recommendations for legislation or other action appropriate for  
25 adoption or consideration by the Legislature.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2883

# STATE OF NEW JERSEY

DATED: MAY 14, 2012

The Assembly Judiciary Committee reports favorably Assembly Bill No. 2883.

This bill would establish a two-year pilot program to determine the effectiveness of mandatory sentencing of qualified offenders to special probation pursuant to N.J.S.2C:35-14, known as drug court.

The Administrative Office of the Courts would select two vicinages to participate in the program and would administer and evaluate it.

Under the bill, in these pilot program vicinages certain defendants would be ordered to undergo a professional diagnostic assessment to determine whether and to what extent they are drug dependent. The assessment would be ordered for any defendant who: (1) is reasonably suspected to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible for probation due to a conviction for a crime that is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; and (3) meets the legal criteria for admission to the drug court program under N.J.S.2C:35-14.

If, based on the results of the professional diagnostic assessment, the court determines that the defendant is drug dependent and otherwise eligible to be sentenced to the drug court program, the court would be required to sentence the defendant to the program unless it finds that it is required to impose a sentence of imprisonment pursuant to chapters 43 and 44 of the Criminal Code.

The bill also provides that subsection c. of N.J.S.2C:35-14 would not apply to defendants sentenced to the drug court program in the pilot program vicinages. This subsection provides that the prosecutor may object to a defendant's admission to the drug court program where: (1) the defendant's current conviction is for an offense involving distribution of a controlled dangerous substance (CDS) on or within 1,000 feet of school property; maintaining a booby trap on property used for a CDS manufacturing or distribution facility; or any crime for which there exists a presumption of imprisonment; (2) the defendant was previously convicted of an offense involving manufacturing, distributing, or dispensing a CDS; or (3) the defendant was previously convicted on two or more separate occasions of crimes of the third degree, other than possession, use, or being under the influence of a CDS. Under this subsection, a court may not sentence a

person to the drug court program over the prosecutor's objection absent a finding of gross and patent abuse of prosecutorial discretion. Under this bill, in the pilot program vicinages a prosecutor's objection would not prevent the court from sentencing a defendant to the drug court program.

This bill would require that, within one year following the effective date and annually thereafter for five years, the Administrative Director of the Courts would submit to the Governor and the Legislature a report containing an evaluation of the pilot program. The report would include the rates of completion and revocation for defendants admitted to the drug court pilot program, recidivism rates for graduates from the drug court pilot program, the costs associated with implementing mandatory sentencing to the drug court program, and any other information that may indicate the effectiveness of mandatory sentencing to the drug court program. The evaluation would include comparative retention and recidivism data for non-mandatory special probation participants.

The Administrative Director of the Courts could make recommendations concerning the practicability and feasibility of expanding the pilot program Statewide, as well as recommendations for legislation or other action appropriate for adoption or consideration by the Legislature.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2883

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 18, 2012

The Assembly Appropriations Committee reports favorably Assembly Bill No.2883, with committee amendments.

This bill, as originally introduced, would have created a two-year pilot program in two vicinages requiring mandatory sentencing to the “drug court” program for certain offenders. Currently, an offender must affirmatively seek admission and meet certain statutory criteria set forth in N.J.S.2C:35-14 to be sentenced to the drug court program. This bill, as amended, would phase in implementation of mandatory sentencing to the drug court program Statewide over a five year period.

*Phase-in of the program:*

Specifically, this bill would authorize the Administrative Director of the Courts to phase-in the implementation of mandatory sentencing and treatment of qualified offenders to the “drug court” program under the special probation statute, N.J.S.2C:35-14, based on monies annually appropriated from the General Fund. Within 60 days of the effective date of this act, the program would be established in no fewer than three court vicinages, with further implementation occurring in no less than three additional vicinages in each fiscal year thereafter in a manner to be determined by the Administrative Director of the Courts provided that sufficient State funds have been appropriated. The Administrative Director of the Courts would select appropriate vicinages for the implementation of the program. The program would be fully implemented in the State no later than the fifth fiscal year following enactment provided that sufficient State funds have been appropriated.

*Professional Assessment:*

As amended, the bill would require that, unless the court is clearly convinced that a professional diagnostic assessment would not serve any purpose, the court require a person to submit to an assessment to determine whether and to what extent a person is drug dependent and would benefit from treatment when there is a reasonable basis to believe that the defendant may be a drug dependent person as defined in N.J.S.2C:35-2, the person is charged with a crime that is subject to a

presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1 or any crime of the third degree if the defendant had previously been convicted of a crime subject to the presumption of imprisonment or that resulted in imposition of a State prison term, and the defendant is eligible to be considered for a sentence to special probation pursuant to the provisions of N.J.S.2C:35-14. The bill would provide that a reasonable basis to believe that a person may be drug dependent exists when:

- (1) the present offense involves a controlled dangerous substance;
- (2) the defendant has previously been convicted of an offense involving a controlled dangerous substance, or was admitted to pretrial intervention or received a conditional discharge for a charge involving a controlled dangerous substance;
- (3) the defendant has any other pending charge in this State, any other state, or a federal court involving a controlled dangerous substance;
- (4) the defendant has any time previously received any form of drug treatment or counseling;
- (5) the defendant appears to have been under the influence of a controlled dangerous substance during the commission of the present offense, or it reasonably appears that the present offense may have been committed to acquire property or monies to purchase a controlled dangerous substance for the defendant's personal use;
- (6) the defendant admits to the unlawful use of a controlled dangerous substance within the year preceding the arrest for the present offense;
- (7) the defendant has had a positive drug test within the last 12 months;
- (8) there is information, other than the circumstances enumerated in paragraphs (1) through (7) of this subsection, which indicates that the defendant may be a drug dependent person or would otherwise benefit by undergoing a professional diagnostic assessment.

A court would have to place its reasons on the record for finding that a diagnostic assessment would not serve any useful purpose.

Once a diagnostic assessment has been ordered and completed, the court would have to determine prior to or at sentencing whether a defendant may be a drug dependent person, which is defined in N.J.S.2C:35-2 as "a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence."



Mandatory sentencing to special probation:

As amended, the bill would provide that, if the court finds a defendant is in need of treatment and the defendant meets the criteria for admission to drug court set forth in N.J.S.2C:35-14, the court would be required to sentence the person to the drug court program.

The bill as amended would define a “person in need of treatment” as a defendant who: 1) the court has determined to be a drug dependent person; 2) has been convicted of a crime with a presumption of imprisonment or any other crime of the third degree if the person was previously imprisoned following a conviction for a crime subject to a presumption of imprisonment that resulted in a State prison term; and 3) the person qualifies for sentencing to the drug court program under the provisions of N.J.S.2C:35-14.

The bill would provide two exceptions to mandatory sentencing to the drug court program: when the court finds a sentence of imprisonment should be imposed; or when the court is clearly convinced that 1) the defendant would receive adequate treatment, monitoring, and supervision under an ordinary sentence of probation pursuant to N.J.S.2C:45-1, 2) the defendant’s needs would not be better served by a sentence to the drug court program, 3) no danger to the community would result from a sentence to regular probation, and 4) a sentence to regular probation would be consistent with the sentencing provisions of the Criminal Code. A sentence to regular probation would not take effect for 10 days to permit the prosecution to appeal the sentence.

In making its findings, the court would be required to consider all relevant circumstances, take judicial notice of any evidence, testimony, or information adduced at trial, plea hearing, or other court proceedings, and consider the presentence report and any professional diagnostic assessment.

Reporting requirement:

The bill as amended would require the Administrative Director of the Courts to submit to the Governor and to the Legislature a report containing an evaluation of mandatory sentencing to special probation. The report would include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, the number of cases denying admission to special probation based on a prosecutorial objection under subsection c. of N.J.S.2C:35-14 including the grounds cited for the objection, and any other information that may indicate the effectiveness of mandatory special probation. Additionally, the evaluation would include a comparison of data from vicinages that have phased in mandatory sentencing to special probation with those that have not, including comparative retention and recidivism data for non-mandatory special probation participants. The evaluation would also include the number of cases denying admission to special

probation based on a prosecutorial objection under subsection c. of N.J.S.2C:35-14 and the grounds cited for those objections. The Administrative Director of the Courts may make recommendations for legislation or other action appropriate for adoption or consideration by the Legislature.

Special probation statute - N.J.S.2C:35-14:

The bill would amend N.J.S.2C:35-14 to require mandatory sentencing to the drug court program for a person determined to be in need of treatment. The amendments would also require that, when a prosecutor objects to admission to special probation pursuant to subsection c. of N.J.S.2C:35-14, the prosecutor's objection and the reasons therefore be reduced to writing and disclosed to the applicant.

Presentence report - N.J.S.2C:44-6:

The bill would amend N.J.S.2C:44-6 to require that a presentence report include information regarding the defendant's history of drug abuse and substance abuse treatment and a determination as to whether the defendant is a drug dependent person. The presentence report would be required to include an analysis regarding whether the defendant should be required to submit to a professional diagnostic assessment in any case where the defendant appears to be a drug dependent person, is eligible to be considered for a sentence to special probation under N.J.S.2C:35-14, and the court has not already required the defendant submit to a professional diagnostic assessment.

Effective date:

This bill would take effect on the first day of the 12th month following enactment, except that the Administrative Office of the Courts, the Office of the Attorney General, the Office of the Public Defender, and the Department of Human Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

These amendments make this bill identical to Senate Bill No. 881(4R).

COMMITTEE AMENDMENTS:

1. Replace title to include reference to N.J.S.2C:35-14 and N.J.S.2C:44-6.
2. Omit section 1 in its entirety.
3. Insert new section 1 to provide for professional diagnostic assessments for new phase-in mandatory program.
4. Insert new section 2 requiring mandatory sentencing to special probation for certain offenders found to be "in need of treatment" as defined in the bill.
5. Insert new section 3 authorizing the Administrative Director of the Courts to phase-in the implementation of mandatory sentencing and treatment of qualified offenders to special probation based on monies annually appropriated from the General Fund. Within 60 days of the effective date of this act,

the program would be established in no fewer than three court vicinages, with further implementation occurring in no less than three additional vicinages in each fiscal year thereafter in a manner to be determined by the Administrative Director of the Courts provided that sufficient State funds have been appropriated. The Administrative Director of the Courts would select appropriate vicinages for the implementation of the program. The program would be fully implemented in the State no later than the fifth fiscal year following enactment provided that sufficient State funds have been appropriated.

6. Insert new section 4 requiring the Administrative Director of the Courts to report on the phase-in implementation of the program.
7. Insert new section 5 amending N.J.S.2C:35-14 to require mandatory sentencing to the drug court program for a person determined to be in need of treatment. The amendments would also require that, when a prosecutor objects to admission to special probation pursuant to subsection c. of N.J.S.2C:35-14, the prosecutor's objection and the reasons therefore be reduced to writing and disclosed to the applicant.
8. Insert new section 6 amending N.J.S.2C:44-6 to require the presentence report indicate whether an offender should undergo a professional diagnostic assessment.
9. Amend effective date to provide that the bill would take effect on the first day of the 12th month following enactment, except that anticipatory administrative action in advance thereof make be done in anticipation of the implementation of this bill.
10. Replace synopsis to more accurately reflect the provisions of the bill as amended.

**FISCAL NOTE**  
**ASSEMBLY, No. 2883**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: JUNE 20, 2012

**SUMMARY**

**Synopsis:** Establishes pilot program for mandatory sentencing to "drug court" program under special probation statute for certain offenders.

**Type of Impact:** General Fund expenditure and savings.

**Agencies Affected:** Judiciary, Department of Human Services, Department of Corrections.

**Executive Estimate**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>
<b>State Cost</b>		
AOC	\$3,016,943	\$3,931,501

**Office of Legislative Services Estimate**

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>
<b>State Cost</b>		
AOC	\$3,016,943	\$3,931,501
<b>Corrections Savings</b>	\$38,380 per inmate diverted from the counties into the program \$2,887 per inmate diverted from DOC facilities into program	

- The Office of Legislative Services (OLS) notes that with regards to the potential savings to be accrued by this bill, every offender who is diverted from incarceration into a treatment program would save an undetermined amount for incarceration costs ranging from \$2,887 per inmate per year to \$38,380 per inmate per year depending upon whether the bed spaces emptied are county jail beds or beds located within State operated facilities.
- The bill would establish a two-year pilot program to determine the effectiveness of mandatory sentencing of qualified offenders to special probation pursuant to N.J.S.2C:35-14, known as drug court. The Administrative Office of the Courts (AOC) would select two vicinages to participate in the program and would administer and evaluate it.

- The bill would establish a two-year pilot program to determine the effectiveness of mandatory sentencing of qualified offenders to special probation pursuant to N.J.S.2C:35-14, known as drug court.
- The AOC state that under the bill, the State would incur costs in four distinct areas: one judge team; enrollment, supervision and assessment services; centralized coordination and drug treatment.
- The AOC states that if enacted, the proposed bill would require expenditures in the amount of \$3,016,943 in the first year after the bill's enactment, increasing to \$3,931,501 in the second year after enactment.

### **BILL DESCRIPTION**

Assembly Bill No. 2883 of 2012 would establish a two-year pilot program to determine the effectiveness of mandatory sentencing of qualified offenders to special probation pursuant to N.J.S.2C:35-14, known as drug court.

The AOC would select two vicinages to participate in the program and would administer and evaluate it.

Under the bill, in these pilot program vicinages certain defendants would be ordered to undergo a professional diagnostic assessment to determine whether and to what extent they are drug dependent. The assessment would be ordered for any defendant who: (1) is reasonably suspected to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible for probation due to a conviction for a crime that is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; and (3) meets the legal criteria for admission to the drug court program under N.J.S.2C:35-14.

If, based on the results of the professional diagnostic assessment, the court determines that the defendant is drug dependent and otherwise eligible to be sentenced to the drug court program, the court would be required to sentence the defendant to the program unless it finds that it is required to impose a sentence of imprisonment pursuant to chapters 43 and 44 of the Criminal Code.

The bill also provides that subsection c. of N.J.S.2C:35-14 would not apply to defendants sentenced to the drug court program in the pilot program vicinages. This subsection provides that the prosecutor may object to a defendant's admission to the drug court program where: (1) the defendant's current conviction is for an offense involving distribution of a controlled dangerous substance (CDS) on or within 1,000 feet of school property; maintaining a booby trap on property used for a CDS manufacturing or distribution facility; or any crime for which there exists a presumption of imprisonment; (2) the defendant was previously convicted of an offense involving manufacturing, distributing, or dispensing a CDS; or (3) the defendant was previously convicted on two or more separate occasions of crimes of the third degree, other than possession, use, or being under the influence of a CDS. Under this subsection, a court may not sentence a person to the drug court program over the prosecutor's objection absent a finding of gross and patent abuse of prosecutorial discretion. Under this bill, in the pilot program vicinages a prosecutor's objection would not prevent the court from sentencing a defendant to the drug court program.

This bill would require that, within one year following the effective date and annually thereafter for five years, the Administrative Director of the Courts would submit to the Governor and the Legislature a report containing an evaluation of the pilot program. The report would

include the rates of completion and revocation for defendants admitted to the drug court pilot program, recidivism rates for graduates from the drug court pilot program, the costs associated with implementing mandatory sentencing to the drug court program, and any other information that may indicate the effectiveness of mandatory sentencing to the drug court program. The evaluation would include comparative retention and recidivism data for non-mandatory special probation participants.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Judiciary**

The AOC states that based on recent statistics, the Judiciary anticipates that between the two vicinages selected for the pilot program, approximately 270 additional cases would qualify for consideration. Of that amount, approximately 75 percent (203 cases) would require a clinical assessment and roughly 64.5 percent (131 cases) of those assessed cases would be reviewed by the court for enrollment in Drug Court, regardless of whether the defendant agreed to apply voluntarily.

Based on these assumptions, the Judiciary anticipates incurring costs in four distinct areas:

- judge team;
- enrollment, supervision and assessment services; and
- centralized coordination.
- drug treatment.

#### **Judge Team:**

The AOC states that the creation of a new judgeship would be necessary to maintain court supervision of those offenders ordered to enroll in the Drug Court Pilot Program. The creation of a complete judge team consists of a Superior Court Judge, a Judge's Secretary, a Law Clerk, a Court Clerk, and an Official Court Reporter. Associated costs include salaries and fringe benefits, office and courtroom space, start up costs, recurring operating costs and optional costs.

Salary and fringe benefits costs for one judge team would equal \$489,675 during the first full year of implementation. According to the AOC, second-year costs are expected to increase by 20 percent, to \$587,610 as a result of the increasing number of active cases.

The AOC notes that one-time start-up costs of \$117,750, would be generated to fund office furniture, video court room capability, computers, law books, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$12,508 during the first year, increasing to \$15,010 in the second year.

Finally, the AOC stated that for the purpose of this fiscal note, it is assumed that the Judiciary would have to rent 100 percent of the office and courtroom space necessary to facilitate the judge team. Assuming that a 2,000 square foot space is necessary, at a cost of \$25 per square foot, the annual facility rental cost would total \$50,000 during the first full year of implementation, increasing to \$60,000 during the second year.

Total annual cost to the Judiciary for one new judgeship for the duration of the pilot program would amount to \$669,933 during the first year of the program's implementation and \$662,620.

**Enrollment, Supervision and Assessment:**

The AOC states that in order to ensure proper intake, case management, record maintenance, program supervision and assessment of program participants, additional staff would be needed to adequately manage the new cases. Increased staff at both vicinages would be required to screen criminal convictions for certain offenses and offenders to determine the need for a full clinical substance abuse assessment. Based on the potential 270 additional cases that would qualify for consideration into the pilot program, an additional three Substance Abuse Evaluators would be needed between the two vicinages in the pilot program. In addition, for every 50 new admissions to the Drug Court program, each vicinage would need a new Probation Officer position. As the Judiciary anticipates that the Drug Court pilot program would enroll 131 cases in the first year, the Judiciary would need to create a minimum of four Probation Officer positions. An Administrative Specialist 4 position would be needed in each vicinage to ensure the appropriate coordination of the mandatory Drug Court program. In addition, the volume of the new cases would require a new Judiciary Clerk position in each vicinage to perform data entry and to process and track the applications and court events associated with Drug Court enrollment.

Based on the above, the Judiciary anticipates creating 11 new positions at an annual salary and fringe benefits cost of \$752,719 during the first year of the pilot program, increasing to \$903,263 during the second year.

The AOC notes that one-time start-up costs of \$114,231 would be generated to fund office furniture, computers, filing resources, etc. Continuing operating expenses (office supplies, telephone bills, postage, office machine rentals, etc.) are estimated at \$46,539 during the first year of operation and \$55,847 during the second year.

The AOC states that a vehicle would be required in each of the two vicinages where the pilot program would be operating at a first year procurement and maintenance cost of \$39,354. Second year maintenance cost would drop substantially to \$5,760.

Drug testing and supplies and services would total \$40,931 during the first year of program operation, increasing to \$49,117 during the second year. Mandatory training for the Probation Officers and Substance Abuse evaluators would total \$25,000.

Total annual cost to the Judiciary for enrollment, supervision and assessment services for the pilot program would amount to \$1,018,774 during the program's first year, and \$1,103,987 during the second year of program operation.

**Centralized Coordination:**

The AOC states that a new Court Executive 1B position would be needed in the Judiciary's Central Office to oversee the implementation, continuity of operation, gathering of statistical data, and coordinate resources to meet reporting requirements of the pilot program.

Salary and fringe benefits costs for this position would total \$96,620 during the first full year of implementation, increasing to \$101,451 during the program's second year.

The AOC notes that one-time start-up costs of \$10,385, would be generated to fund office furniture, computer and filing resources. Continuing operating expenses are estimated at \$4,231 during the first year, increasing to \$4,443 during the second year.

The AOC states that to ensure accurate and timely compliance with the annual evaluation and reporting requirements specified in the legislation, a third party consultant specializing in the analysis and evaluation of program data and report preparation would be required. Based on the anticipated caseload for the pilot program, the first year cost is expected to total \$300,000, increasing to \$315,000 during the second year of the program's operation.

Total annual cost to the Judiciary for one central office coordinator for the duration of the two-year pilot program would amount to \$411,236 during the program's first year, increasing to \$420,894 during the second year.

**Drug Treatment Services:**

The Judiciary anticipates funding the Division of Mental Health and Addiction Services approximately \$7,000 per active case. Based on the 131 cases the Judiciary anticipates participating in the pilot program in the first full year of implementation, the cost associated with drug treatment services will be \$917,000. This amount does not reflect any costs that may be necessary to expand residential treatment infrastructure to handle additional drug court participants. Costs recurring in the second year of the pilot program are expected to double as participation in the mandatory program will increase by 131 cases in each year of the pilot program's lifecycle.

**Total Expenditure Summary:**

The AOC states that if enacted, the proposed bill would require expenditures in the amount of \$3,016,943 in the first year after the bill's enactment, increasing to \$3,931,501 in the second year as follows:

	<b>Year 1</b>	<b>Year 2</b>
Judge Team	<b>\$669,933</b>	<b>\$662,620</b>
Enrollment, Supervision and Assessment Services	<b>\$1,018,774</b>	<b>\$1,013,987</b>
Centralized Coordination	<b>\$411,236</b>	<b>\$420,894</b>
Drug Treatment Services	<b>\$917,000</b>	<b>\$1,834,000</b>
<b>TOTAL</b>	<b>\$3,016,943</b>	<b>\$3,931,501</b>

**Department of Corrections**

In a fiscal note to a similar bill introduced in the current session Senate Bill No. 881 (3R), the Department of Corrections (DOC) projected that the impact of the bill would be minimal to the existing department's drug program. Additionally, there is not sufficient data to determine the impact to the department's jurisdictional count resulting from the bill's implementation.

**Department of Human Services**

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that with regards to the potential savings to be accrued by this bill, every offender who is diverted from incarceration into a treatment program would save an undetermined amount for incarceration costs. State sentenced inmates are currently serving time in State operated facilities, with the overflow unable to be accommodated by the State housed in the county jails. At an average county reimbursement rate of \$105.15 per inmate per day, the annual cost to house a State sentenced prison inmate within the county jails totals \$38,380. Since the counties house the overflow of State sentenced inmates, the first inmates to be diverted from jail into the expanded drug court program would be those housed in the counties. As of May 31, 2012, there were a total of 257 State prisoners housed in the county jails. The remaining inmates would be diverted from State prison facilities which cost an average of \$43,000 per inmate annually. However, due to fixed costs, savings would be closer to the \$2,887 per year marginal cost of housing a State sentenced inmate. The larger savings of \$43,000 per inmate would be accrued only after the State inmate population is reduced by enough to allow the department to begin to close down facilities.



*Section: Judiciary*

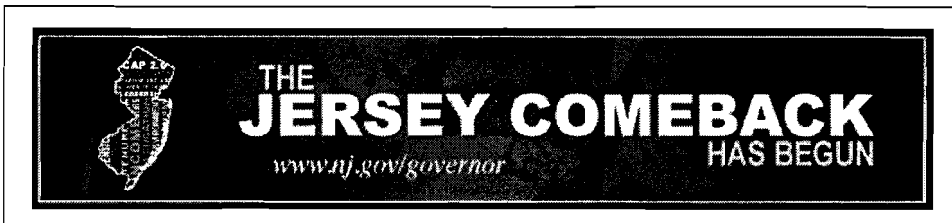
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This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# Governor Chris Christie Follows Through on Commitment to Reclaim Lives with Landmark, Bipartisan Mandatory Drug Court Law

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## Phased-In Program will Provide Mandatory Treatment in All 21 Counties

Trenton, NJ – Today, Governor Chris Christie followed through on his commitment to take a smarter and more effective approach in how the state treats drug-addicted offenders by signing into law landmark, bipartisan legislation to put in place a statewide, mandatory drug court program. The legislation, S-881, acts on the principles laid out by Governor Christie in his January State of the State Address – that no life is disposable and that it is a commonsense, fiscal, and moral imperative to help individuals dealing with drug addiction reclaim their lives with treatment, rather than warehousing them in prison.

"When I outlined this proposal six months ago, I made it clear that our commitment to our most vulnerable was not just a matter of dollars and cents, it was about reclaiming lives. No life is disposable and every life can be redeemed, but not if we ignore them," said Governor Christie. "Once again by putting people before partisanship, we are providing optimism and hope to individuals and families torn apart by addiction. Once fully phased in over 5 years, this program will provide mandatory drug treatment to appropriate offenders who are not a threat to society and who suffer from the disease of addiction – redeeming lives and healing families."

Working in a bipartisan manner with the legislature to move forward on this critical issue, Governor Christie secured passage of this legislation that enables a statewide, mandatory drug court program to be implemented over the course of 5 years. Beginning one year after the enactment of the bill, the Administrative Director of the Courts will select 3 vicinages to begin the expansion, followed by the addition of 3 vicinages each year over the period of phase-in.

The Governor's plan for drug court expansion was first announced in his 2012 State of the State Address and reaffirmed in his Fiscal Year 2013 Budget Address when he called drug addiction a treatable disease and dedicated an additional \$2.5 million in funding for program expansion. That funding was secured in the Fiscal Year 2013 Budget signed into law by the Governor in June.

The program builds on the success of New Jersey's highly successful drug court program, by expanding it to provide mandatory treatment for drug-addicted offenders throughout all 21 New Jersey counties. While effective, the existing program only accommodates 1,400 new participants per year. As a voluntary program, it fails to overcome the biggest obstacle to addiction treatment – denial.

"We will no longer simply warehouse individuals in prison who are not a threat to society while the underlying cause of their criminality goes unaddressed. And we won't wait for them to come to the conclusion that they need treatment on their own. With this legislation we are building on our record of reducing recidivism, reclaiming lives by breaking the vicious cycle of crime and addiction, and doing so in a way that is less costly and more effective in getting results," said Governor Christie.

"Continuing to look to imprisonment as the only solution for nonviolent drug offenders is not only more costly to our taxpayers, but fails to deal with the underlying problem in these individuals' lives in the first place," said Assemblywoman Bonnie Watson Coleman, a primary sponsor of the legislation. "By expanding on the success of the voluntary drug court program and reaching even more people through mandatory treatment in their sentencing, we can save taxpayer dollars and, more importantly, help these individuals get their lives back. I thank the Governor and my fellow bill sponsors for their work and commitment to making this important reform a reality for our state."

According to their October 2010 Drug Court Report, the rate at which drug court graduates are re-arrested for a new

indictable offense is 16% and the reconviction rate is 8%. This is compared to re-arrest rates for drug offenders released from prison that stands at 54% with a re-conviction rate of 43%. According to that report, an average institutional cost per inmate is approximately \$38,900, whereas the cost for an active drug court participant is roughly \$11,379.

Under this legislation, mandatory participation in a drug treatment program for eligible nonviolent, drug-addicted offenders could be sentenced by a judge, regardless of whether they apply for admission to the drug court program.

The law also requires that within one year following the effective date, and annually for five years thereafter, the Administrative Director of the Courts must submit an evaluation of the program to the Governor and the Legislature. The report will include completion and recidivism rates, implementation costs, and any other information relevant to the success of the program.

In addition, the legislation provides for:

Increased identification of eligible drug addicted nonviolent offenders. As part of this effort, information on drug addiction and treatment would be required to be given to those charged with second and third drug degree offenses.

Court ordered clinical assessment to determine suitability for drug court. Pre-sentencing reports would be required to include information regarding drug addiction and recommendations regarding whether an assessment should be ordered for a defendant.

Courts to make a finding regarding addiction for any offender having a clinical assessment. If offenders are found to be drug addicted, meeting present drug court eligibility factors and are prison bound, then those offenders would be sentenced to the drug court program regardless of their desire to enter the program.


Judges to be given ultimate discretion in determining whether an individual poses a threat to society and should not be sent to a drug treatment facility as part of his or her sentencing.

Primary sponsors of the bill are Senator Raymond Lesniak (D-Union), Senator Nicholas Scutari (D-Middlesex, Somerset and Union), Assemblywoman Bonnie Watson Coleman (D-Hunterdon and Mercer), Assemblyman Gordon Johnson (D-Bergen), Assemblywoman Annette Quijano (D-Union), and Assemblywoman Holly Schepisi (R-Bergen and Passaic).

###

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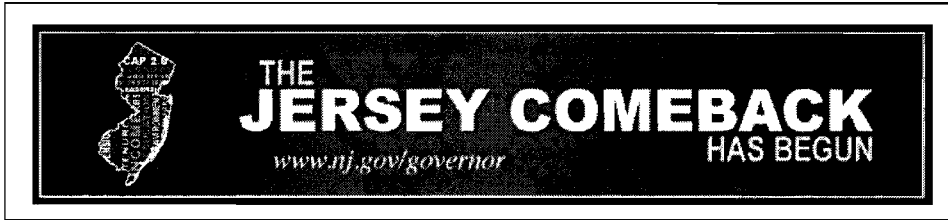
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# "A Unique Opportunity To Save Lives"

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## Governor Christie's "Revolutionary," Bipartisan Expansion Of Mandatory Drug Court "Expands Access To The Life-Saving, Cost-Saving And Crime-Preventing Opportunities"

*"Once again by putting people before partisanship, we are providing optimism and hope to individuals and families torn apart by addiction. Once fully phased in over 5 years, this program will provide mandatory drug treatment to appropriate offenders who are not a threat to society and who suffer from the disease of addiction – redeeming lives and healing families."*

~ Governor Chris Christie, Remarks On Drug Court Expansion, July 19, 2012

### Bipartisan Legislative Leaders

**Assemblywoman Bonnie Watson Coleman (D-Mercer):** "By expanding on the success of the voluntary drug court program and reaching even more people through mandatory treatment in their sentencing, we can save taxpayer dollars and, more importantly, help these individuals get their lives back." ("Governor Chris Christie Follows Through on Commitment to Reclaim Lives with Landmark, Bipartisan Mandatory Drug Court Law," Press Release, 7/19/12)

**Watson Coleman:** "I thank the Governor and my fellow bill sponsors for their work and commitment to making this important reform a reality for our state."

**Watson Coleman:** "Continuing to look to imprisonment as the only solution for nonviolent drug offenders is not only more costly to our taxpayers, but fails to deal with the underlying problem in these individuals' lives in the first place ..."

**Senator Raymond Lesniak (D-Union):** "This law expands access to the life-saving, cost-saving and crime-preventing opportunities provided by our drug courts to thousands of criminal offenders struggling with drug addiction."

**Lesniak:** "Our communities will be safer and taxpayer costs will be saved as our prison population is reduced as a result." (Senate Democrats, "Lesniak-Scutari Drug Court Bill Signed Into Law," Press Release, 7/19/12)

**Senator Nicholas Scutari (D-Union):** "This law is about spending corrections dollars smarter, and allowing drug-addicted offenders to seek treatment, rather than incarceration ..." (Senate Democrats, "Lesniak-Scutari Drug Court Bill Signed Into Law," Press Release, 7/19/12)

**Scutari:** "The old criminal justice system failed far many offenders than it helped, and instead of putting the focus on reform and rehabilitation, the focus was on warehousing criminal offenders. This new law puts our priorities back in the right place, and ensures that folks who can be helped by the program will be directed to drug court."

**Assemblyman Gordon Johnson (D-Bergen):** "Making the program mandatory will not only help these individuals get better, but it would save the state on incarceration costs. It's a win-win." (Assembly Democrats, "Watson Coleman, Johnson & Quijano Bill to Phase In Mandatory Sentencing to Drug Court Program Signed Into Law," Press Release, 7/19/12)

**Assemblywoman Annette Quijano (D-Union):** "Considering the potential societal benefits, requiring these type of offenders to participate in the program makes sense." (Assembly Democrats, "Watson Coleman, Johnson & Quijano Bill to Phase In Mandatory Sentencing to Drug Court Program Signed Into Law," Press Release, 7/19/12)

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**Assemblywoman Holly Schepisi (R-Bergen):** "While we cannot measure the compassion of such a program in dollars and cents, offering help to those in need is a benchmark of our society ..." (Assembly Republicans, "Schepisi's Mandatory Sentencing To Drug Court Program Signed Into Law," Press Release, 7/19/12)

**Schepisi:** "I have seen first-hand how those suffering from drug addiction can turn their lives around and make a positive contribution to society. I congratulate Governor Christie for bringing this issue to the forefront."

**Senator Diane Allen (R-Burlington):** "Diverting low-risk, non-violent drug offenders into rehab rather than incarceration gives these individuals a fighting chance at overcoming the disease that is addiction so that they can ultimately lead productive lives ..." (Senate Republicans, "Allen and Bateman Welcome Enactment of Expanded Drug Treatment Options for Nonviolent Offenders," Press Release, 7/19/12)

**Allen:** "Since drug offenders who go untreated commit more and more serious crimes, dealing with the issue early is a great benefit not only to the drug war, but all of society."

**Senator Christopher Bateman (R-Somerset):** "This overdue law will make societal contributors out of people who pose no public safety threat and have committed drug offenses simply to support their addiction ..." (Senate Republicans, "Allen and Bateman Welcome Enactment of Expanded Drug Treatment Options for Nonviolent Offenders," Press Release, 7/19/12)

**Bateman:** "It will channel nonviolent drug offenders toward treatment they probably would not otherwise pursue, away from a life of crime. It will also decrease court case loads and otherwise annually save taxpayers hundreds of millions of dollars, as it costs about \$28, 000 more per year to incarcerate rather than treat a nonviolent drug offender."

**Assemblywoman Mary Pat Angelini (R-Monmouth):** "The drug court program offers those suffering from addiction the chance to turn their lives around and overcome this disease ... Instead of being locked up in prison, non-violent addicts deserve an opportunity to be rehabilitated." (Assembly Republicans, "Angelini Lauds Signing Of New Drug Court

## Policy Experts And Community Leaders

**Delia Bass-Dandridge, president of the Rescue Mission's Board of Directors:** "We believe, as [Governor Christie] does, that everyone deserves a second chance," she said. "No life is dispensable." (Melissa Hayes, "Christie signs bill mandating drug offenders seek treatment," The Record, 7/19/12)

**NJ Association of Mental Health and Addiction Agencies CEO Debra L. Wentz:** "Christie's initiative is right on time to strengthen New Jersey and address a widespread health issue." (Debra L. Wentz, "Gov. Chris Christie's drug treatment plan good for jailed people, N.J.," *Star-Ledger*, 1/29/12)

**Wentz:** "Christie's revolutionary policy will pave the way for fiscal relief by slashing in half the money spent incarcerating thousands of nonviolent offenders and by saving millions of corrections dollars."

**Wentz:** "We call on our state's leaders to join together in a unique opportunity to save lives, save money and save New Jersey."

**John Hulick, Executive Director Of The Governor's Council On Alcoholism And Drug Abuse:** "With today's signing, non-violent offenders assessed with an addiction, who heretofore could deny a course of treatment, will now be provided an opportunity to also recover even if they are at first unwilling." (Bill Mooney, "Drug court bill signed into law," PolitickerNJ, 7/19/12)

**Judge Glenn Grant, administrative director of the courts:** "We're talking about changing lives, changing communities ..." (Bill Mooney, "Drug court bill signed into law," PolitickerNJ, 7/19/12)

"Participants will have a support team to get them back on track. And by slowly rolling the program out over five years, at the end of which time it will be present in every county, the state will make sure the infrastructure is in place to ensure the program's success, he said."

**Sherry Sandler, New Jersey State Parole Board:** "The New Jersey State Parole Board 'fully supports the governor's proposal ...'" (Kevin Riordan, "Christie's Comment On Treating Drug Abuse Stirs Hope," *Philadelphia Inquirer*, 2/12/2012)

**Sandler:** "We've always had the position that treatment works. And New Jersey's success in reducing the prison population is partially related to our use of treatment."

**New Jersey Coalition of Community Corrections Providers President Patricia McKernan:** "We're hopeful about the governor's proposal ... Expanding treatment options is great..." (Kevin Riordan, "Christie's Comment On Treating Drug Abuse Stirs Hope," *Philadelphia Inquirer*, 2/12/2012)

**Cumberland County's Seabrook House Vice President Stephanie Loeb:** "The governor gets it..." (Kevin Riordan, "Christie's Comment On Treating Drug Abuse Stirs Hope," *Philadelphia Inquirer*, 2/12/2012)

**Loeb:** "The social stigma [is] that addiction ... is an issue of morals, or a lack of intestinal fortitude, or a lack of willpower ... Addiction is a chronic illness."

**Former New Jersey NAACP Political Director Walter Fields:** "With drug courts, we can reduce the number of crime victims, alleviate human suffering and save taxpayer dollars. That's what I call being tough — and smart — on crime." (Walter Fields, "With Drug Courts, N.J. Could Be Tough And Smart On Crime," *The Star-Ledger*, 2/1/2012)


"We should treat, rather than incarcerate, nonviolent drug offenders. That's the straightforward policy behind so-called drug courts."

"For his part, Gov. Chris Christie proposes to take a good idea and make it better by expanding the number of drug court participants and making enrollment mandatory, not merely voluntary."

"By almost any measure, drug courts make sense. ... Thus, if we treat the root causes of drug-related crimes — substance abuse and addiction — we can reduce the likelihood of crimes being committed in the first instance."

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# Providing For Those In Need

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## Governor Christie Is Committed To Protecting New Jersey's Most Vulnerable Citizens

*"We must work in multiple ways to improve the quality of life for everyone. Creating jobs and fixing the schools are probably the two most important ways to do that, but there are other steps we can take as well to improve the quality of life in New Jersey. ... We need to reclaim our inner cities, respond to underserved regions, and engage our most vulnerable citizens."*

– Governor Chris Christie, State Of The State Address, 1/17/12

### PROVIDING A SECOND CHANCE TO NON-VIOLENT OFFENDERS

#### Expanding The Drug Court Program For Non-Violent Offenders:

Governor Christie followed through on his commitment to take a smarter and more effective approach in how the state treats drug-addicted offenders by signing into law landmark, bipartisan legislation to put in place a statewide, mandatory Drug Court program. The legislation, S-881, acts on the principles laid out by Governor Christie in his January State of the State Address – that no life is disposable and that it is a common sense, fiscal, and moral imperative to help individuals dealing with drug addiction reclaim their lives with treatment, rather than warehousing them in prison.

Through the Fiscal Year 2013 budget, Governor Christie provided an additional **\$2.5 million** in funding.

The program will be phased in over 5 years and additional drug courts will be established so that access will be available in all 21 counties.

In addition, the legislation provides for:

- Increased identification of eligible drug addicted non-violent offenders.
- Court ordered clinical assessment to determine suitability for drug court.
- Courts to make a finding regarding addiction for any offender having a clinical assessment.
- The court to consider a defendant's cooperation in the process of drug treatment and assessment in sentencing.
- Judges to be given ultimate discretion in determining whether an individual poses a threat to society and should not be sent to a drug treatment facility as part of his or her sentencing.

#### A Smarter Approach To Helping Ex-Offenders Re-Enter Society:

To address the current lack of coordination among the many treatment and re-entry programs across State government, Governor Christie signed Executive Order 83, creating the Governor's Task Force for Recidivism Reduction. The primary functions of the task force will be:

- Collecting and analyzing performance data from various State departments for budgeting, programming and procurement purposes.
- Developing recommendations for the Governor regarding how best to ensure the effectiveness and success of New

Jersey's efforts towards recidivism reduction

Undertaking an initial benchmarking study of existing program effectiveness and performance, and the development and implementation of a system to measure program effectiveness in an ongoing, real-time way.

#### Ongoing Program Assessment And A Real-Time Recidivism Database:

The path forward to improve prisoner re-entry requires the Administration to gauge the successes, failures and the depth of gaps in program delivery – inside and outside of prison. Programming gaps will be rectified by expanding existing, successful programs and hitting capacity thresholds, particularly relating to program delivery within prison.

Data will be used to populate a real-time recidivism database, which will allow the Administration to track outcomes for individuals and trends and level of effectiveness in programs in a real-time manner.

### **ENSURING THE HEALTH AND WELL-BEING OF OUR MOST VULNERABLE**

#### Increasing Access to Health Centers:

Governor Christie is increasing funding for Health Centers in fiscal year 2013 by \$3.6 million. The Christie Administration is supporting FQHCs with **\$50 million** in reimbursement for providing care to the uninsured—a record high:

More than 400,000 patients receive care at 20 Federally Qualified Health Centers (FQHCs) with 95 licensed satellite sites that provide well woman, dental, pediatric and other health exams;

75% of those who receive health care through FQHCs are women and children; and

The total number of patient visits each year exceeds 1.3 million. Nearly half of the patients are uninsured and 41% are on Medicaid.

#### Funding New Jersey's Hospitals:

Providing the necessary resources to keep safety net hospitals operating, while recognizing that all hospitals provide care to the uninsured and underinsured, remains the principle behind hospital funding in fiscal year 2013. In response to concerns expressed by hospitals, fiscal year 2013 charity care payments will again be tied to the level of charity care provided during the most recent calendar year for which claims data is available. The amended distribution formula continues the principles of:

Transparency: Distribution of subsidy amounts will be shared with the industry early in the year.

Predictability: A portion of the proposed fiscal year 2013 subsidy will be based on the fiscal year 2012 subsidy.

Equity: A portion of the subsidy will be based on the change in documented charity care from the prior year 2009 to the base year 2010 and no single hospital is significantly advantaged or disadvantaged.

*Despite economic challenges facing the state, hospital funding will be maintained at the enhanced fiscal year 2012 level. A total of **\$956 million** has been provided in the FY 2013 budget for hospital funding through Charity Care, Graduate Medical Education support and Hospital Relief Subsidy Fund.*

*In addition **\$30 million** will be made available through Hospital Stabilization Aid.*

#### Increased Funding For Nursing Homes:

Governor Christie is increasing state funding for nursing home reimbursements by \$15 million over fiscal year 2012. Combined with federal matching funds, this represents **\$30 million** in additional resources available.

#### WorkFirst New Jersey:

WorkFirst NJ emphasizes work as the first step toward building a new life and a brighter future. The goal is to help people get off welfare, secure employment and become self-sufficient, through job training, education and work activities. WorkFirst NJ provides temporary cash assistance and other support services to families through the Temporary Assistance for Needy Families (TANF) program.

Under Workfirst NJ, the fiscal year 2013 budget is increasing State and federal funding by **\$5 million** for subsidized child care for eligible families regardless of where the child resides.

#### Giving Families the Tools to Succeed:

Family Success Centers are community-based grassroots organizations that provide services ranging from basic needs like day care and parenting classes, to more complex needs such as accessing mental health support, domestic violence prevention and substance abuse services.



Governor Christie protected funding at **\$9.5 million** in State funds along with \$2.5 million in federal funds. The number of Family Success Centers in New Jersey will increase from 42 to **49**.

#### **Increased Funding To NJCEED:**

The New Jersey Cancer Education and Early Detection (NJCEED) Program provides cancer outreach, education, screening, tracking and follow-up services to individuals 18-64 with incomes of up to 250% of the Federal Poverty Level.

Governor Christie is increasing state funding to more than **\$9 million** so it can continue to serve New Jersey's most vulnerable residents. An additional **\$1 million** dollars is also being provided in cancer research funding.

#### **Protecting Health Care Coverage for Uninsured Children:**

The Christie Administration has demonstrated its commitment to providing health care coverage for uninsured children by maintaining the income eligibility level for children's coverage at 350% of the federal poverty level – the second highest coverage level in the country. Recently the Department of Human Services was recognized for performance excellence in enrolling over 700,000 children in the Family Care program. The State received a \$16.8 million performance bonus payment award from the Centers for Medicare and Medicaid Services (CMS) for surpassing enrollment targets and improving children's access to health care.

*During fiscal year 2013, New Jersey Family Care will use more than **\$1 billion** of State and federal resources to provide or subsidize health insurance for 162,088 children and 192,571 adults.*

### **COMBATING HOMELESSNESS AND HELPING LOW-INCOME FAMILIES STAY IN THEIR HOMES**

#### **Expanded Veterans Haven Program:**

The Christie Administration is expanding the Department of Military and Veterans Affairs successful Veterans Haven program to provide access to veterans in the northern part of the state. The Veterans Transitional Housing Program – Veterans Haven – is a facility for homeless veterans. After being medically evaluated at a VA Medical Center, eligible veterans participate in a long-term program focusing on psychological, social and vocational rehabilitation. Hagedorn Psychiatric Hospital will provide the location for Veterans Haven North.

Startup funds for the project total **\$3.5 million**. With federal funding through the U.S. Department of Veterans Affairs, this will allow DMAVA to provide housing, health services and social and vocational rehabilitation to approximately 50 homeless veterans.

#### **Combating Homelessness In A More Efficient, Coordinated And Strategic Manner:**

Governor Chris Christie signed Executive Order 92 creating the Interagency Council on Homelessness to combat homelessness as part of the administration's commitment to protecting the most vulnerable New Jerseyans. The Governor's action will mobilize the state government in a more efficient, coordinated and strategic manner around the goal of combating homelessness in the state.

The Council is tasked with better identifying and addressing the needs of homeless New Jerseyans as part of a long term plan to help assist those individuals affected by homelessness.

#### **Providing Housing Assistance To Those In Need:**

Governor Christie's Fiscal Year 2013 budget reaffirms his commitment to protecting the state's most vulnerable citizens by maintaining funding for a variety of housing assistance for low-income New Jerseyans.

**State Rental Assistance Program (SRAP).** Governor Christie is providing funding for SRAP at **\$21 million** in fiscal year 2013, which helps low-income residents afford housing by providing rental assistance grants to individuals and families.

**Homelessness Prevention Program.** This program provides financial assistance to low- and moderate-income tenants and homeowners in imminent danger of eviction or foreclosure due to temporary financial problems beyond their control. Governor Christie's fiscal year 2013 budget protects funding at **\$4.4 million**.

**Shelter Assistance.** In fiscal year 2013, the Christie Administration will provide **\$2.3 million** in assistance to homeless shelters in the state.

**Assistance for Needy Families.** In addition to these programs to assist homeless families and prevent homelessness, DHS serves many homeless residents through its General Assistance and Temporary Assistance for Needy Families (TANF) programs. Both provide supports that include temporary shelter placement, rental assistance, medical coverage, food assistance and job training. The Governor's fiscal year 2013 budget protects **\$78.6 million** in funding for the WorkFirst New Jersey program, part of TANF, which helps people get off welfare, secure employment and become self-sufficient through job training, education and work activities.

#### **Providing The Necessary Resources To Address And Prevent Homelessness:**

**Shelter Support Grants:** In December 2011, the Christie Administration announced the award of 37 Shelter Support grants totaling \$3,830,265 in both state and federal funding to nonprofit and local government agencies operating emergency homeless shelters and transitional housing facilities located throughout New Jersey.

It is estimated that these shelters and transitional housing facilities will assist approximately 3,000 households over the next year.

These grants will be used to create additional bed space, address life safety issues, abate code violations and support the 1,652 beds in existing homeless shelters and transitional housing, resulting in improved living conditions for homeless individuals, victims of domestic violence and military veterans.

**Homelessness Prevention Grants:** In November 2011, the Christie Administration announced the award of 10 Homelessness Prevention grants totaling \$1.2 million to nonprofit agencies administering Homelessness Prevention Programs.

The agencies will use the state-funded grants to provide assistance to low and moderate-income tenants who are in imminent danger of eviction because of temporary or extraordinary financial circumstances.

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