

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW

P.L. 2008, CHAPTER 15, *approved April 21, 2008*
Assembly Committee Substitute for
Assembly, No. 1770

1 AN ACT concerning rehabilitation of drug and alcohol dependent
2 offenders and amending N.J.S.2C:35-14 and N.J.S.2C:35-15.

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; **[Mandatory]** Commitment to Residential Treatment
13 Facilities or Participation in a Nonresidential Treatment Program;
14 Presumption of Revocation; Brief Incarceration in Lieu of
15 Permanent Revocation.

16 a. Any person who is ineligible for probation due to a conviction
17 for a crime which is subject to a presumption of incarceration or a
18 mandatory minimum period of parole ineligibility may be sentenced
19 to a term of special probation in accordance with this section, and
20 may not apply for drug and alcohol treatment pursuant to
21 N.J.S.2C:45-1. Nothing in this section shall be construed to
22 prohibit a person who is eligible for probation in accordance with
23 N.J.S.2C:45-1 due to a conviction for an offense which is not
24 subject to a presumption of incarceration or a mandatory minimum
25 period of parole ineligibility from applying for drug or alcohol
26 treatment as a condition of probation pursuant to N.J.S.2C:45-1.

27 Notwithstanding the presumption of incarceration pursuant to the
28 provisions of subsection d. of N.J.S.2C:44-1, and except as
29 provided in subsection c. of this section, whenever a drug or alcohol
30 dependent person who is subject to sentencing under this section is
31 convicted of or adjudicated delinquent for an offense, other than
32 one described in subsection b. of this section, the court, upon notice
33 to the prosecutor, may, on motion of the person, or on the court's
34 own motion, place the person on special probation, which shall be
35 for a term of five years, provided that the court finds on the record
36 that:

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

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

Matter underlined thus is new matter.

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

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

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

13 (5) the person did not possess a firearm at the time of the present
14 offense and did not possess a firearm at the time of any pending
15 criminal charge; and

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

23 (7) the person has not been previously convicted or adjudicated
24 delinquent for, and does not have a pending charge of murder,
25 aggravated manslaughter, manslaughter, robbery, kidnapping,
26 aggravated assault, aggravated sexual assault or sexual assault, or a
27 similar crime under the laws of any other state or the United States;
28 and

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

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

36 In determining whether to sentence the person pursuant to this
37 section, the court shall consider all relevant circumstances, and
38 shall take judicial notice of any evidence, testimony or information
39 adduced at the trial, plea hearing or other court proceedings, and
40 shall also consider the presentence report and the results of the
41 professional diagnostic assessment to determine whether and to
42 what extent the person is drug or alcohol dependent and would
43 benefit from treatment.

44 As a condition of special probation, the court shall order the
45 person to enter a residential treatment program at a facility licensed
46 and approved by the Division of Addiction Services in the
47 Department of **[Health and Senior Services]** Human Services or a

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

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

17 (1) a crime of the first degree;

18 (2) a crime of the first or second degree enumerated in
19 subsection d. of **[N.J.S.2C:43-7.2]** section 2 of P.L.1997, c.117
20 (C.2C:43-7.2);

21 (3) a crime, other than that defined in **[N.J.S.2C:35-7]** section 1
22 of P.L.1987, c.101 (C.2C:35-7), for which a mandatory minimum
23 period of incarceration is prescribed under chapter 35 of this Title
24 or any other law; or

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

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

31 (1) the person has been

32 (a) convicted of or adjudicated delinquent for an offense under
33 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1
34 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there
35 exists a presumption of imprisonment pursuant to subsection d. of
36 N.J.S.2C:44-1 or any other statute [, or who has been];

37 (b) previously convicted of an offense under subsection a. of
38 N.J.S.2C:35-5 or a similar offense under any other law of this State,
39 any other state or the United States, [shall not be eligible for
40 sentence in accordance with this section if]; or

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

44 (2) the prosecutor objects to the person being placed on special
45 probation. The court shall not place a person on special probation
46 over the prosecutor's objection except upon a finding by the court of
47 a gross and patent abuse of prosecutorial discretion. If the court

1 makes a finding of a gross and patent abuse of prosecutorial
2 discretion and imposes a sentence of special probation
3 notwithstanding the objection of the prosecutor, the sentence of
4 special probation imposed pursuant to this section shall not become
5 final for 10 days in order to permit the appeal of such sentence by
6 the prosecution.

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

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

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

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

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

46 (4) If the court permanently revokes the person's special
47 probation pursuant to this subsection, the court shall impose any

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

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

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

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

43 g. When a person on special probation is subject to a
44 presumption of revocation on a second or subsequent violation
45 pursuant to paragraph (2) of subsection f. of this section, or when
46 the person refuses to undergo drug or alcohol testing pursuant to
47 paragraph (6) of subsection f. of this section, the court may, in lieu

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

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

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

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

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

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

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

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

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

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

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

43 (2) The probation department or other appropriate agency shall
44 immediately notify the court and the prosecutor in the event that the
45 person fails or refuses to submit to a drug or alcohol test, knowingly
46 defrauds the administration of a drug test, terminates his
47 participation in the course of treatment, or commits any act that

1 would constitute absconding from parole. If the person at any time
2 while entered in a nonresidential treatment program pursuant to
3 subsection j. of this section knowingly defrauds the administration
4 of a drug test, goes into hiding or leaves the State with a purpose of
5 avoiding supervision, the court shall permanently revoke the
6 person's special probation.

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

19 (cf: P.L.2001, c.129, s.2.)

20
21 2. N.J.S.2C:35-15 is amended to read as follows:

22 2C:35-15. a. (1) In addition to any disposition authorized by this
23 title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43),
24 or any other statute indicating the dispositions that can be ordered
25 for an adjudication of delinquency, every person convicted of or
26 adjudicated delinquent for a violation of any offense defined in this
27 chapter or chapter 36 of this title shall be assessed for each such
28 offense a penalty fixed at:

29 (a) \$3,000.00 in the case of a crime of the first degree;

30 (b) \$2,000.00 in the case of a crime of the second degree;

31 (c) \$1,000.00 in the case of a crime of the third degree;

32 (d) \$750.00 in the case of a crime of the fourth degree;

33 (e) \$500.00 in the case of a disorderly persons or petty disorderly
34 persons offense.

35 (2) A person being sentenced for more than one offense set forth
36 in subsection a. of this section who is neither placed in supervisory
37 treatment pursuant to this section nor ordered to perform
38 reformatory service pursuant to subsection f. of this section may, in
39 the discretion of the court, be assessed a single penalty applicable to
40 the highest degree offense for which the person is convicted or
41 adjudicated delinquent, if the court finds that the defendant has
42 established the following:

43 (a) the imposition of multiple penalties would constitute a
44 serious hardship that outweighs the need to deter the defendant
45 from future criminal activity; and

46 (b) the imposition of a single penalty would foster the
47 defendant's rehabilitation.

1 Every person placed in supervisory treatment pursuant to the
2 provisions of N.J.S.2C:36A-1 or N.J.S.2C:43-12 for a violation of
3 any offense defined in this chapter or chapter 36 of this title shall be
4 assessed the penalty prescribed herein and applicable to the degree
5 of the offense charged, except that the court shall not impose more
6 than one such penalty regardless of the number of offenses charged.
7 If the person is charged with more than one offense, the court shall
8 impose as a condition of supervisory treatment the penalty
9 applicable to the highest degree offense for which the person is
10 charged.

11 All penalties provided for in this section shall be in addition to
12 and not in lieu of any fine authorized by law or required to be
13 imposed pursuant to the provisions of N.J.S.2C:35-12.

14 b. All penalties provided for in this section shall be collected as
15 provided for collection of fines and restitutions in section 3 of
16 P.L.1979, c.396 (C.2C:46-4), and shall be forwarded to the
17 Department of the Treasury as provided in subsection c. of this
18 section.

19 c. All moneys collected pursuant to this section shall be
20 forwarded to the Department of the Treasury to be deposited in a
21 nonlapsing revolving fund to be known as the "Drug Enforcement
22 and Demand Reduction Fund." Moneys in the fund shall be
23 appropriated by the Legislature on an annual basis for the purposes
24 of funding in the following order of priority: (1) the Alliance to
25 Prevent Alcoholism and Drug Abuse and its administration by the
26 Governor's Council on Alcoholism and Drug Abuse; (2) the
27 "Alcoholism and Drug Abuse Program for the Deaf, Hard of
28 Hearing and Disabled" established pursuant to section 2 of
29 P.L.1995, c.318 (C.26:2B-37); (3) the "Partnership for a Drug Free
30 New Jersey," the State affiliate of the "Partnership for a Drug Free
31 America"; and (4) other alcohol and drug abuse programs.

32 Moneys appropriated for the purpose of funding the "Alcoholism
33 and Drug Abuse Program for the Deaf, Hard of Hearing and
34 Disabled" shall not be used to supplant moneys that are available to
35 the Department of Health and Senior Services as of the effective
36 date of P.L.1995, c.318 (C.26:2B-36 et al.), and that would
37 otherwise have been made available to provide alcoholism and drug
38 abuse services for the deaf, hard of hearing and disabled, nor shall
39 the moneys be used for the administrative costs of the program.

40 d. (Deleted by amendment, P.L.1991, c.329).

41 e. The court may suspend the collection of a penalty imposed
42 pursuant to this section; provided the person is ordered by the court
43 to participate in a drug or alcohol rehabilitation program approved
44 by the court; and further provided that the person agrees to pay for
45 all or some portion of the costs associated with the rehabilitation
46 program. In this case, the collection of a penalty imposed pursuant
47 to this section shall be suspended during the person's participation

1 in the approved, court-ordered rehabilitation program. Upon
2 successful completion of the program, as determined by the court
3 upon the recommendation of the treatment provider, the person may
4 apply to the court to reduce the penalty imposed pursuant to this
5 section by any amount actually paid by the person for his
6 participation in the program. The court shall not reduce the penalty
7 pursuant to this subsection unless the person establishes to the
8 satisfaction of the court that he has successfully completed the
9 rehabilitation program. If the person's participation is for any
10 reason terminated before his successful completion of the
11 rehabilitation program, collection of the entire penalty imposed
12 pursuant to this section shall be enforced. Nothing in this section
13 shall be deemed to affect or suspend any other criminal sanctions
14 imposed pursuant to this chapter or chapter 36 of this title.

15 f. A person required to pay a penalty under this section may
16 propose to the court and the prosecutor a plan to perform
17 reformatory service in lieu of payment of up to one-half of the
18 penalty amount imposed under this section. The reformatory
19 service plan option shall not be available if the provisions of
20 paragraph (2) of subsection a. of this section apply or if the person
21 is placed in supervisory treatment pursuant to the provisions of
22 N.J.S.2C:36A-1 or N.J.S.2C:43-12. For purposes of this section,
23 "reformatory service" shall include training, education or work, in
24 which regular attendance and participation is required, supervised,
25 and recorded, and which would assist in the defendant's
26 rehabilitation and reintegration. "Reformatory service" shall
27 include, but not be limited to, substance abuse treatment or services,
28 other therapeutic treatment, educational or vocational services,
29 employment training or services, family counseling, service to the
30 community and volunteer work. For the purposes of this section, an
31 application to participate in a court-administered alcohol and drug
32 rehabilitation program shall have the same effect as the submission
33 of a reformatory service plan to the court.

34 The court, in its discretion, shall determine whether to accept the
35 plan, after considering the position of the prosecutor, the plan's
36 appropriateness and practicality, the defendant's ability to pay and
37 the effect of the proposed service on the defendant's rehabilitation
38 and reintegration into society. The court shall determine the amount
39 of the credit that would be applied against the penalty upon
40 successful completion of the reformatory service, not to exceed one-
41 half of the amount assessed, except that the court may, in the case
42 of an extreme financial hardship, waive additional amounts of the
43 penalty owed by a person who has completed a court administered
44 alcohol and drug rehabilitation program if necessary to aid the
45 person's rehabilitation and reintegration into society. The court
46 shall not apply the credit against the penalty unless the person
47 establishes to the satisfaction of the court that he has successfully

1 completed the reformatory service. If the person's participation is
2 for any reason terminated before his successful completion of the
3 reformatory service, collection of the entire penalty imposed
4 pursuant to this section shall be enforced. Nothing in this
5 subsection shall be deemed to affect or suspend any other criminal
6 sanctions imposed pursuant to this chapter or chapter 36 of this
7 title.

8 Any reformatory service ordered pursuant to this section shall be
9 in addition to and not in lieu of any community service imposed by
10 the court or otherwise required by law. Nothing in this section shall
11 limit the court's authority to order a person to participate in any
12 activity, program or treatment in addition to those proposed in a
13 reformatory service plan.

14 (cf: P.L.2007, c.297, s.1.)

15

16 3. This act shall take effect on the first day of the fourth month
17 following enactment.

18

19

20

21

22 Amends special probation statute to increase participation in
23 drug court program; permits court to reduce certain fees.

ASSEMBLY, No. 1770

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

SYNOPSIS

Allows additional offenders to receive special probation under certain circumstances and increases the provision of outpatient treatment as a component of special probation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning treatment for drug and alcohol dependent
2 persons and amending various sections of the New Jersey
3 Statutes.

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

7
8 1. N.J.S.2C:29-5 is amended to read as follows:

9 2C:29-5. Escape. a. Escape. A person commits an offense if he
10 without lawful authority removes himself from official detention or
11 fails to return to official detention following temporary leave
12 granted for a specific purpose or limited period. "Official detention"
13 means arrest, detention in any facility for custody of persons under
14 charge or conviction of a crime or offense, or committed pursuant
15 to chapter 4 of this Title, or alleged or found to be delinquent,
16 detention for extradition or deportation, or any other detention for
17 law enforcement purposes; but "official detention" does not include
18 supervision of probation or parole, or constraint incidental to
19 release on bail.

20 b. Absconding from parole. A person subject to parole commits
21 a crime of the third degree if the person goes into hiding or leaves
22 the State with a purpose of avoiding supervision. As used in this
23 subsection, "parole" includes participation in the Intensive
24 Supervision Program (ISP) established pursuant to the Rules
25 Governing the Courts of the State of New Jersey and participation
26 in a residential or nonresidential drug treatment program ordered by
27 a court pursuant to N.J.S.2C:35-14. Abandoning a place of
28 residence without the prior permission of or notice to the
29 appropriate supervising authority shall constitute prima facie
30 evidence that the person intended to avoid such supervision.

31 c. Permitting or facilitating escape A public servant concerned
32 in detention commits an offense if he knowingly or recklessly
33 permits an escape. Any person who knowingly causes or facilitates
34 an escape commits an offense.

35 d. Effect of legal irregularity in detention. Irregularity in
36 bringing about or maintaining detention, or lack of jurisdiction of
37 the committing or detaining authority, shall not be a defense to
38 prosecution under this section if the escape is from a prison or other
39 custodial facility or from detention pursuant to commitment by
40 official proceedings. In the case of other detentions, irregularity or
41 lack of jurisdiction shall be a defense only if:

42 (1) The escape involved no substantial risk of harm to the person
43 or property of anyone other than the detainee; or

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 (2) The detaining authority did not act in good faith under color
2 of law.

3 e. Grading of offenses. An offense under subsection a. or c. of
4 this section is a crime of the second degree where the actor employs
5 force, threat, deadly weapon or other dangerous instrumentality to
6 effect the escape. Otherwise it is a crime of the third degree.

7 (cf: P.L.1991, c.34, s.1)

8

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

10 2C:35-14. Rehabilitation Program for Drug and Alcohol
11 Dependent Persons; Criteria for Imposing Special Probation;
12 Ineligible Offenders; Prosecutorial Objections; **[Mandatory]**
13 Commitment to Residential and Nonresidential Treatment
14 Facilities; Presumption of Revocation; Brief Incarceration in Lieu
15 of Permanent Revocation.

16 a. Notwithstanding the presumption of incarceration pursuant to
17 the provisions of subsection d. of N.J.S.2C:44-1, and except as
18 provided in subsection c. of this section, whenever a drug or alcohol
19 dependent person is convicted of or adjudicated delinquent for an
20 offense, other than one described in subsection b. of this section,
21 the court, upon notice to the prosecutor, may, on motion of the
22 person, or on the court's own motion, place the person on special
23 probation, which shall be for a term of five years, provided that the
24 court finds on the record that:

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

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

31 (3) the present offense was committed while the person was
32 under the influence of a controlled dangerous substance, controlled
33 substance analog or alcohol or was committed to acquire property
34 or monies in order to support the person's drug or alcohol
35 dependency; and

36 (4) substance abuse treatment and monitoring will serve to
37 benefit the person by addressing his drug or alcohol dependency
38 and will thereby reduce the likelihood that the person will thereafter
39 commit another offense; and

40 (5) the person did not possess a firearm at the time of the present
41 offense and did not possess a firearm at the time of any pending
42 criminal charge; and

43 (6) the person has **[not been previously convicted on two or**
44 **more separate occasions of crimes of the first, second or third**
45 **degree, other than crimes defined in N.J.S.2C:35-10]** demonstrated
46 amenability to rehabilitation by pleading guilty and accepting
47 responsibility for committing the present offense; and

1 (7) the person has not been previously convicted or adjudicated
2 delinquent for, and does not have a pending charge of murder,
3 aggravated manslaughter, manslaughter, robbery, kidnapping,
4 aggravated assault, aggravated sexual assault or sexual assault, or a
5 similar crime under the laws of any other state or the United States;
6 and

7 (8) a suitable treatment facility licensed and approved by the
8 Department of Health and Senior Services is able and has agreed to
9 provide appropriate treatment services in accordance with the
10 requirements of this section; and

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

13 In determining whether to sentence the person pursuant to this
14 section, the court shall consider all relevant circumstances, and
15 shall take judicial notice of any evidence, testimony or information
16 adduced at the trial, plea hearing or other court proceedings, and
17 shall also consider the presentence report and the results of the
18 professional diagnostic assessment to determine whether and to
19 what extent the person is drug or alcohol dependent and would
20 benefit from treatment.

21 As a condition of special probation, the court shall order the
22 person to enter a treatment program at a facility licensed and
23 approved by the Department of Health and Senior Services, to
24 comply with program rules and the requirements of the course of
25 treatment, to cooperate fully with the treatment provider, and to
26 comply with such other reasonable terms and conditions as may be
27 required by the court or by law, pursuant to N.J.S.2C:45-1, and
28 which shall include periodic urine testing for drug or alcohol usage
29 throughout the period of special probation. Subject to the
30 requirements of subsection d. of this section, the conditions of
31 special probation may include different methods and levels of
32 community-based or residential supervision.

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

36 (1) a crime of the first degree;

37 (2) a crime of the first or second degree enumerated in
38 subsection d. of **[N.J.S.2C:43-7.2]** section 2 of P.L.1997, c.117
39 (C.2C:43-7.2);

40 (3) a crime, other than that defined in **[N.J.S.2C:35-7]** section 1
41 of P.L.1987, c.101 (C.2C:35-7), for which a mandatory minimum
42 period of incarceration is prescribed under chapter 35 of this Title
43 or any other law; or

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

47 c. A person shall not be eligible for special probation in

1 accordance with this section if:
2 (1) the person has been:
3 (a) convicted of or adjudicated delinquent for an offense under
4 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1
5 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there
6 exists a presumption of imprisonment pursuant to subsection d. of
7 N.J.S.2C:44-1 or any other statute, [or who has been]
8 (b) previously convicted of an offense under subsection a. of
9 N.J.S.2C:35-5 or a similar offense under any other law of this State,
10 any other state or the United States [shall not be eligible for
11 sentence in accordance with this section if], or
12 (c) previously convicted of two or more crimes of the first,
13 second or third degree, other than crimes defined in N.J.S.2C:35-10,
14 that were committed on prior and separate occasions, if the crime
15 for which the person is being sentenced was committed less than
16 five years after the most recent crime for which the person was
17 previously convicted or the person's release from confinement; and
18 (2) the prosecutor objects to the person being placed on special
19 probation. The court shall not place a person on special probation
20 over the prosecutor's objection except upon a finding by the court of
21 a gross and patent abuse of prosecutorial discretion. If the court
22 makes a finding of a gross and patent abuse of prosecutorial
23 discretion and imposes a sentence of special probation
24 notwithstanding the objection of the prosecutor, the sentence of
25 special probation imposed pursuant to this section shall not become
26 final for 10 days in order to permit the appeal of such sentence by
27 the prosecution.
28 d. [A] Subject to the provisions of subsection j. of this section,
29 a person convicted of or adjudicated delinquent for a crime of the
30 second degree or of a violation of section 1 of P.L.1987, c.101
31 (C.2C:35-7), or who previously has been convicted of or
32 adjudicated delinquent for an offense under subsection a. of
33 N.J.S.2C:35-5 or a similar offense under any other law of this State,
34 any other state or the United States, or who has been previously
35 convicted of two or more crimes of the first, second or third degree,
36 other than crimes defined in N.J.S.2C:35-10, that were committed
37 on prior and separate occasions, regardless of the dates of the
38 convictions, who is placed on special probation under this section
39 shall be committed to the custody of a residential treatment facility
40 licensed and approved by the Department of Health and Senior
41 Services, whether or not residential treatment was recommended by
42 the person conducting the diagnostic assessment. The person shall
43 be committed to the residential treatment facility immediately,
44 unless the facility cannot accommodate the person, in which case
45 the person shall be incarcerated to await commitment to the
46 residential treatment facility. [The] Subject to the provisions of
47 subsection j. of this section, the term of such commitment shall be

1 for a minimum of six months, or until the court, upon
2 recommendation of the treatment provider, determines that the
3 person has successfully completed the residential treatment
4 program, whichever is later, except that no person shall remain in
5 the custody of a residential treatment facility pursuant to this
6 section for a period in excess of five years. Upon successful
7 completion of the required residential treatment program, the person
8 shall complete the period of special probation, as authorized by
9 subsection a. of this section, with credit for time served for any
10 imprisonment served as a condition of probation and credit for each
11 day during which the person satisfactorily complied with the terms
12 and conditions of special probation while committed pursuant to
13 this section to a residential treatment facility. The person shall not
14 be eligible for early discharge of special probation pursuant to
15 N.J.S.2C:45-2, or any other provision of the law, except as provided
16 in subsection l. of this section. The court, in determining the
17 number of credits for time spent in residential treatment, shall
18 consider the recommendations of the treatment provider. A person
19 placed into a residential treatment facility pursuant to this section
20 shall be deemed to be subject to official detention for the purposes
21 of N.J.S.2C:29-5 (escape).

22 e. The probation department or other appropriate agency
23 designated by the court to monitor or supervise the person's special
24 probation shall report periodically to the court as to the person's
25 progress in treatment and compliance with court-imposed terms and
26 conditions. The treatment provider shall promptly report to the
27 probation department or other appropriate agency all significant
28 failures by the person to comply with any court imposed term or
29 condition of special probation or any requirements of the course of
30 treatment, including but not limited to a positive drug or alcohol
31 test, knowingly defrauding the administration of a drug test or the
32 unexcused failure to attend any session or activity, and shall
33 immediately report any act that would constitute an escape or
34 absconding from parole. The probation department or other
35 appropriate agency shall immediately notify the court and the
36 prosecutor in the event that the person refuses to submit to a
37 periodic drug or alcohol test, knowingly defrauds the administration
38 of a drug test or for any reason terminates his participation in the
39 course of treatment, or commits any act that would constitute an
40 escape or absconding from parole.

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

45 (2) Upon a second or subsequent violation of any term or
46 condition of the special probation authorized by this section or of
47 any requirements of the course of treatment, the court shall, subject

1 only to the provisions of subsection g. of this section, permanently
2 revoke the person's special probation unless the court finds on the
3 record that there is a substantial likelihood that the person will
4 successfully complete the treatment program if permitted to
5 continue on special probation, and the court is clearly convinced,
6 considering the nature and seriousness of the violations, that no
7 danger to the community will result from permitting the person to
8 continue on special probation pursuant to this section. The court's
9 determination to permit the person to continue on special probation
10 following a second or subsequent violation pursuant to this
11 paragraph may be appealed by the prosecution.

12 (3) In making its determination whether to revoke special
13 probation, and whether to overcome the presumption of revocation
14 established in paragraph (2) of this subsection, the court shall
15 consider the nature and seriousness of the present infraction and any
16 past infractions in relation to the person's overall progress in the
17 course of treatment, and shall also consider the recommendations of
18 the treatment provider. The court shall give added weight to the
19 treatment provider's recommendation that the person's special
20 probation be permanently revoked, or to the treatment provider's
21 opinion that the person is not amenable to treatment or is not likely
22 to complete the treatment program successfully.

23 (4) If the court permanently revokes the person's special
24 probation pursuant to this subsection, the court shall impose any
25 sentence that might have been imposed, or that would have been
26 required to be imposed, originally for the offense for which the
27 person was convicted or adjudicated delinquent. The court shall
28 conduct a de novo review of any aggravating and mitigating factors
29 present at the time of both original sentencing and resentencing. If
30 the court determines or is required pursuant to any other provision
31 of this chapter or any other law to impose a term of imprisonment,
32 the person shall receive credit for any time served in custody
33 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
34 treatment facility pursuant to this section, and for each day during
35 which the person satisfactorily complied with the terms and
36 conditions of special probation while committed pursuant to this
37 section to a residential treatment facility. The court, in determining
38 the number of credits for time spent in a residential treatment
39 facility, shall consider the recommendations of the treatment
40 provider.

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

47 (6) Notwithstanding any other provision of this subsection, if
48 the person at any time refuses to undergo urine testing for drug or

1 alcohol usage as provided in subsection a. of this section or
2 knowingly defrauds the administration of a drug test, the court
3 shall, subject only to the provisions of subsection g. of this section,
4 permanently revoke the person's special probation.
5 Notwithstanding any other provision of this section, if the person at
6 any time while committed to the custody of a residential treatment
7 facility pursuant to this section commits an act that would constitute
8 an escape or absconding from parole, the court shall forthwith
9 permanently revoke the person's special probation.

10 (7) An action for a violation under this section may be brought
11 by a probation officer or prosecutor or on the court's own motion.
12 Failure to complete successfully the required treatment program
13 shall constitute a violation of the person's special probation. A
14 person who fails to comply with the terms of his special probation
15 pursuant to this section and is thereafter sentenced to imprisonment
16 in accordance with this subsection shall thereafter be ineligible for
17 entry into the Intensive Supervision Program.

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

45 h. The court, as a condition of its order, and after considering
46 the person's financial resources, shall require the person to pay that
47 portion of the costs associated with his participation in any
48 rehabilitation program or period of residential or nonresidential

1 treatment imposed pursuant to this section which, in the opinion of
2 the court, is consistent with the person's ability to pay, taking into
3 account the court's authority to order payment or reimbursement to
4 be made over time and in installments.

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

8 j. Where the person has satisfied all of the eligibility criteria for
9 special probation and would otherwise be required to be committed
10 to the custody of a residential treatment facility pursuant to the
11 provisions of subsection d. of this section, the court may
12 temporarily suspend imposition of all or any portion of the term of
13 commitment to a residential treatment facility and may instead
14 order the person to enter a nonresidential treatment program
15 provided that the court finds on the record that:

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

21 (2) no danger to the community would result from the person
22 participating in the proposed course of nonresidential treatment
23 services; and

24 (3) a suitable treatment provider is able and has agreed to
25 provide clinically appropriate nonresidential treatment services; and

26 (4) the prosecutor does not object to the person's participation in
27 the proposed course of nonresidential treatment. The court shall not
28 suspend the commitment of the person to the custody of a
29 residential treatment facility pursuant to this subsection over the
30 prosecutor's objection except upon a finding by the court of a gross
31 and patent abuse of prosecutorial discretion. If the court makes
32 such a finding and suspends the commitment of the person to a
33 residential treatment facility pursuant to this subsection, the
34 sentence of special probation imposed pursuant to this section shall
35 not become final for ten days in order to permit the appeal by the
36 prosecution of the court's decision.

37 After a period of six months of nonresidential treatment, if the
38 court, considering all available information including the
39 recommendation of the treatment provider, finds that the person has
40 made satisfactory progress in treatment, and that there is a
41 substantial likelihood that the person will successfully complete the
42 nonresidential treatment program and period of special probation,
43 the court, on notice to the prosecutor, may permanently suspend the
44 commitment of the person to the custody of a residential treatment
45 program, in which event the special monitoring provisions set forth
46 in subsection k. of this section shall no longer apply.

47 Nothing in this subsection shall be construed to limit the
48 authority of the court at any time during the term of special

1 probation to order the person to be committed to a residential or
2 nonresidential treatment facility if the court determines that such
3 treatment is clinically appropriate and necessary to address the
4 person's present treatment needs.

5 k. (1) When the court temporarily suspends the commitment of
6 the person to a residential treatment facility pursuant to subsection
7 j. of this section, the court shall, in addition to ordering
8 participation in a prescribed course of nonresidential treatment and
9 any other appropriate terms or conditions authorized or required by
10 law, order the person to undergo urine testing for drug or alcohol
11 use not less than once per week unless otherwise ordered by the
12 court. The court-ordered testing shall be conducted by the
13 probation department or the treatment provider. The results of all
14 tests shall be reported promptly to the court and to the prosecutor.
15 In addition, the court shall impose appropriate curfews or other
16 restrictions on the person's movements, and may order the person to
17 wear electronic monitoring devices to enforce such curfews or other
18 restrictions as a condition of special probation.

19 (2) The probation department or other appropriate agency shall
20 immediately notify the court and the prosecutor in the event that the
21 person fails or refuses to submit to a drug or alcohol test, knowingly
22 defrauds the administration of a drug test, terminates his
23 participation in the course of treatment, or commits any act that
24 would constitute absconding from parole. If the person at any time
25 while entered in a nonresidential treatment program pursuant to
26 subsection j. of this section knowingly defrauds the administration
27 of a drug test, goes into hiding or leaves the State with a purpose of
28 avoiding supervision, the court shall permanently revoke the
29 person's special probation.

30 l. If the court finds that the person has made exemplary progress
31 in the course of treatment, the court may, on application of the
32 person or on the court's own motion and with notice to the
33 prosecutor, grant early discharge of the five-year term of special
34 probation. Early discharge may be granted if the court finds on the
35 record that the person: has satisfactorily completed the treatment
36 program, is not likely to relapse or commit an offense if probation
37 supervision and related services are discontinued, and did not
38 commit a substantial violation of any term or condition of special
39 probation, including but not limited to a positive urine test, within
40 the preceding 12 months. Where the person was subject to the
41 provisions of subsections c., d. or j. of this section, the court shall
42 not grant early discharge pursuant to this subsection unless the court
43 additionally finds on the record that: (1) the person has served not
44 less than four years of special probation; or (2) the person has
45 committed no substantial violation of any term or condition of
46 special probation, including but not limited to a positive urine test,
47 within the preceding three years. The court's order granting early
48 discharge of special probation pursuant to this subsection shall be

1 entered in open court.

2 (cf: P.L.2001, c.129, s.2)

3

4 3. N.J.S.2C:43-2 is amended to read as follows:

5 2C:43-2. Sentence in accordance with code; authorized
6 dispositions.

7 a. Except as otherwise provided by this code, all persons
8 convicted of an offense or offenses shall be sentenced in accordance
9 with this chapter.

10 b. Except as provided in subsection a. of this section and subject
11 to the applicable provisions of the code, the court may suspend the
12 imposition of sentence on a person who has been convicted of an
13 offense, or may sentence him as follows:

14 (1) To pay a fine or make restitution authorized by N.J.S.2C:43-3
15 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or

16 (2) Except as provided in subsection g. of this section, to be
17 placed on probation and, in the case of a person convicted of a
18 crime, to imprisonment for a term fixed by the court not exceeding
19 364 days to be served as a condition of probation, or in the case of a
20 person convicted of a disorderly persons offense, to imprisonment
21 for a term fixed by the court not exceeding 90 days to be served as a
22 condition of probation; or

23 (3) To imprisonment for a term authorized by sections 2C:113,
24 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

25 (4) To pay a fine, make restitution and probation, or fine,
26 restitution and imprisonment; or

27 (5) To release under supervision in the community or to require
28 the performance of community-related service; or

29 (6) To a halfway house or other residential facility in the
30 community, including agencies which are not operated by the
31 Department of Human Services; **[or]**

32 (7) To imprisonment at night or on weekends with liberty to
33 work or to participate in training or educational programs; or

34 (8) To special probation pursuant to N.J.S.2C:35-14.

35 c. Instead of or in addition to any disposition made according to
36 this section, the court may postpone, suspend, or revoke for a period
37 not to exceed two years the driver's license, registration certificate,
38 or both of any person convicted of a crime, disorderly persons
39 offense, or petty disorderly persons offense in the course of which a
40 motor vehicle was used. In imposing this disposition and in
41 deciding the duration of the postponement, suspension, or
42 revocation, the court shall consider the severity of the crime or
43 offense and the potential effect of the loss of driving privileges on
44 the person's ability to be rehabilitated. Any postponement,
45 suspension, or revocation shall be imposed consecutively with any
46 custodial sentence.

47 d. This chapter does not deprive the court of any authority
48 conferred by law to decree a forfeiture of property, suspend or

1 cancel a license, remove a person from office, or impose any other
2 civil penalty. Such a judgment or order may be included in the
3 sentence.

4 e. The court shall state on the record the reasons for imposing the
5 sentence, including its findings pursuant to the criteria for
6 withholding or imposing imprisonment or fines under sections
7 2C:44-1 to 2C:44-3, where imprisonment is imposed, consideration
8 of the defendant's eligibility for release under the law governing
9 parole and the factual basis supporting its findings of particular
10 aggravating or mitigating factors affecting sentence.

11 f. The court shall explain the parole laws as they apply to the
12 sentence and shall state:

13 (1) the approximate period of time in years and months the
14 defendant will serve in custody before parole eligibility;

15 (2) the jail credits or the amount of time the defendant has
16 already served;

17 (3) that the defendant may be entitled to good time and work
18 credits; and

19 (4) that the defendant may be eligible for participation in the
20 Intensive Supervision Program.

21 g. Notwithstanding the provisions of paragraph (2) of subsection
22 b. of this section, a court imposing sentence on a defendant who has
23 been convicted of any offense enumerated in subsection a. of
24 section 2 of P.L.1994, c.130 (C.2C:43-6.4) may not sentence the
25 defendant to be placed on probation.

26 (cf: P.L.2003, c.267, s.5)

27

28 4. N.J.S.2C:44-6 is amended to read as follows:

29 2C:44-6. Procedure on Sentence; Presentence Investigation and
30 Report.

31 a. The court shall not impose sentence without first ordering a
32 presentence investigation of the defendant and according due
33 consideration to a written report of such investigation when
34 required by the Rules of Court. The court may order a presentence
35 investigation in any other case.

36 b. The presentence investigation shall include an analysis of the
37 circumstances attending the commission of the offense, the
38 defendant's history of delinquency or criminality, family situation,
39 financial resources, including whether or not the defendant is an
40 enrollee or covered person under a health insurance contract, policy
41 or plan, debts, including any amount owed for a fine, assessment or
42 restitution ordered in accordance with the provisions of Title 2C,
43 employment history, personal habits, a history of the defendant's
44 drug or alcohol use including any treatment history, the disposition
45 of any charge made against any codefendants, the defendant's
46 history of civil commitment, any disposition which arose out of
47 charges suspended pursuant to N.J.S.2C:4-6 including the records
48 of the disposition of those charges and any acquittal by reason of

1 insanity pursuant to N.J.S.2C:4-1, and any other matters that the
2 probation officer deems relevant or the court directs to be included.
3 The defendant shall disclose any information concerning any
4 history of civil commitment. The report shall also include a
5 medical history of the defendant and a complete psychological
6 evaluation of the defendant in any case in which the defendant is
7 being sentenced for a first or second degree crime involving
8 violence and:

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

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

19 (3) he defendant has a prior diagnosis of psychosis.

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

32 The presentence report shall also include a report on any
33 compensation paid by the Victims of Crime Compensation Board as
34 a result of the commission of the offense and, in any case where the
35 victim chooses to provide one, a statement by the victim of the
36 offense for which the defendant is being sentenced. The statement
37 may include the nature and extent of any physical harm or
38 psychological or emotional harm or trauma suffered by the victim,
39 the extent of any loss to include loss of earnings or ability to work
40 suffered by the victim and the effect of the crime upon the victim's
41 family. The probation department shall notify the victim or nearest
42 relative of a homicide victim of his right to make a statement for
43 inclusion in the presentence report if the victim or relative so
44 desires. Any such statement shall be made within 20 days of
45 notification by the probation department.

46 The presentence report shall specifically include an assessment
47 of the gravity and seriousness of harm inflicted on the victim,
48 including whether or not the defendant knew or reasonably should

1 have known that the victim of the offense was particularly
2 vulnerable or incapable of resistance due to advanced age,
3 disability, ill-health, or extreme youth, or was for any other reason
4 substantially incapable of exercising normal physical or mental
5 power of resistance.

6 c. If, after the presentence investigation, the court desires
7 additional information concerning an offender convicted of an
8 offense before imposing sentence, it may order any additional
9 psychological or medical testing of the defendant.

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

22 e. The court shall not impose a sentence of imprisonment for an
23 extended term unless the ground therefor has been established at a
24 hearing after the conviction of the defendant and on written notice
25 to him of the ground proposed. The defendant shall have the right
26 to hear and controvert the evidence against him and to offer
27 evidence upon the issue.

28 f. (Deleted by amendment, P.L.1986, c.85).
29 (cf: P.L.1997, c.216, s.2)

30
31 5. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 Under N.J.S.A.2C:35-14, "Rehabilitation Program for Drug and
37 Alcohol Dependent Persons," when a drug or alcohol dependent
38 person is convicted of a crime (other than a crime of the first degree
39 or certain other crimes listed in subsection b. of N.J.S.A.2C:35-14),
40 the court may place the person on special probation for a period of
41 five years. As a condition of special probation, the person must
42 enter a drug or alcohol treatment program and comply with
43 treatment requirements and other terms and conditions ordered by
44 the court.

45 This bill expands the provisions of special probation to allow
46 additional offenders to receive special probation under certain
47 circumstances, and to increase the provision of outpatient treatment
48 as a component of special probation.

1 Section 1 of the bill amends N.J.S.A.2C:29-5b., "Absconding
2 from Parole," to provide that a person who goes into hiding or
3 leaves the State with a purpose of avoiding participation in a
4 residential or nonresidential drug treatment program ordered by a
5 court pursuant to N.J.S.A.2C:35-14 is guilty of a crime of the third
6 degree.

7 Section 2 of the bill amends several subsections of
8 N.J.S.A.2C:35-14 and adds three new subsections:

9 Subsection a. of N.J.S.A.2C:35-14 would be amended to add as a
10 new factor to be weighed by the court in determining whether a
11 defendant who is dependent on drugs or alcohol should be placed
12 on special probation that the defendant "demonstrated amenability
13 to rehabilitation by pleading guilty and accepting responsibility for
14 committing the present offense."

15 Subsection c. of N.J.S.A.2C:35-14 would be amended to provide
16 that a person is not eligible for special probation if he was
17 previously convicted of two or more crimes of the first, second or
18 third degree other than crimes set out in N.J.S.A.2C:35-10
19 (possession, use or being under the influence of CDS), if the crime
20 for which the person is currently being sentenced was committed
21 less than five years after the most recent crime for which the person
22 was previously convicted or the person's release from confinement.

23 Subsection d. of N.J.S.A.2C:35-14 would be amended to provide
24 that a person placed on special probation must be confined to a
25 residential treatment facility if the person was previously convicted
26 of two or more crimes of the first, second or third degree, other than
27 crimes set out in N.J.S.A.2C:35-10 (possession, use or being under
28 the influence of CDS), if the crime for which the person is currently
29 being sentenced was committed five years or more after the most
30 recent crime for which the person was previously convicted or the
31 person's release from confinement.

32 Subsection e. of N.J.S.A.2C:35-14 would be amended to provide
33 that the treatment provider must promptly report to the probation
34 department, and, in turn, the probation department must notify the
35 court and the prosecutor, if the person knowingly defrauds the
36 administration of a drug test or absconds from parole.

37 Subsection f. of N.J.S.A.2C:35-14 would be amended to provide
38 that if a person commits either of the acts listed in subsection e., the
39 court will permanently revoke the special probation.

40 New subsections j., k., and l. would be added to N.J.S.A.2C:35-
41 14 to provide as follows:

42 New subsection j. of N.J.S.A.2C:35-14 provides that the court
43 may *temporarily* suspend the imposition of all or a portion of the
44 term of commitment to a residential treatment facility and may
45 instead order the person to enter a nonresidential (outpatient)
46 treatment program if the court finds that the diagnostic assessment
47 performed on the person recommends that nonresidential treatment
48 is clinically appropriate; if no danger to the community would result

1 from the person participating in nonresidential treatment; if a
2 suitable treatment provider is able and willing to provide
3 appropriate services, and if the prosecutor does not object.
4 Subsection j. also provides that after a period of six months of
5 nonresidential treatment, if the court finds that the person has made
6 satisfactory progress in treatment and that there is a substantial
7 likelihood that the person will successfully complete the program,
8 the court may *permanently* suspend the commitment of the person
9 to the custody of a residential treatment program.

10 New subsection k. of N.J.S.A.2C:35-14 provides that a person
11 who is temporarily suspended from commitment to a residential
12 treatment facility must undergo periodic urine testing for drug or
13 alcohol use, must be subject to appropriate curfews or other
14 restrictions on his movements, and may be ordered to wear
15 electronic monitoring devices to enforce the curfews or other
16 restrictions.

17 New subsection l. of N.J.S.A.2C:35-14 provides that if the court
18 finds that the person has made exemplary progress in the course of
19 treatment, the court may grant early discharge of the five-year term
20 of special probation required under N.J.S.A.2C:35-14a. Early
21 discharge may be granted if the court finds on the record that the
22 person: has satisfactorily completed the treatment program, is not
23 likely to relapse or commit an offense if probation supervision and
24 related services are discontinued, and did not commit a substantial
25 violation of any term or condition of special probation, including
26 but not limited to a positive urine test, within the preceding 12
27 months. If the person was subject to the provisions of subsections
28 c., d. or j. of N.J.S.A.2C:35-14, the court shall not grant early
29 discharge unless the court additionally finds on the record that: (1)
30 the person has served not less than four years of special probation;
31 or (2) the person has committed no substantial violation of any term
32 or condition of special probation, including but not limited to a
33 positive urine test, within the preceding three years.

34 Section 3 of the bill amends N.J.S.A.2C:43-2, the general
35 sentencing provision of the Criminal Code, to specifically provide
36 that a person convicted of an offense may be sentenced by the court
37 to special probation pursuant to N.J.S.A.2C:35-14.

38 Section 4 of the bill amends N.J.S.A.2C:44-6, the general
39 provision concerning presentence investigations, to provide that any
40 presentence investigation would include a history of the defendant's
41 drug or alcohol use including any treatment history.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1770

STATE OF NEW JERSEY

DATED: JANUARY 28, 2008

The Assembly Judiciary Committee reports favorably a committee substitute for Assembly Bill No. 1770 .

This Assembly Committee Substitute makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

Section 1 of the substitute makes various changes to N.J.S.2C:35-14, the State's special probation statute.

The substitute amends subsection a. of N.J.S.2C:35-14 to clarify who is subject to special probation. Under the provisions of the substitute, the special probation statute would apply only to persons who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State's general probation law, N.J.S.2C:45-1. The substitute also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State's general probation law.

The substitute amends paragraph (6) of subsection a. and subsection c. of N.J.S.2C:35-14 to reduce restrictions on special probation for past offenses. Under current law, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the substitute, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The substitute amends paragraph (7) of subsection f. of N.J.S.2C:35-10 to clarify that although a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation is thereafter ineligible for entry into an Intensive Supervision Program, this does not affect the person's eligibility for

entry into the Intensive Supervision Program for a subsequent conviction.

The substitute amends subsections a. and d. and adds new subsections j. and k. to N.J.S.2C:35-14 to give judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved treatment provider under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The substitute adds a new subsection l. to N.J.S.2C:35-14 to permit the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

The substitute also updates references in N.J.S.2C:35-14 to the Division of Addiction Services in the Department of Human Services.

Section 2 of the substitute permits a court to reduce the DEDR Penalty, which is between \$500 and \$3,000 depending on the nature of the offense. Under current law, up to half of the DEDR penalty may be waived if the offender submits, and the court approves, a reformatory service plan. In addition, any money spent by the offender as part of the court-administered drug and alcohol rehabilitation program may be deducted from the amount of DEDR owed if the offender successfully completes the program.

The substitute provides that an application to participate in a court-administered alcohol and drug rehabilitation shall have the same effect as the submission of a reformatory service plan. The phrase “court-administered alcohol and drug rehabilitation program” as used in section 2 of the substitute means the Drug Court program. The substitute also provides that, in the case of an extreme financial hardship, after successful completion of the drug court program, the court may further reduce the amount of DEDR penalties owed if necessary to aid the person’s rehabilitation and reintegration into society.

This substitute is substantially similar to the bill recommended by the New Jersey Commission to Review Criminal Sentencing in its report entitled “New Jersey’s Drug Courts, Special Probation and Proposal for Reform” issued in April of 2007.

This substitute is identical to SCS for Senate Bill Nos. 233 and 504.

FISCAL NOTE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1770
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: FEBRUARY 20, 2008

SUMMARY

Synopsis: Amends special probation statute to increase participation in drug program; permits court to reduce certain fees.

Type of Impact: Undetermined revenue loss offset by undetermined savings.

Agencies Affected: Judiciary, Department of Corrections, Drug Enforcement and Demand Reduction Fund.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Undetermined Savings – See Comments Below		
State Revenue	Undetermined Revenue Loss – See Comments Below		

- The Office of Legislative Services (OLS) notes that in addition to those offenders who show extreme financial hardship in order to obtain a DEDR penalty reduction, every offender who participates in and completes a drug court program could have his DEDR penalty reduced by one-half. This revenue loss could substantially affect DEDR collections. The OLS also notes that the influx of offenders into the drug court program could require an expansion of the program at an undetermined program cost.
- The OLS adds that the AOC has stated that it costs \$9,850 per participant in a drug court program. The OLS also notes that DOC data indicate the ongoing operation expense of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration. As a result, for every offender who is diverted into the drug court program, the State would realize a savings of about \$22,000 per year.
- The committee substitute makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

- The Administrative Office of the Courts (AOC) states that the substitute may result in a decrease in revenue from the collection of the Drug Enforcement and Demand Reduction (DEDR) penalty.
- The AOC further notes that although the Judiciary cannot provide an exact fiscal impact of this substitute, it seems logical that the substitute would create additional costs as a result of the increase in offenders participating in the State's current Drug Court program. However, cost savings from the elimination of mandatory special probation requirements are anticipated to significantly offset a portion of any increase in existing costs.
- Additional savings would be generated by replacing the current requirement for mandatory six-month in-patient drug treatment with clinically based treatment plans specific to each participant. Costs associated with inpatient treatment may be reduced as they are replaced with outpatient services for some offenders. It is not possible to provide specific savings since treatment plans will vary by participant.
- The substitute may also reduce costs related to the probation supervision of drug court participants by permitting early discharge from the drug court program where appropriate.

BILL DESCRIPTION

Assembly Committee Substitute to Assembly Bill No. 1770 of 2008 makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

The substitute clarifies who is subject to special probation. Under the provisions of the substitute, the special probation statute would apply only to persons who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State's general probation law, N.J.S.2C:45-1. The substitute also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State's general probation law.

The substitute would amend current law to reduce restrictions on special probation for past offenses. Currently, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the substitute, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The substitute clarifies that although a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation and is thereafter ineligible for entry into an Intensive Supervision Program, the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction is not affected.

The substitute gives judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved

treatment provider under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The substitute adds a new subsection to permit the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

Section 2 of the substitute permits a court to reduce the DEDR penalty, which is between \$500 and \$3,000 depending on the nature of the offense. Under current law, up to half of the DEDR penalty may be waived if the offender submits, and the court approves, a reformatory service plan. In addition, any money spent by the offender as part of the court-administered drug and alcohol rehabilitation program may be deducted from the amount of DEDR owed if the offender successfully completes the program.

The substitute provides that an application to participate in a drug court program shall have the same effect as the submission of a reformatory service plan. The substitute also provides that, in the case of an extreme financial hardship, after successful completion of the drug court program, the court may further reduce the amount of DEDR penalties owed if necessary to aid the person's rehabilitation and reintegration into society.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Revenue

The Administrative Office of the Courts (AOC) states that the substitute may result in a nominal decrease in revenue from the collection of the Drug Enforcement and Demand Reduction (DEDR) penalty. Under the substitute the offender must show an "extreme financial hardship" before any reduction is granted, which may limit applications for such relief. Moreover, where the court finds such circumstances, the DEDR penalty might have been difficult to collect. Potential lost revenue cannot be projected because there is no way to determine how many offenders would seek the reduction, or the amount of same whether it would be granted.

Expenditures

The AOC notes that although the Judiciary cannot provide an exact fiscal impact of this substitute, it seems logical that it would create additional costs as a result of the increase in offenders participating in the State's current Drug Court program. However, cost savings from the elimination of mandatory special probation requirements are anticipated to significantly offset a portion of any increase in existing costs.

Specifically, the substitute would reduce the overall cost of special probation by replacing the current requirement for mandatory six-month in-patient drug treatment with clinically based treatment plans specific to each participant. Costs associated with inpatient treatment may be reduced as they are replaced with outpatient services for some offenders. It is not possible to provide specific savings since treatment plans will vary by participant.

The substitute may also reduce costs related to the probation supervision of drug court participants by permitting early discharge from the drug court program where appropriate. Under current law, the term of required special probation is five years. The substitute allows the court to grant an early discharge after the completion of two years of special probation. It is not possible to provide specific savings since special probation terms would be based on an assessment of each offender's status at various points in the treatment/supervision process.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that in addition to those offenders who show extreme financial hardship in order to obtain a DEDR penalty reduction, every offender who participates in and completes a drug court program could have his DEDR penalty reduced by one-half. This revenue loss could substantially affect DEDR collections. The OLS also notes that the influx of offenders into the drug court program could require an expansion of the program at an undetermined program cost.

The OLS adds that the AOC has stated that it costs \$9,850 per participant in a drug court program. The OLS also notes that DOC data indicate the ongoing operation expense of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration. As a result, for every offender who is diverted into the drug court program, the State would realize a savings of about \$22,000 per year.

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-1 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1770

STATE OF NEW JERSEY

DATED: FEBRUARY 21, 2008

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1770 (ACS).

Assembly No. 1770 (ACS) makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

The substitute clarifies that special probation would apply only to offenders who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State's general probation law. The substitute also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State's general probation law.

The substitute reduces the restrictions on special probation based upon offenders' past offenses. Under current law, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the substitute, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The substitute clarifies that although a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation is thereafter ineligible for entry into an Intensive Supervision Program, this does not affect the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction.

The substitute gives judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved treatment provider

under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The substitute permits the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

The substitute also permits a court to reduce the DEDR Penalty, which is between \$500 and \$3,000 depending on the nature of the offense. Under current law, up to half of the DEDR penalty may be waived if the offender submits, and the court approves, a reformatory service plan. In addition, any money spent by the offender as part of the court-administered drug and alcohol rehabilitation program may be deducted from the amount of DEDR owed if the offender successfully completes the program.

The substitute provides that an application to participate in the Drug Court program shall have the same effect as the submission of a reformatory service plan. The substitute also provides that, in the case of an extreme financial hardship, after successful completion of the drug court program, the court may further reduce the amount of DEDR penalties owed if necessary to aid the person's rehabilitation and reintegration into society.

This substitute is substantially similar to the bill recommended by the New Jersey Commission to Review Criminal Sentencing in its report entitled "New Jersey's Drug Courts, Special Probation and Proposal for Reform" issued in April of 2007.

As reported, this substitute is identical to Senate Nos. 233/504 (SCS), as also reported by the committee.

FISCAL IMPACT:

In a Fiscal Note prepared for the substitute, the Office of Legislative Services (OLS) notes that while actual costs and savings cannot be determined, in general the revenue loss from reduced collections of DEDR penalties and increased program costs for expansion of the Drug Court program may be offset from savings realized by the Department of Corrections for every potential State incarcerated prisoner who may instead be subject to special probation outpatient treatment under the Drug Court program.

The OLS notes that the Administrative Office of the Courts (AOC) has stated that it costs \$9,850 per participant in a drug court program. The OLS also notes that DOC data indicate the ongoing operation expense of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration. As a result, for every offender who is diverted into the drug court program, the State would realize a savings of about \$22,000 per year.

The Administrative Office of the Courts (AOC) has estimated there may be a nominal amount of lost revenue from reduced DEDR penalties. The AOC cannot project the amount of lost revenue because

there is no way to determine how many offenders would seek the reduction, or the amount of overall reductions that may be granted. The OLS notes that in addition to those offenders who show extreme financial hardship in order to obtain a DEDR penalty reduction, every offender who participates in and completes a drug court program could have his DEDR penalty reduced by one-half. This revenue loss could substantially affect DEDR collections.

The AOC notes that additional undetermined program costs for the Judiciary may occur as a result of the increase in offenders participating in the State's current Drug Court program. However, cost savings from the elimination of mandatory special probation requirements may significantly offset a portion of any increase in existing Drug Court program costs. The overall cost of special probation may be reduced by replacing the costs of the current requirement for mandatory six-month in-patient drug treatment with clinically based outpatient treatment plans specific to each participant. OLS notes that it is not possible to provide specific savings since treatment plans will vary by participant.

The substitute may also reduce costs related to the probation supervision of drug court participants by permitting early discharge from the drug court program where appropriate. Under current law, the term of required special probation is five years. The substitute allows the court to grant an early discharge after the completion of two years of special probation. The OLS notes that it is not possible to provide specific savings since special probation terms would be based on an assessment of each offender's status at various points in the treatment/supervision process.

SENATE, No. 233

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:
Senator JOHN H. ADLER
District 6 (Camden)

SYNOPSIS

Allows additional offenders to receive special probation under certain circumstances and increases the provision of outpatient treatment as a component of special probation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S233 ADLER

2

1 AN ACT concerning treatment for drug and alcohol dependent
2 persons and amending various sections of the New Jersey
3 Statutes.

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

7
8 1. N.J.S.2C:29-5 is amended to read as follows:

9 2C:29-5. Escape. a. Escape. A person commits an offense if he
10 without lawful authority removes himself from official detention or
11 fails to return to official detention following temporary leave
12 granted for a specific purpose or limited period. "Official detention"
13 means arrest, detention in any facility for custody of persons under
14 charge or conviction of a crime or offense, or committed pursuant
15 to chapter 4 of this Title, or alleged or found to be delinquent,
16 detention for extradition or deportation, or any other detention for
17 law enforcement purposes; but "official detention" does not include
18 supervision of probation or parole, or constraint incidental to
19 release on bail.

20 b. Absconding from parole. A person subject to parole commits
21 a crime of the third degree if the person goes into hiding or leaves
22 the State with a purpose of avoiding supervision. As used in this
23 subsection, "parole" includes participation in the Intensive
24 Supervision Program (ISP) established pursuant to the Rules
25 Governing the Courts of the State of New Jersey and participation
26 in a residential or nonresidential drug treatment program ordered by
27 a court pursuant to N.J.S.2C:35-14. Abandoning a place of
28 residence without the prior permission of or notice to the
29 appropriate supervising authority shall constitute prima facie
30 evidence that the person intended to avoid such supervision.

31 c. Permitting or facilitating escape A public servant concerned
32 in detention commits an offense if he knowingly or recklessly
33 permits an escape. Any person who knowingly causes or facilitates
34 an escape commits an offense.

35 d. Effect of legal irregularity in detention. Irregularity in
36 bringing about or maintaining detention, or lack of jurisdiction of
37 the committing or detaining authority, shall not be a defense to
38 prosecution under this section if the escape is from a prison or other
39 custodial facility or from detention pursuant to commitment by
40 official proceedings. In the case of other detentions, irregularity or
41 lack of jurisdiction shall be a defense only if:

42 (1) The escape involved no substantial risk of harm to the person
43 or property of anyone other than the detainee; or

44 (2) The detaining authority did not act in good faith under color
45 of law.

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.

S233 ADLER

1 e. Grading of offenses. An offense under subsection a. or c. of
2 this section is a crime of the second degree where the actor employs
3 force, threat, deadly weapon or other dangerous instrumentality to
4 effect the escape. Otherwise it is a crime of the third degree.

5 (cf: P.L.1991, c.34, s.1)

6
7 2. 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; Criteria for Imposing Special Probation;
10 Ineligible Offenders; Prosecutorial Objections; **[Mandatory]**
11 Commitment to Residential and Nonresidential Treatment
12 Facilities; Presumption of Revocation; Brief Incarceration in Lieu
13 of Permanent Revocation.

14 a. Notwithstanding the presumption of incarceration pursuant to
15 the provisions of subsection d. of N.J.S.2C:44-1, and except as
16 provided in subsection c. of this section, whenever a drug or alcohol
17 dependent person is convicted of or adjudicated delinquent for an
18 offense, other than one described in subsection b. of this section,
19 the court, upon notice to the prosecutor, may, on motion of the
20 person, or on the court's own motion, place the person on special
21 probation, which shall be for a term of five years, provided that the
22 court finds on the record that:

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

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

29 (3) the present offense was committed while the person was
30 under the influence of a controlled dangerous substance, controlled
31 substance analog or alcohol or was committed to acquire property
32 or monies in order to support the person's drug or alcohol
33 dependency; and

34 (4) substance abuse treatment and monitoring will serve to
35 benefit the person by addressing his drug or alcohol dependency
36 and will thereby reduce the likelihood that the person will thereafter
37 commit another offense; and

38 (5) the person did not possess a firearm at the time of the present
39 offense and did not possess a firearm at the time of any pending
40 criminal charge; and

41 (6) the person has **[not been previously convicted on two or**
42 **more separate occasions of crimes of the first, second or third**
43 **degree, other than crimes defined in N.J.S.2C:35-10] demonstrated**
44 **amenability to rehabilitation by pleading guilty and accepting**
45 **responsibility for committing the present offense;** and

46 (7) the person has not been previously convicted or adjudicated
47 delinquent for, and does not have a pending charge of murder,

S233 ADLER

1 aggravated manslaughter, manslaughter, robbery, kidnapping,
2 aggravated assault, aggravated sexual assault or sexual assault, or a
3 similar crime under the laws of any other state or the United States;
4 and

5 (8) a suitable treatment facility licensed and approved by the
6 Department of Health and Senior Services is able and has agreed to
7 provide appropriate treatment services in accordance with the
8 requirements of this section; and

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

11 In determining whether to sentence the person pursuant to this
12 section, the court shall consider all relevant circumstances, and
13 shall take judicial notice of any evidence, testimony or information
14 adduced at the trial, plea hearing or other court proceedings, and
15 shall also consider the presentence report and the results of the
16 professional diagnostic assessment to determine whether and to
17 what extent the person is drug or alcohol dependent and would
18 benefit from treatment.

19 As a condition of special probation, the court shall order the
20 person to enter a treatment program at a facility licensed and
21 approved by the Department of Health and Senior Services, to
22 comply with program rules and the requirements of the course of
23 treatment, to cooperate fully with the treatment provider, and to
24 comply with such other reasonable terms and conditions as may be
25 required by the court or by law, pursuant to N.J.S.2C:45-1, and
26 which shall include periodic urine testing for drug or alcohol usage
27 throughout the period of special probation. Subject to the
28 requirements of subsection d. of this section, the conditions of
29 special probation may include different methods and levels of
30 community-based or residential supervision.

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

34 (1) a crime of the first degree;

35 (2) a crime of the first or second degree enumerated in
36 subsection d. of **[N.J.S.2C:43-7.2]** section 2 of P.L.1997, c.117
37 (C.2C:43-7.2);

38 (3) a crime, other than that defined in **[N.J.S.2C:35-7]** section 1
39 of P.L.1987, c.101 (C.2C:35-7), for which a mandatory minimum
40 period of incarceration is prescribed under chapter 35 of this Title
41 or any other law; or

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

45 c. A person shall not be eligible for special probation in
46 accordance with this section if:

47 (1) the person has been:

1 (a) convicted of or adjudicated delinquent for an offense under
2 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1
3 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there
4 exists a presumption of imprisonment pursuant to subsection d. of
5 N.J.S.2C:44-1 or any other statute, **[or who has been]**

6 (b) previously convicted of an offense under subsection a. of
7 N.J.S.2C:35-5 or a similar offense under any other law of this State,
8 any other state or the United States **[shall not be eligible for**
9 **sentence in accordance with this section if]**, or

10 (c) previously convicted of two or more crimes of the first,
11 second or third degree, other than crimes defined in N.J.S.2C:35-10,
12 that were committed on prior and separate occasions, if the crime
13 for which the person is being sentenced was committed less than
14 five years after the most recent crime for which the person was
15 previously convicted or the person's release from confinement; and

16 (2) the prosecutor objects to the person being placed on special
17 probation. The court shall not place a person on special probation
18 over the prosecutor's objection except upon a finding by the court of
19 a gross and patent abuse of prosecutorial discretion. If the court
20 makes a finding of a gross and patent abuse of prosecutorial
21 discretion and imposes a sentence of special probation
22 notwithstanding the objection of the prosecutor, the sentence of
23 special probation imposed pursuant to this section shall not become
24 final for 10 days in order to permit the appeal of such sentence by
25 the prosecution.

26 d. **[A]** Subject to the provisions of subsection j. of this section,
27 a person convicted of or adjudicated delinquent for a crime of the
28 second degree or of a violation of section 1 of P.L.1987, c.101
29 (C.2C:35-7), or who previously has been convicted of or
30 adjudicated delinquent for 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 who has been previously
33 convicted of two or more crimes of the first, second or third degree,
34 other than crimes defined in N.J.S.2C:35-10, that were committed
35 on prior and separate occasions, regardless of the dates of the
36 convictions, who is placed on special probation under this section
37 shall be committed to the custody of a residential treatment facility
38 licensed and approved by the Department of Health and Senior
39 Services, whether or not residential treatment was recommended by
40 the person conducting the diagnostic assessment. The person shall
41 be committed to the residential treatment facility immediately,
42 unless the facility cannot accommodate the person, in which case
43 the person shall be incarcerated to await commitment to the
44 residential treatment facility. **[The]** Subject to the provisions of
45 subsection j. of this section, the term of such commitment shall be
46 for a minimum of six months, or until the court, upon
47 recommendation of the treatment provider, determines that the

S233 ADLER

1 person has successfully completed the residential treatment
2 program, whichever is later, except that no person shall remain in
3 the custody of a residential treatment facility pursuant to this
4 section for a period in excess of five years. Upon successful
5 completion of the required residential treatment program, the person
6 shall complete the period of special probation, as authorized by
7 subsection a. of this section, with credit for time served for any
8 imprisonment served as a condition of probation and credit for each
9 day during which the person satisfactorily complied with the terms
10 and conditions of special probation while committed pursuant to
11 this section to a residential treatment facility. The person shall not
12 be eligible for early discharge of special probation pursuant to
13 N.J.S.2C:45-2, or any other provision of the law, except as provided
14 in subsection 1. of this section. The court, in determining the
15 number of credits for time spent in residential treatment, shall
16 consider the recommendations of the treatment provider. A person
17 placed into a residential treatment facility pursuant to this section
18 shall be deemed to be subject to official detention for the purposes
19 of N.J.S.2C:29-5 (escape).

20 e. The probation department or other appropriate agency
21 designated by the court to monitor or supervise the person's special
22 probation shall report periodically to the court as to the person's
23 progress in treatment and compliance with court-imposed terms and
24 conditions. The treatment provider shall promptly report to the
25 probation department or other appropriate agency all significant
26 failures by the person to comply with any court imposed term or
27 condition of special probation or any requirements of the course of
28 treatment, including but not limited to a positive drug or alcohol
29 test, knowingly defrauding the administration of a drug test or the
30 unexcused failure to attend any session or activity, and shall
31 immediately report any act that would constitute an escape or
32 absconding from parole. The probation department or other
33 appropriate agency shall immediately notify the court and the
34 prosecutor in the event that the person refuses to submit to a
35 periodic drug or alcohol test, knowingly defrauds the administration
36 of a drug test or for any reason terminates his participation in the
37 course of treatment, or commits any act that would constitute an
38 escape or absconding from parole.

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

43 (2) Upon a second or subsequent violation of any term or
44 condition of the special probation authorized by this section or of
45 any requirements of the course of treatment, the court shall, subject
46 only to the provisions of subsection g. of this section, permanently
47 revoke the person's special probation unless the court finds on the

1 record that there is a substantial likelihood that the person will
2 successfully complete the treatment program if permitted to
3 continue on special probation, and the court is clearly convinced,
4 considering the nature and seriousness of the violations, that no
5 danger to the community will result from permitting the person to
6 continue on special probation pursuant to this section. The court's
7 determination to permit the person to continue on special probation
8 following a second or subsequent violation pursuant to this
9 paragraph may be appealed by the prosecution.

10 (3) In making its determination whether to revoke special
11 probation, and whether to overcome the presumption of revocation
12 established in paragraph (2) of this subsection, the court shall
13 consider the nature and seriousness of the present infraction and any
14 past infractions in relation to the person's overall progress in the
15 course of treatment, and shall also consider the recommendations of
16 the treatment provider. The court shall give added weight to the
17 treatment provider's recommendation that the person's special
18 probation be permanently revoked, or to the treatment provider's
19 opinion that the person is not amenable to treatment or is not likely
20 to complete the treatment program successfully.

21 (4) If the court permanently revokes the person's special
22 probation pursuant to this subsection, the court shall impose any
23 sentence that might have been imposed, or that would have been
24 required to be imposed, originally for the offense for which the
25 person was convicted or adjudicated delinquent. The court shall
26 conduct a de novo review of any aggravating and mitigating factors
27 present at the time of both original sentencing and resentencing. If
28 the court determines or is required pursuant to any other provision
29 of this chapter or any other law to impose a term of imprisonment,
30 the person shall receive credit for any time served in custody
31 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
32 treatment facility pursuant to this section, and for each day during
33 which the person satisfactorily complied with the terms and
34 conditions of special probation while committed pursuant to this
35 section to a residential treatment facility. The court, in determining
36 the number of credits for time spent in a residential treatment
37 facility, shall consider the recommendations of the treatment
38 provider.

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

45 (6) Notwithstanding any other provision of this subsection, if
46 the person at any time refuses to undergo urine testing for drug or
47 alcohol usage as provided in subsection a. of this section or
48 knowingly defrauds the administration of a drug test, the court

S233 ADLER

1 shall, subject only to the provisions of subsection g. of this section,
2 permanently revoke the person's special probation.
3 Notwithstanding any other provision of this section, if the person at
4 any time while committed to the custody of a residential treatment
5 facility pursuant to this section commits an act that would constitute
6 an escape or absconding from parole, the court shall forthwith
7 permanently revoke the person's special probation.

8 (7) An action for a violation under this section may be brought
9 by a probation officer or prosecutor or on the court's own motion.
10 Failure to complete successfully the required treatment program
11 shall constitute a violation of the person's special probation. A
12 person who fails to comply with the terms of his special probation
13 pursuant to this section and is thereafter sentenced to imprisonment
14 in accordance with this subsection shall thereafter be ineligible for
15 entry into the Intensive Supervision Program.

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

43 h. The court, as a condition of its order, and after considering
44 the person's financial resources, shall require the person to pay that
45 portion of the costs associated with his participation in any
46 rehabilitation program or period of residential or nonresidential
47 treatment imposed pursuant to this section which, in the opinion of
48 the court, is consistent with the person's ability to pay, taking into

1 account the court's authority to order payment or reimbursement to
2 be made over time and in installments.

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

6 j. Where the person has satisfied all of the eligibility criteria for
7 special probation and would otherwise be required to be committed
8 to the custody of a residential treatment facility pursuant to the
9 provisions of subsection d. of this section, the court may
10 temporarily suspend imposition of all or any portion of the term of
11 commitment to a residential treatment facility and may instead
12 order the person to enter a nonresidential treatment program
13 provided that the court finds on the record that:

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

19 (2) no danger to the community would result from the person
20 participating in the proposed course of nonresidential treatment
21 services; and

22 (3) a suitable treatment provider is able and has agreed to
23 provide clinically appropriate nonresidential treatment services; and

24 (4) the prosecutor does not object to the person's participation in
25 the proposed course of nonresidential treatment. The court shall not
26 suspend the commitment of the person to the custody of a
27 residential treatment facility pursuant to this subsection over the
28 prosecutor's objection except upon a finding by the court of a gross
29 and patent abuse of prosecutorial discretion. If the court makes
30 such a finding and suspends the commitment of the person to a
31 residential treatment facility pursuant to this subsection, the
32 sentence of special probation imposed pursuant to this section shall
33 not become final for ten days in order to permit the appeal by the
34 prosecution of the court's decision.

35 After a period of six months of nonresidential treatment, if the
36 court, considering all available information including the
37 recommendation of the treatment provider, finds that the person has
38 made satisfactory progress in treatment, and that there is a
39 substantial likelihood that the person will successfully complete the
40 nonresidential treatment program and period of special probation,
41 the court, on notice to the prosecutor, may permanently suspend the
42 commitment of the person to the custody of a residential treatment
43 program, in which event the special monitoring provisions set forth
44 in subsection k. of this section shall no longer apply.

45 Nothing in this subsection shall be construed to limit the
46 authority of the court at any time during the term of special
47 probation to order the person to be committed to a residential or
48 nonresidential treatment facility if the court determines that such

1 treatment is clinically appropriate and necessary to address the
2 person's present treatment needs.

3 k. (1) When the court temporarily suspends the commitment of
4 the person to a residential treatment facility pursuant to subsection
5 j. of this section, the court shall, in addition to ordering
6 participation in a prescribed course of nonresidential treatment and
7 any other appropriate terms or conditions authorized or required by
8 law, order the person to undergo urine testing for drug or alcohol
9 use not less than once per week unless otherwise ordered by the
10 court. The court-ordered testing shall be conducted by the
11 probation department or the treatment provider. The results of all
12 tests shall be reported promptly to the court and to the prosecutor.
13 In addition, the court shall impose appropriate curfews or other
14 restrictions on the person's movements, and may order the person to
15 wear electronic monitoring devices to enforce such curfews or other
16 restrictions as a condition of special probation.

17 (2) The probation department or other appropriate agency shall
18 immediately notify the court and the prosecutor in the event that the
19 person fails or refuses to submit to a drug or alcohol test, knowingly
20 defrauds the administration of a drug test, terminates his
21 participation in the course of treatment, or commits any act that
22 would constitute absconding from parole. If the person at any time
23 while entered in a nonresidential treatment program pursuant to
24 subsection j. of this section knowingly defrauds the administration
25 of a drug test, goes into hiding or leaves the State with a purpose of
26 avoiding supervision, the court shall permanently revoke the
27 person's special probation.

28 l. If the court finds that the person has made exemplary progress
29 in the course of treatment, the court may, on application of the
30 person or on the court's own motion and with notice to the
31 prosecutor, grant early discharge of the five-year term of special
32 probation. Early discharge may be granted if the court finds on the
33 record that the person: has satisfactorily completed the treatment
34 program, is not likely to relapse or commit an offense if probation
35 supervision and related services are discontinued, and did not
36 commit a substantial violation of any term or condition of special
37 probation, including but not limited to a positive urine test, within
38 the preceding 12 months. Where the person was subject to the
39 provisions of subsections c., d. or j. of this section, the court shall
40 not grant early discharge pursuant to this subsection unless the court
41 additionally finds on the record that: (1) the person has served not
42 less than four years of special probation; or (2) the person has
43 committed no substantial violation of any term or condition of
44 special probation, including but not limited to a positive urine test,
45 within the preceding three years. The court's order granting early
46 discharge of special probation pursuant to this subsection shall be
47 entered in open court.

48 (cf: P.L.2001, c.129, s.2)

1 3. N.J.S.2C:43-2 is amended to read as follows:
2 2C:43-2. Sentence in accordance with code; authorized
3 dispositions.
4 a. Except as otherwise provided by this code, all persons
5 convicted of an offense or offenses shall be sentenced in accordance
6 with this chapter.
7 b. Except as provided in subsection a. of this section and subject
8 to the applicable provisions of the code, the court may suspend the
9 imposition of sentence on a person who has been convicted of an
10 offense, or may sentence him as follows:
11 (1) To pay a fine or make restitution authorized by N.J.S.2C:43-3
12 or P.L.1997, c.253 (C.2C:43-3.4 et al.); or
13 (2) Except as provided in subsection g. of this section, to be
14 placed on probation and, in the case of a person convicted of a
15 crime, to imprisonment for a term fixed by the court not exceeding
16 364 days to be served as a condition of probation, or in the case of a
17 person convicted of a disorderly persons offense, to imprisonment
18 for a term fixed by the court not exceeding 90 days to be served as a
19 condition of probation; or
20 (3) To imprisonment for a term authorized by sections 2C:113,
21 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or
22 (4) To pay a fine, make restitution and probation, or fine,
23 restitution and imprisonment; or
24 (5) To release under supervision in the community or to require
25 the performance of community-related service; or
26 (6) To a halfway house or other residential facility in the
27 community, including agencies which are not operated by the
28 Department of Human Services; **[or]**
29 (7) To imprisonment at night or on weekends with liberty to
30 work or to participate in training or educational programs; or
31 (8) To special probation pursuant to N.J.S.2C:35-14.
32 c. Instead of or in addition to any disposition made according to
33 this section, the court may postpone, suspend, or revoke for a period
34 not to exceed two years the driver's license, registration certificate,
35 or both of any person convicted of a crime, disorderly persons
36 offense, or petty disorderly persons offense in the course of which a
37 motor vehicle was used. In imposing this disposition and in
38 deciding the duration of the postponement, suspension, or
39 revocation, the court shall consider the severity of the crime or
40 offense and the potential effect of the loss of driving privileges on
41 the person's ability to be rehabilitated. Any postponement,
42 suspension, or revocation shall be imposed consecutively with any
43 custodial sentence.
44 d. This chapter does not deprive the court of any authority
45 conferred by law to decree a forfeiture of property, suspend or
46 cancel a license, remove a person from office, or impose any other
47 civil penalty. Such a judgment or order may be included in the
48 sentence.

1 e. The court shall state on the record the reasons for imposing the
2 sentence, including its findings pursuant to the criteria for
3 withholding or imposing imprisonment or fines under sections
4 2C:44-1 to 2C:44-3, where imprisonment is imposed, consideration
5 of the defendant's eligibility for release under the law governing
6 parole and the factual basis supporting its findings of particular
7 aggravating or mitigating factors affecting sentence.

8 f. The court shall explain the parole laws as they apply to the
9 sentence and shall state:

10 (1) the approximate period of time in years and months the
11 defendant will serve in custody before parole eligibility;

12 (2) the jail credits or the amount of time the defendant has
13 already served;

14 (3) that the defendant may be entitled to good time and work
15 credits; and

16 (4) that the defendant may be eligible for participation in the
17 Intensive Supervision Program.

18 g. Notwithstanding the provisions of paragraph (2) of subsection
19 b. of this section, a court imposing sentence on a defendant who has
20 been convicted of any offense enumerated in subsection a. of
21 section 2 of P.L.1994, c.130 (C.2C:43-6.4) may not sentence the
22 defendant to be placed on probation.

23 (cf: P.L.2003, c.267, s.5)

24
25 4. N.J.S.2C:44-6 is amended to read as follows:

26 2C:44-6. Procedure on Sentence; Presentence Investigation and
27 Report.

28 a. The court shall not impose sentence without first ordering a
29 presentence investigation of the defendant and according due
30 consideration to a written report of such investigation when
31 required by the Rules of Court. The court may order a presentence
32 investigation in any other case.

33 b. The presentence investigation shall include an analysis of the
34 circumstances attending the commission of the offense, the
35 defendant's history of delinquency or criminality, family situation,
36 financial resources, including whether or not the defendant is an
37 enrollee or covered person under a health insurance contract, policy
38 or plan, debts, including any amount owed for a fine, assessment or
39 restitution ordered in accordance with the provisions of Title 2C,
40 employment history, personal habits, a history of the defendant's
41 drug or alcohol use including any treatment history, the disposition
42 of any charge made against any codefendants, the defendant's
43 history of civil commitment, any disposition which arose out of
44 charges suspended pursuant to N.J.S.2C:4-6 including the records
45 of the disposition of those charges and any acquittal by reason of
46 insanity pursuant to N.J.S.2C:4-1, and any other matters that the
47 probation officer deems relevant or the court directs to be included.
48 The defendant shall disclose any information concerning any

1 history of civil commitment. The report shall also include a
2 medical history of the defendant and a complete psychological
3 evaluation of the defendant in any case in which the defendant is
4 being sentenced for a first or second degree crime involving
5 violence and:

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

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

16 (3) he defendant has a prior diagnosis of psychosis.

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

29 The presentence report shall also include a report on any
30 compensation paid by the Victims of Crime Compensation Board as
31 a result of the commission of the offense and, in any case where the
32 victim chooses to provide one, a statement by the victim of the
33 offense for which the defendant is being sentenced. The statement
34 may include the nature and extent of any physical harm or
35 psychological or emotional harm or trauma suffered by the victim,
36 the extent of any loss to include loss of earnings or ability to work
37 suffered by the victim and the effect of the crime upon the victim's
38 family. The probation department shall notify the victim or nearest
39 relative of a homicide victim of his right to make a statement for
40 inclusion in the presentence report if the victim or relative so
41 desires. Any such statement shall be made within 20 days of
42 notification by the probation department.

43 The presentence report shall specifically include an assessment
44 of the gravity and seriousness of harm inflicted on the victim,
45 including whether or not the defendant knew or reasonably should
46 have known that the victim of the offense was particularly
47 vulnerable or incapable of resistance due to advanced age,
48 disability, ill-health, or extreme youth, or was for any other reason

1 substantially incapable of exercising normal physical or mental
2 power of resistance.

3 c. If, after the presentence investigation, the court desires
4 additional information concerning an offender convicted of an
5 offense before imposing sentence, it may order any additional
6 psychological or medical testing of the defendant.

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

19 e. The court shall not impose a sentence of imprisonment for an
20 extended term unless the ground therefor has been established at a
21 hearing after the conviction of the defendant and on written notice
22 to him of the ground proposed. The defendant shall have the right
23 to hear and controvert the evidence against him and to offer
24 evidence upon the issue.

25 f. (Deleted by amendment, P.L.1986, c.85).
26 (cf: P.L.1997, c.216, s.2)

27

28 5. This act shall take effect immediately.

29

30

31

STATEMENT

32

33 Under N.J.S.A.2C:35-14, "Rehabilitation Program for Drug and
34 Alcohol Dependent Persons," when a drug or alcohol dependent
35 person is convicted of a crime (other than a crime of the first degree
36 or certain other crimes listed in subsection b. of N.J.S.A.2C:35-14),
37 the court may place the person on special probation for a period of
38 five years. As a condition of special probation, the person must
39 enter a drug or alcohol treatment program and comply with
40 treatment requirements and other terms and conditions ordered by
41 the court.

42 This bill expands the provisions of special probation to allow
43 additional offenders to receive special probation under certain
44 circumstances, and to increase the provision of outpatient treatment
45 as a component of special probation.

46 **Section 1** of the bill amends **N.J.S.A.2C:29-5b.**, Absconding
47 from Parole, to provide that a person who goes into hiding or leaves
48 the State with a purpose of avoiding participation in a residential or

1 nonresidential drug treatment program ordered by a court pursuant
2 to N.J.S.A.2C:35-14 is guilty of a crime of the third degree.

3 **Section 2** of the bill amends several subsections of
4 **N.J.S.A.2C:35-14** and adds three new subsections:

5 **Subsection a.** of N.J.S.A.2C:35-14 would be amended to add as
6 a new factor to be weighed by the court in determining whether a
7 defendant who is dependent on drugs or alcohol should be placed
8 on special probation that the defendant "demonstrated amenability
9 to rehabilitation by pleading guilty and accepting responsibility for
10 committing the present offense."

11 **Subsection c.** of N.J.S.A.2C:35-14 would be amended to provide
12 that a person is not eligible for special probation if he was
13 previously convicted of two or more crimes of the first, second or
14 third degree other than crimes set out in N.J.S.A.2C:35-10
15 (possession, use or being under the influence of CDS), if the crime
16 for which the person is currently being sentenced was committed
17 less than five years after the most recent crime for which the person
18 was previously convicted or the person's release from confinement.

19 **Subsection d.** of N.J.S.A.2C:35-14 would be amended to
20 provide that a person placed on special probation must be confined
21 to a residential treatment facility if the person was previously
22 convicted of two or more crimes of the first, second or third degree,
23 other than crimes set out in N.J.S.A.2C:35-10 (possession, use or
24 being under the influence of CDS), if the crime for which the
25 person is currently being sentenced was committed five years or
26 more after the most recent crime for which the person was
27 previously convicted or the person's release from confinement.

28 **Subsection e.** of N.J.S.A.2C:35-14 would be amended to provide
29 that the treatment provider must promptly report to the probation
30 department, and, in turn, the probation department must notify the
31 court and the prosecutor, if the person knowingly defrauds the
32 administration of a drug test or absconds from parole.

33 **Subsection f.** of N.J.S.A.2C:35-14 would be amended to provide
34 that if a person commits either of the acts listed above, the court
35 will permanently revoke the special probation.

36 **New subsections j., k., and l.** would be added to N.J.S.A.2C:35-
37 14 to provide as follows:

38 **New subsection j.** of N.J.S.A.2C:35-14 provides that the court
39 may *temporarily* suspend the imposition of all or a portion of the
40 term of commitment to a residential treatment facility and may
41 instead order the person to enter a nonresidential (outpatient)
42 treatment program if the court finds that the diagnostic assessment
43 performed on the person recommends that nonresidential treatment
44 is clinically appropriate; if no danger to the community would result
45 from the person participating in nonresidential treatment; if a
46 suitable treatment provider is able and willing to provide
47 appropriate services, and if the prosecutor does not object.
48 Subsection j. also provides that after a period of six months of

1 nonresidential treatment, if the court finds that the person has made
2 satisfactory progress in treatment and that there is a substantial
3 likelihood that the person will successfully complete the program,
4 the court may *permanently* suspend the commitment of the person
5 to the custody of a residential treatment program.

6 **New subsection k.** of N.J.S.A.2C:35-14 provides that a person
7 who is temporarily suspended from commitment to a residential
8 treatment facility must undergo periodic urine testing for drug or
9 alcohol use, must be subject to appropriate curfews or other
10 restrictions on his movements, and may be ordered to wear
11 electronic monitoring devices to enforce the curfews or other
12 restrictions.

13 **New subsection l.** of N.J.S.A.2C:35-14 provides that if the court
14 finds that the person has made exemplary progress in the course of
15 treatment, the court may grant early discharge of the five-year term
16 of special probation required under N.J.S.A.2C:35-14a. Early
17 discharge may be granted if the court finds on the record that the
18 person: has satisfactorily completed the treatment program, is not
19 likely to relapse or commit an offense if probation supervision and
20 related services are discontinued, and did not commit a substantial
21 violation of any term or condition of special probation, including
22 but not limited to a positive urine test, within the preceding 12
23 months. If the person was subject to the provisions of subsections
24 c., d. or j. of N.J.S.A.2C:35-14, the court shall not grant early
25 discharge unless the court additionally finds on the record that: (1)
26 the person has served not less than four years of special probation;
27 or (2) the person has committed no substantial violation of any term
28 or condition of special probation, including but not limited to a
29 positive urine test, within the preceding three years.

30 **Section 3** of the bill amends **N.J.S.A.2C:43-2**, the general
31 sentencing provision of the Criminal Code, to specifically provide
32 that a person convicted of an offense may be sentenced by the court
33 to special probation pursuant to N.J.S.A.2C:35-14.

34 **Section 4** of the bill amends **N.J.S.A.2C:44-6**, the general
35 provision concerning presentence investigations, to provide that any
36 presentence investigation would include a history of the
37 defendant's drug or alcohol use including any treatment history.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 233 and 504**

STATE OF NEW JERSEY

DATED: JANUARY 24, 2008

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 233 and 504.

This Senate Committee Substitute makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

Section 1 of the substitute makes various changes to N.J.S.2C:35-14, the State's special probation statute.

The substitute amends subsection a. of N.J.S.2C:35-14 to clarify who is subject to special probation. Under the provisions of the substitute, the special probation statute would apply only to persons who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State's general probation law, N.J.S.2C:45-1. The substitute also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State's general probation law.

The substitute amends paragraph (6) of subsection a. and subsection c. of N.J.S.2C:35-14 to reduce restrictions on special probation for past offenses. Under current law, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the substitute, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The substitute amends paragraph (7) of subsection f. of N.J.S.2C:35-10 to clarify that although a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation is thereafter ineligible for entry into an Intensive

Supervision Program, this does not affect the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction.

The substitute amends subsections a. and d. and adds new subsections j. and k. to N.J.S.2C:35-14 to give judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved treatment provider under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The substitute adds a new subsection l. to N.J.S.2C:35-14 to permit the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

The substitute also updates references in N.J.S.2C:35-14 to the Division of Addiction Services in the Department of Human Services.

Section 2 of the substitute permits a court to reduce the DEDR Penalty, which is between \$500 and \$3,000 depending on the nature of the offense. Under current law, up to half of the DEDR penalty may be waived if the offender submits, and the court approves, a reformatory service plan. In addition, any money spent by the offender as part of the court-administered drug and alcohol rehabilitation program may be deducted from the amount of DEDR owed if the offender successfully completes the program.

The substitute provides that an application to participate in a court-administered alcohol and drug rehabilitation shall have the same effect as the submission of a reformatory service plan. The phrase "court-administered alcohol and drug rehabilitation program" as used in section 2 of the substitute means the Drug Court program. The substitute also provides that, in the case of an extreme financial hardship, after successful completion of the drug court program, the court may further reduce the amount of DEDR penalties owed if necessary to aid the person's rehabilitation and reintegration into society.

This substitute is substantially similar to the bill recommended by the New Jersey Commission to Review Criminal Sentencing in its report entitled "New Jersey's Drug Courts, Special Probation and Proposal for Reform" issued in April of 2007.

FISCAL NOTE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 233 and 504
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: FEBRUARY 20, 2008

SUMMARY

Synopsis: Amends special probation statute to increase participation in drug program; permits court to reduce certain fees.

Type of Impact: Undetermined revenue loss offset by undetermined savings.

Agencies Affected: Judiciary, Department of Corrections, Drug Enforcement and Demand Reduction Fund.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Undetermined savings - See comments below		
State Revenue	Undetermined revenue loss - See comments below		

- The Office of Legislative Services (OLS) notes that in addition to those offenders who show extreme financial hardship in order to obtain a DEDR penalty reduction, every offender who participates in and completes a drug court program could have his DEDR penalty reduced by one-half. This revenue loss could substantially affect DEDR collections. The OLS also notes that the influx of offenders into the drug court program could require an expansion of the program at an undetermined program cost.
- The OLS adds that the AOC has stated that it costs \$9,850 per participant in a drug court program. The OLS also notes that DOC data indicate the ongoing operation expense of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration. As a result, for every offender who is diverted into the drug court program, the State would realize a savings of about \$22,000 per year.
- The committee substitute makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

- The Administrative Office of the Courts (AOC) states that the substitute may result in a decrease in revenue from the collection of the Drug Enforcement and Demand Reduction (DEDR) penalty.
- The AOC further notes that although the Judiciary cannot provide an exact fiscal impact of this substitute, it seems logical that the substitute would create additional costs as a result of the increase in offenders participating in the State's current Drug Court program. However, cost savings from the elimination of mandatory special probation requirements are anticipated to significantly offset a portion of any increase in existing costs.
- Additional savings would be generated by replacing the current requirement for mandatory six-month in-patient drug treatment with clinically based treatment plans specific to each participant. Costs associated with inpatient treatment may be reduced as they are replaced with outpatient services for some offenders. It is not possible to provide specific savings since treatment plans will vary by participant.
- The substitute may also reduce costs related to the probation supervision of drug court participants by permitting early discharge from the drug court program where appropriate.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 233 and 504 of 2008 makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

The substitute clarifies who is subject to special probation. Under the provisions of the substitute, the special probation statute would apply only to persons who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State's general probation law, N.J.S.2C:45-1. The substitute also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State's general probation law.

The substitute would amend current law to reduce restrictions on special probation for past offenses. Currently, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the substitute, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The substitute clarifies that although a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation and is thereafter ineligible for entry into an Intensive Supervision Program, the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction is not affected.

The substitute gives judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved treatment provider under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The substitute adds a new subsection to permit the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

Section 2 of the substitute permits a court to reduce the DEDR penalty, which is between \$500 and \$3,000 depending on the nature of the offense. Under current law, up to half of the DEDR penalty may be waived if the offender submits, and the court approves, a reformatory service plan. In addition, any money spent by the offender as part of the court-administered drug and alcohol rehabilitation program may be deducted from the amount of DEDR owed if the offender successfully completes the program.

The substitute provides that an application to participate in a drug court program shall have the same effect as the submission of a reformatory service plan. The substitute also provides that, in the case of an extreme financial hardship, after successful completion of the drug court program, the court may further reduce the amount of DEDR penalties owed if necessary to aid the person's rehabilitation and reintegration into society.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Revenue

The AOC states that the substitute may result in a nominal decrease in revenue from the collection of the DEDR penalty. Under the substitute the offender must show an "extreme financial hardship" before any reduction is granted, which may limit applications for such relief. Moreover, where the court finds such circumstances, the DEDR penalty might have been difficult to collect. Potential lost revenue cannot be projected because there is no way to determine how many offenders would seek the reduction, or the amount of same whether it would be granted.

Expenditures

The AOC notes that although the Judiciary cannot provide an exact fiscal impact of this substitute, it seems logical that it would create additional costs as a result of the increase in offenders participating in the State's current Drug Court program. However, cost savings from the elimination of mandatory special probation requirements are anticipated to significantly offset a portion of any increase in existing costs.

Specifically, the substitute would reduce the overall cost of special probation by replacing the current requirement for mandatory six-month in-patient drug treatment with clinically based treatment plans specific to each participant. Costs associated with inpatient treatment may be reduced as they are replaced with outpatient services for some offenders. It is not possible to provide specific savings since treatment plans will vary by participant.

The substitute may also reduce costs related to the probation supervision of drug court participants by permitting early discharge from the drug court program where appropriate. Under current law, the term of required special probation is five years. The substitute allows the court to grant an early discharge after the completion of two years of special probation. It is not possible to provide specific savings since special probation terms would be based on an assessment of each offender's status at various points in the treatment/supervision process.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that in addition to those offenders who show extreme financial hardship in order to obtain a DEDR penalty reduction, every offender who participates in and completes a drug court program could have his DEDR penalty reduced by one-half. This revenue loss could substantially affect DEDR collections. The OLS also notes that the influx of offenders into the drug court program could require an expansion of the program at an undetermined program cost.

The OLS adds that the AOC has stated that it costs \$9,850 per participant in a drug court program. The OLS also notes that DOC data indicate the ongoing operation expense of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration. As a result, for every offender who is diverted into the drug court program, the State would realize a savings of about \$22,000 per year.

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-1 et seq.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 233 and 504**

STATE OF NEW JERSEY

DATED: FEBRUARY 21, 2008

The Senate Budget and Appropriations Committee reports favorably Senate Bill Nos. 233 and 504 (SCS).

Senate Bill Nos. 233 and 504 (SCS) makes various changes to the State's special probation statute and permits the mandatory Drug Enforcement and Demand Reduction (DEDR) penalties to be reduced for people who complete the Drug Court program.

The substitute clarifies that special probation would apply only to offenders who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State's general probation law. The substitute also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State's general probation law.

The substitute reduces the restrictions on special probation based upon offenders' past offenses. Under current law, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the substitute, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The substitute clarifies that although a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation is thereafter ineligible for entry into an Intensive Supervision Program, this does not affect the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction.

The substitute gives judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved treatment provider

under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The substitute permits the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

The substitute also permits a court to reduce the DEDR Penalty, which is between \$500 and \$3,000 depending on the nature of the offense. Under current law, up to half of the DEDR penalty may be waived if the offender submits, and the court approves, a reformatory service plan. In addition, any money spent by the offender as part of the court-administered drug and alcohol rehabilitation program may be deducted from the amount of DEDR owed if the offender successfully completes the program.

The substitute provides that an application to participate in the Drug Court program shall have the same effect as the submission of a reformatory service plan. The substitute also provides that, in the case of an extreme financial hardship, after successful completion of the drug court program, the court may further reduce the amount of DEDR penalties owed if necessary to aid the person's rehabilitation and reintegration into society.

This substitute is substantially similar to the bill recommended by the New Jersey Commission to Review Criminal Sentencing in its report entitled "New Jersey's Drug Courts, Special Probation and Proposal for Reform" issued in April of 2007.

As reported, this substitute is identical to Assembly No. 1770 (ACS), as also reported by the committee.

FISCAL IMPACT:

In a Fiscal Note prepared for the substitute, the Office of Legislative Services (OLS) notes that while actual costs and savings cannot be determined, in general the revenue loss from reduced collections of DEDR penalties and increased program costs for expansion of the Drug Court program may be offset from savings realized by the Department of Corrections for every potential State incarcerated prisoner who may instead be subject to special probation outpatient treatment under the Drug Court program.

The OLS notes that the Administrative Office of the Courts (AOC) has stated that it costs \$9,850 per participant in a drug court program. The OLS also notes that DOC data indicate the ongoing operation expense of housing a State sentenced prison inmate is \$32,000 per year for the duration of that offender's incarceration. As a result, for every offender who is diverted into the drug court program, the State would realize a savings of about \$22,000 per year.

The Administrative Office of the Courts (AOC) has estimated there may be a nominal amount of lost revenue from reduced DEDR penalties. The AOC cannot project the amount of lost revenue because

there is no way to determine how many offenders would seek the reduction, or the amount of overall reductions that may be granted. The OLS notes that in addition to those offenders who show extreme financial hardship in order to obtain a DEDR penalty reduction, every offender who participates in and completes a drug court program could have his DEDR penalty reduced by one-half. This revenue loss could substantially affect DEDR collections.

The AOC notes that additional undetermined program costs for the Judiciary may occur as a result of the increase in offenders participating in the State's current Drug Court program. However, cost savings from the elimination of mandatory special probation requirements may significantly offset a portion of any increase in existing Drug Court program costs. The overall cost of special probation may be reduced by replacing the costs of the current requirement for mandatory six-month in-patient drug treatment with clinically based outpatient treatment plans specific to each participant. OLS notes that it is not possible to provide specific savings since treatment plans will vary by participant.

The substitute may also reduce costs related to the probation supervision of drug court participants by permitting early discharge from the drug court program where appropriate. Under current law, the term of required special probation is five years. The substitute allows the court to grant an early discharge after the completion of two years of special probation. The OLS notes that it is not possible to provide specific savings since special probation terms would be based on an assessment of each offender's status at various points in the treatment/supervision process.

SENATE, No. 504

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Mercer)

SYNOPSIS

Amends special probation statute to increase participation in drug court program; permits court to reduce certain fees.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



S504 TURNER

2

1 AN ACT concerning rehabilitation of drug and alcohol dependent
2 offenders and amending N.J.S.2C:35-14 and N.J.S.2C:35-15.

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; **[Mandatory]** Commitment to Residential Treatment
13 Facilities or Participation in a Nonresidential Treatment Program;
14 Presumption of Revocation; Brief Incarceration in Lieu of
15 Permanent Revocation.

16 a. Any person who is ineligible for probation due to a conviction
17 for a crime which is subject to a presumption of incarceration or a
18 mandatory minimum period of parole ineligibility may be sentenced
19 to a term of special probation in accordance with this section, and
20 may not apply for drug and alcohol treatment pursuant to
21 N.J.S.2C:45-1. Nothing in this section shall be construed to
22 prohibit a person who is eligible for probation in accordance with
23 N.J.S.2C:45-1 due to a conviction for an offense which is not
24 subject to a presumption of incarceration or a mandatory minimum
25 period of parole ineligibility from applying for drug or alcohol
26 treatment as a condition of probation pursuant to N.J.S.2C:45-1.

27 Notwithstanding the presumption of incarceration pursuant to the
28 provisions of subsection d. of N.J.S.2C:44-1, and except as
29 provided in subsection c. of this section, whenever a drug or alcohol
30 dependent person who is subject to sentencing under this section is
31 convicted of or adjudicated delinquent for an offense, other than
32 one described in subsection b. of this section, the court, upon notice
33 to the prosecutor, may, on motion of the person, or on the court's
34 own motion, place the person on special probation, which shall be
35 for a term of five years, provided that the court finds on the record
36 that:

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

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

43 (3) the present offense was committed while the person was
44 under the influence of a controlled dangerous substance, controlled
45 substance analog or alcohol or was committed to acquire property

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.

S504 TURNER

1 or monies in order to support the person's drug or alcohol
2 dependency; and

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

7 (5) the person did not possess a firearm at the time of the present
8 offense and did not possess a firearm at the time of any pending
9 criminal charge; and

10 (6) the person has not been previously convicted on two or more
11 separate occasions of crimes of the first **[.]** or second [or third]
12 degree, other than those listed in paragraph (7); or the person has
13 not been previously convicted on two or more separate occasions,
14 where one of the offenses is a crime of the third degree, other than
15 crimes defined in N.J.S.2C:35-10 , and one of the offenses is a
16 crime of the first or second degree; and

17 (7) the person has not been previously convicted or adjudicated
18 delinquent for, and does not have a pending charge of murder,
19 aggravated manslaughter, manslaughter, robbery, kidnapping,
20 aggravated assault, aggravated sexual assault or sexual assault, or a
21 similar crime under the laws of any other state or the United States;
22 and

23 (8) a suitable treatment facility licensed and approved by the
24 Department of Health and Senior Services is able and has agreed to
25 provide appropriate treatment services in accordance with the
26 requirements of this section; and

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

29 In determining whether to sentence the person pursuant to this
30 section, the court shall consider all relevant circumstances, and
31 shall take judicial notice of any evidence, testimony or information
32 adduced at the trial, plea hearing or other court proceedings, and
33 shall also consider the presentence report and the results of the
34 professional diagnostic assessment to determine whether and to
35 what extent the person is drug or alcohol dependent and would
36 benefit from treatment.

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

1 nonresidential rather than a residential treatment program, the court
2 shall follow the procedure set forth in subsection j. of this section.
3 Subject to the requirements of subsection d. of this section, the
4 conditions of special probation may include different methods and
5 levels of community-based or 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 **[N.J.S.2C:43-7.2]** section 2 of P.L.1997, c.117
12 (C.2C:43-7.2);

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

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

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

23 (1) the person has been

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

29 (b) previously convicted of an offense under subsection a. of
30 N.J.S.2C:35-5 or a similar offense under any other law of this State,
31 any other state or the United States, [shall not be eligible for
32 sentence in accordance with this section if]; 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 d. **[A]** Except as otherwise provided in subsection j. of this
47 section, a person convicted of or adjudicated delinquent for a crime

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

39 e. The probation department or other appropriate agency
40 designated by the court to monitor or supervise the person's special
41 probation shall report periodically to the court as to the person's
42 progress in treatment and compliance with court-imposed terms and
43 conditions. The treatment provider shall promptly report to the
44 probation department or other appropriate agency all significant
45 failures by the person to comply with any court imposed term or
46 condition of special probation or any requirements of the course of
47 treatment, including but not limited to a positive drug or alcohol

1 test or the unexcused failure to attend any session or activity, and
2 shall immediately report any act that would constitute an escape.
3 The probation department or other appropriate agency shall
4 immediately notify the court and the prosecutor in the event that the
5 person refuses to submit to a periodic drug or alcohol test or for any
6 reason terminates his participation in the course of treatment, or
7 commits any act that would constitute an escape.

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

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

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

37 (4) If the court permanently revokes the person's special
38 probation pursuant to this subsection, the court shall impose any
39 sentence that might have been imposed, or that would have been
40 required to be imposed, originally for the offense for which the
41 person was convicted or adjudicated delinquent. The court shall
42 conduct a de novo review of any aggravating and mitigating factors
43 present at the time of both original sentencing and resentencing. If
44 the court determines or is required pursuant to any other provision
45 of this chapter or any other law to impose a term of imprisonment,
46 the person shall receive credit for any time served in custody
47 pursuant to N.J.S.2C:45-1 or while awaiting placement in a

1 treatment facility pursuant to this section, and for each day during
2 which the person satisfactorily complied with the terms and
3 conditions of special probation while committed pursuant to this
4 section to a residential treatment facility. The court, in determining
5 the number of credits for time spent in a residential treatment
6 facility, shall consider the recommendations of the treatment
7 provider.

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

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

24 (7) An action for a violation under this section may be brought
25 by a probation officer or prosecutor or on the court's own motion.
26 Failure to complete successfully the required treatment program
27 shall constitute a violation of the person's special probation. A
28 person who fails to comply with the terms of his special probation
29 pursuant to this section and is thereafter sentenced to imprisonment
30 in accordance with this subsection shall thereafter be ineligible for
31 entry into the Intensive Supervision Program for the instant offense.

32 g. When a person on special probation is subject to a
33 presumption of revocation on a second or subsequent violation
34 pursuant to paragraph (2) of subsection f. of this section, or when
35 the person refuses to undergo drug or alcohol testing pursuant to
36 paragraph (6) of subsection f. of this section, the court may, in lieu
37 of permanently revoking the person's special probation, impose a
38 term of incarceration for a period of not less than 30 days nor more
39 than six months, after which the person's term of special probation
40 pursuant to this section may be reinstated. In determining whether
41 to order a period of incarceration in lieu of permanent revocation
42 pursuant to this subsection, the court shall consider the
43 recommendations of the treatment provider with respect to the
44 likelihood that such confinement would serve to motivate the
45 person to make satisfactory progress in treatment once special
46 probation is reinstated. This disposition may occur only once with
47 respect to any person unless the court is clearly convinced that there

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

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

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

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

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

36 (2) no danger to the community would result from the person
37 participating in the proposed course of nonresidential treatment
38 services; and

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

41 If the prosecutor objects to the court's decision to suspend the
42 commitment of the person to a residential treatment facility
43 pursuant to this subsection, the sentence of special probation
44 imposed pursuant to this section shall not become final for ten days
45 in order to permit the appeal by the prosecution of the court's
46 decision.

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

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

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

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

43 l. If the court finds that the person has made exemplary progress
44 in the course of treatment, the court may, upon recommendation of
45 the person's supervising probation officer or on the court's own
46 motion, and upon notice to the prosecutor, grant early discharge
47 from a term of special probation provided that the person: (1) has

1 satisfactorily completed the treatment program ordered by the court;
2 (2) has served at least two years of special probation; (3) did not
3 commit a substantial violation of any term or condition of special
4 probation, including but not limited to a positive urine test, within
5 the preceding 12 months; and (4) is not likely to relapse or commit
6 an offense if probation supervision and related services are
7 discontinued.

8 (cf: P.L.2001, c.129, s.2.)

9

10 2. N.J.S.2C:35-15 is amended to read as follows:

11 2C:35-15. a. In addition to any disposition authorized by this
12 title, the provisions of section 24 of P.L.1982, c.77 (C.2A:4A-43),
13 or any other statute indicating the dispositions that can be ordered
14 for an adjudication of delinquency, every person convicted of or
15 adjudicated delinquent for a violation of any offense defined in this
16 chapter or chapter 36 of this title shall be assessed for each such
17 offense a penalty fixed at:

- 18 (1) \$3,000.00 in the case of a crime of the first degree;
19 (2) \$2,000.00 in the case of a crime of the second degree;
20 (3) \$1,000.00 in the case of a crime of the third degree;
21 (4) \$750.00 in the case of a crime of the fourth degree;
22 (5) \$500.00 in the case of a disorderly persons or petty disorderly
23 persons offense.

24 Every person placed in supervisory treatment pursuant to the
25 provisions of N.J.S.2C:36A-1 or N.J.S.2C:43-12 for a violation of
26 any offense defined in this chapter or chapter 36 of this title shall be
27 assessed the penalty prescribed herein and applicable to the degree
28 of the offense charged, except that the court shall not impose more
29 than one such penalty regardless of the number of offenses charged.
30 If the person is charged with more than one offense, the court shall
31 impose as a condition of supervisory treatment the penalty
32 applicable to the highest degree offense for which the person is
33 charged.

34 All penalties provided for in this section shall be in addition to
35 and not in lieu of any fine authorized by law or required to be
36 imposed pursuant to the provisions of N.J.S.2C:35-12.

37 b. All penalties provided for in this section shall be collected as
38 provided for collection of fines and restitutions in section 3 of
39 P.L.1979, c.396 (C.2C:46-4), and shall be forwarded to the
40 Department of the Treasury as provided in subsection c. of this
41 section.

42 c. All moneys collected pursuant to this section shall be
43 forwarded to the Department of the Treasury to be deposited in a
44 nonlapsing revolving fund to be known as the "Drug Enforcement
45 and Demand Reduction Fund." Moneys in the fund shall be
46 appropriated by the Legislature on an annual basis for the purposes
47 of funding in the following order of priority: (1) the Alliance to

S504 TURNER

1 Prevent Alcoholism and Drug Abuse and its administration by the
2 Governor's Council on Alcoholism and Drug Abuse; (2) the
3 "Alcoholism and Drug Abuse Program for the Deaf, Hard of
4 Hearing and Disabled" established pursuant to section 2 of
5 P.L.1995, c.318 (C.26:2B-37); (3) the "Partnership for a Drug Free
6 New Jersey," the State affiliate of the "Partnership for a Drug Free
7 America"; and (4) other alcohol and drug abuse programs.

8 Moneys appropriated for the purpose of funding the "Alcoholism
9 and Drug Abuse Program for the Deaf, Hard of Hearing and
10 Disabled" shall not be used to supplant moneys that are available to
11 the Department of Health and Senior Services as of the effective
12 date of P.L.1995, c.318 (C.26:2B-36 et al.), and that would
13 otherwise have been made available to provide alcoholism and drug
14 abuse services for the deaf, hard of hearing and disabled, nor shall
15 the moneys be used for the administrative costs of the program.

16 d. (Deleted by amendment, P.L.1991, c.329).

17 e. The court may suspend the collection of a penalty imposed
18 pursuant to this section; provided the person is ordered by the court
19 to participate in a drug or alcohol rehabilitation program approved
20 by the court; and further provided that the person agrees to pay for
21 all or some portion of the costs associated with the rehabilitation
22 program. In this case, the collection of a penalty imposed pursuant
23 to this section shall be suspended during the person's participation
24 in the approved, court-ordered rehabilitation program. Upon
25 successful completion of the program, as determined by the court
26 upon the recommendation of the treatment provider, the person may
27 apply to the court to reduce the penalty imposed pursuant to this
28 section: (1) by any amount actually paid by the person for his
29 participation in the program; or (2) if the person demonstrates that
30 collection of the penalty will result in extreme financial hardship.
31 The court shall not reduce the penalty pursuant to this subsection
32 unless the person establishes to the satisfaction of the court that he
33 has successfully completed the rehabilitation program. If the
34 person's participation is for any reason terminated before his
35 successful completion of the rehabilitation program, collection of
36 the entire penalty imposed pursuant to this section shall be
37 enforced. Nothing in this section shall be deemed to affect or
38 suspend any other criminal sanctions imposed pursuant to this
39 chapter or chapter 36 of this title.

40 (cf: P.L.1999, c.376, s.3.)

41

42 3. This act shall take effect on the first day of the fourth month
43 following enactment.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

The bill makes various changes to the State’s special probation statute and permits mandatory fees currently imposed on drug offenders to be reduced in cases where imposition of the fees would cause extreme financial hardship.

Section 1 of the bill makes various changes to N.J.S.2C:35-14, the State’s special probation statute.

The bill amends subsection a. of N.J.S.2C:35-14 to clarify who is subject to special probation. Under the provisions of the bill, the special probation statute would apply only to persons who are subject to a presumption of incarceration or a mandatory minimum term. These persons could not apply for drug and alcohol treatment through the State’s general probation law, N.J.S.2C:45-1. The bill also clarifies that offenders who are not subject to a presumption of incarceration or a mandatory minimum term could not be sentenced under the special probation statute, but they may be sentenced to drug and alcohol treatment as a condition of probation pursuant to the State’s general probation law.

The bill amends paragraph (6) of subsection a. and subsection c. of N.J.S.2C:35-14 to reduce restrictions on special probation for past offenses. Under current law, an offender is barred from special probation if he or she has been convicted on two separate occasions of crimes of the first, second or third degree other than crimes defined in N.J.S.2C:35-10 (possession of a controlled substance). Under the provisions of the bill, the bar to special probation would apply only if at least one of the two prior convictions was for a crime of the first or second degree. If the person has two or more convictions both of which are for third degree crimes, the person would be eligible for special probation unless the person is otherwise disqualified.

The bill amends paragraph (7) of subsection f. of N.J.S.2C:35-10 to clarify that a person who is sentenced to imprisonment for failing to comply with the terms of his or her special probation is thereafter ineligible for entry into an Intensive Supervision Program for the instant offense.

The bill amends subsections a. and d. and adds new subsections j. and k. to N.J.S.2C:35-14 to give judges discretion to allow a person subject to special probation to be sentenced to a nonresidential treatment program administered by a licensed and approved treatment provider under certain circumstances. Under current law, in most cases, a person who receives special probation is sentenced to a period of residential treatment for six months.

The bill adds a new subsection l. to N.J.S.2C:35-14 to permit the court to grant an early discharge from special probation if the person has made exemplary progress in the course of treatment.

S504 TURNER

13

1 Section 2 of the bill permits a court to reduce the Drug
2 Enforcement and Demand Reduction Penalty, which is between
3 \$500 and \$3,000 depending on the nature of the offense, if the
4 offender demonstrates that collection of the fine will cause extreme
5 financial hardship.

6 The bill was recommended by the New Jersey Commission to
7 Review Criminal Sentencing in its report entitled "New Jersey's
8 Drug Courts, Special Probation and Proposal for Reform" issued in
9 April of 2007.