

SENATE, No. 881

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

3

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

6

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 24 (1) a crime of the first degree;
25 (2) a crime of the first or second degree enumerated in
26 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);
27 (3) a crime, other than that defined in section 1 of P.L.1987,
28 c.101 (C.2C:35-7), for which a mandatory minimum period of
29 incarceration is prescribed under chapter 35 of this Title or any
30 other law; or
31 (4) an offense that involved the distribution or the conspiracy or
32 attempt to distribute a controlled dangerous substance or controlled
33 substance analog to a juvenile near or on school property.

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

- 37 (1) the person has been:
38 (a) convicted of or adjudicated delinquent for an offense
39 under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of
40 section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which
41 there exists a presumption of imprisonment pursuant to subsection
42 d. of N.J.S.2C:44-1 or any other statute; or
43 (b) previously convicted of an offense under subsection
44 a. of N.J.S.2C:35-5 or a similar offense under any other law of this
45 State, any other state or the United States; **[or**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25

26 2. This act shall take effect immediately.

27

28

29

STATEMENT

30

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

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

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

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

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

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

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

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