

ASSEMBLY, No. 3679

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Concerns diversion from criminal prosecution for persons with mental illness under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning diversion for persons with mental illness,
2 supplementing Title 2C of the New Jersey Statutes and Title 52
3 of the Revised Statutes, and amending P.L.1987, c.116.

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

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

9 “Crisis Intervention Team Center of Excellence Program” or
10 “CIT” means the 40-hour national certification and training
11 program offered to law enforcement officers and other first
12 responders to provide the skills, knowledge, and support systems
13 necessary to divert persons experiencing a mental health crisis from
14 the criminal justice system to behavioral health treatment services;
15 improve law enforcement response to persons experiencing a
16 mental health crisis; and protect the safety of first responders, the
17 person in crisis, and the public.

18 “Crisis Intervention Team – New Jersey Center of Excellence
19 Program” or “CIT-NJ” means this State’s county-based 40-hour
20 training and certification program modelled on the CIT but adapted
21 to conform with the laws and the specific resources and needs in
22 this State.

23 “Crime or offense involving violence” means a crime or offense
24 involving violence or the threat of violence if the victim suffers
25 bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the
26 actor is armed with and uses a deadly weapon or threatens by word
27 or gesture to use a deadly weapon as defined in subsection c. of
28 N.J.S.2C:11-1, or threatens to inflict bodily injury.

29 “Mental health crisis” means a behavioral, emotional, or
30 psychiatric situation which, but for the provision of crisis response
31 services, would likely result in significantly reduced levels of
32 functioning in primary activities of daily living, or in an emergency
33 situation, or in the placement of the recipient in a more restrictive
34 setting, including but not limited to, inpatient hospitalization.

35 “Mental illness” means a mental disorder listed in the Diagnostic
36 and Statistical Manual of Mental Disorders (DSM) published by the
37 American Psychiatric Association.

38
39 2. (New section) a. The Police Training Commission in the
40 Department of Law and Public Safety shall adopt a one day in-
41 service basic training course to provide law enforcement officers
42 with the skills and knowledge necessary to recognize, respond to,
43 and divert from the criminal justice system, when appropriate, a
44 person experiencing a mental health crisis.

45 (1) Every full-time law enforcement officer who is or may be

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 assigned uniformed patrol duty on or after the effective date of
2 P.L. c. (C.) (pending before the Legislature as this bill)
3 shall complete the basic training course within one year following
4 the effective date of P.L. c. (C.) (pending before the
5 Legislature as this bill) or within one year of the date the officer is
6 appointed.

7 (2) A law enforcement officer who is assigned to uniformed
8 patrol duty shall complete an in-service refresher course at least
9 once every five years following the basic training course required in
10 paragraph (1) of this subsection.

11 b. In addition to the basic training course required in
12 subsection a. of this section, the Police Training Commission shall
13 adopt the CIT-NJ and establish standards for requiring a certain
14 percentage of law enforcement officers to receive this training. The
15 percentage shall be based on the size and responsibilities of each
16 law enforcement agency and the characteristics of the community,
17 with the goal of certifying at least 20 percent of law enforcement
18 officers assigned to uniformed patrol duty.

19 c. The Police Training Commission, in consultation with the
20 Division of Mental Health and Addiction Services in the
21 Department of Health, shall develop and maintain relevant
22 curriculums for the law enforcement training programs required in
23 subsections a. and b. of this section. Each curriculum shall be
24 reviewed and approved every two years and modified as
25 appropriate. Each curriculum shall include classroom instruction
26 and interactive training to assure the most realistic learning
27 experience. The CIT-NJ curriculum shall adhere to the goals and
28 core elements of the CIT or other similar evidence-based models.
29 At a minimum, each curriculum shall include training on:

30 (1) the cause and nature of mental illness;

31 (2) identifying indicators of mental illness and the appropriate
32 response in various situations;

33 (3) conflict resolution and de-escalation techniques for
34 potentially dangerous situations involving a mentally ill person;

35 (4) use of appropriate language when interacting with a mentally
36 ill person;

37 (5) alternatives to lethal force when interacting with a
38 potentially dangerous mentally ill person; and

39 (6) community and State resources available to serve the
40 mentally ill and how they can be best utilized by law enforcement
41 to benefit this community.

42
43 3. (New section) The Department of Health, in cooperation
44 with local government officials, shall coordinate and facilitate a
45 Mental Health Services Coordinating Council in each county
46 comprised of representatives from local law enforcement agencies,
47 correctional facilities, courts, treatment facilities, county
48 departments of social services, veterans' organizations, hospitals

1 and emergency rooms, and mental health advocacy groups. The
2 council periodically shall meet to identify mental health screening,
3 treatment, and case management resources within each county that
4 are available to support law enforcement diversion of a person who
5 is experiencing a mental health crisis. To the extent feasible, the
6 council shall develop information sharing technologies to assist law
7 enforcement officers in promptly identifying available mental
8 health resources to facilitate the emergent diversion of a person who
9 is experiencing a mental health crisis.

10
11 4. (New section) When a person taken into custody for a
12 crime or offense exhibits behavior that appears related to a mental
13 health crisis, the law enforcement officer may, with due regard for
14 the safety of the person, a victim, the public, and the officer, divert
15 the person to a screening service as defined in section 4 of
16 P.L.1987 c.116 (C.30:4-27.4) or other alternative for mental health
17 screening and assessment identified by the Department of Health.
18 Following an evaluation performed by the screening service or
19 other alternative, the officer shall have discretion, in accordance
20 with guidelines issued by the Attorney General, in determining
21 whether a criminal complaint shall be filed against the person.
22 Except for a crime or offense involving violence or when the law
23 enforcement officer perceives a risk to a victim or the public, there
24 shall be a presumption to delay or forgo filing a criminal complaint
25 until the person has received behavioral health treatment services. If
26 a criminal complaint is not filed due to diversion to a screening
27 service or behavioral health treatment provider, a law enforcement
28 officer subsequently may file a criminal complaint, subject to the
29 time limitations of N.J.S.2C:1-6, if the person fails to cooperate
30 with the screening service or treatment provider, or commits a
31 subsequent crime or offense.

32
33 5. (New section) a. At any time after the filing of a criminal
34 complaint, but prior to the disposition of the complaint, a
35 prosecutor, upon request of the defendant, the defendant's legal
36 counsel, or at the prosecutor's own discretion, may approve the
37 diversion of a defendant to a mental health screening service or
38 behavioral health treatment service. After the prosecutor has
39 approved the diversion, the prosecutor shall motion the court to
40 postpone proceedings while the defendant participates in mental
41 health screening or treatment services. The court may grant the
42 postponement of proceedings and release the defendant on the
43 defendant's own recognizance subject to compliance with any
44 conditions specified in the prosecutor's diversion agreement.

45 b. Except as provided in subsection c. of this section, the
46 prosecutor shall have sole discretion in determining whether a
47 defendant is diverted from prosecution to participate in mental
48 health screening or treatment services after consideration of:

- 1 (1) the nature of the eligible offense;
- 2 (2) the causative relationship between the person's diagnosed or
- 3 apparent mental illness and the commission of the offense;
- 4 (3) the amenability of the defendant to participation in screening
- 5 and treatment services;
- 6 (4) the availability of case management and behavioral health
- 7 treatment services;
- 8 (5) the input of any victim;
- 9 (6) the person's criminal history record;
- 10 (7) the public safety; and
- 11 (8) any other factor deemed appropriate by the Attorney General
- 12 or the prosecutor.
- 13 c. A defendant who is charged with a crime or offense
- 14 involving violence or was previously convicted of a violent crime
- 15 enumerated in subsection d. of section 2 of P.L.1997, c.117
- 16 (C.2C:43-7.2) shall not be diverted from prosecution pursuant to
- 17 this section.
- 18 d. There shall be a presumption against diversion, subject to
- 19 the discretion of the prosecutor after consulting with any victim, for
- 20 a defendant charged with:
- 21 (1) a crime of the first or second degree; or
- 22 (2) a crime or offense involving domestic violence, as defined in
- 23 subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) if the
- 24 defendant committed the crime or offense while subject to a
- 25 temporary or permanent restraining order issued pursuant to the
- 26 provisions of the "Prevention of Domestic Violence Act of 1991,"
- 27 P.L.1991, c.261 (C.2C:25-17 et seq.).
- 28 e. The prosecutor shall consult with each victim of a crime or
- 29 offense prior to approving a defendant's diversion to behavioral
- 30 health treatment services; however, nothing in this section shall be
- 31 construed to alter or limit the authority or discretion of the
- 32 prosecutor to divert a defendant into behavioral health treatment
- 33 services if the prosecutor believes that diversion is in the interest of
- 34 the public and the defendant.
- 35 f. The prosecutor's approval of a diversion to behavioral health
- 36 treatment services shall not be conditioned on an admission or plea
- 37 of guilty by a defendant.
- 38 g. The court shall review the status of the deferred prosecution
- 39 for the crime or offense no later than six months from the date on
- 40 which the court approved the prosecutor's initial request for a
- 41 postponement of the proceedings, and, thereafter, every six months
- 42 from the most recent review, to consider, based on information
- 43 provided by the prosecutor, whether the postponement of court
- 44 proceedings as requested by the prosecutor should continue.
- 45 h. The charges against the defendant may be dismissed by the
- 46 court upon motion of the prosecutor if, after a minimum of six
- 47 months from the date of diversion, the prosecutor is satisfied that
- 48 the defendant:

1 (1) has complied with the terms and conditions of the diversion
2 agreement;

3 (2) has not been the subject of any subsequent criminal charges;
4 and

5 (3) based on clinical reports, is no longer experiencing a mental
6 health crisis.

7 i. If, at any time, the prosecutor finds that the defendant has
8 failed to comply with any term or condition of the diversion
9 agreement, the prosecutor may notify the court that the State is
10 prepared to proceed with the prosecution of the offense and the
11 court shall schedule court proceedings as appropriate.
12 Alternatively, the prosecutor may extend the term of the diversion
13 agreement which may be contingent on compliance with additional
14 conditions.

15 j. A fee shall not be assessed to a defendant to be eligible for,
16 or to participate in, diversion as provided in this section.

17 k. A defendant may be diverted from criminal prosecution
18 pursuant to this section one or more times at the discretion of the
19 prosecutor if the prosecutor finds that the diversion will promote the
20 defendant's mental health, prevent the commission of future
21 offenses, and protect the safety of the public. Nothing in this act
22 shall preclude a defendant from applying for admission to a
23 criminal justice diversion program, including a program of
24 supervisory treatment pursuant to N.J.S.2C:43-12, conditional
25 discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal
26 pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1), as an
27 alternative to a diversion authorized pursuant to this section to the
28 extent that the defendant meets the eligibility criteria and qualifies
29 for the program. The dismissal of a criminal complaint resulting
30 from successful diversion into behavioral health treatment services
31 pursuant to this section shall bar a defendant's subsequent
32 eligibility for a program of supervisory treatment pursuant to
33 N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1,
34 or conditional dismissal pursuant to section 1 of P.L.2013, c.158
35 (C.2C:43-13.1); however, the defendant may seek subsequent
36 diversion to behavioral health treatment pursuant to this section
37 services at the sole discretion of the prosecutor.

38 l. The dismissal of charges based on a defendant's successful
39 participation in behavioral health treatment services pursuant to this
40 section shall not be deemed:

41 (1) a conviction for purposes of disqualifications or disabilities,
42 if any, imposed by law upon conviction of a petty disorderly
43 persons offense, disorderly persons offense, or a crime, but shall be
44 reported to the State Bureau of Identification criminal history
45 record information files for purposes of determining future
46 eligibility or exclusion from other diversion programs; or

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

4
5 6. (New section) Nothing in section 5 of P.L. c. (C.)
6 (pending before the Legislature as this bill) shall be construed to
7 limit or constrain in any way the authority or discretion of a
8 prosecutor to divert, prosecute, or pursue any other disposition of a
9 criminal matter involving a defendant experiencing a mental health
10 crisis.

11
12 7. (New section) a. The Department of Health shall develop
13 and implement any pilot program necessary to improve response
14 times when a law enforcement officer requests assistance in
15 intervening with a person experiencing a mental health crisis.

16 b. To stabilize a defendant who is experiencing a mental health
17 crisis and assist prosecutors in determining whether a defendant
18 should be diverted from prosecution into behavioral health
19 treatment services due to a mental health crisis, the department also
20 shall develop and implement any pilot program necessary to expand
21 the availability of mental health screening services in emergent
22 situations by using mobile response units and telemedicine, and
23 assigning licensed health care professionals to high-volume courts
24 and county jails.

25
26 8. Section 5 of P.L.1987, c.116 (C.30:4-27.5) is amended to
27 read as follows:

28 5. The commissioner shall adopt rules and regulations pursuant
29 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
30 1 et seq.) regarding a screening service and its staff that effectuate
31 the following purposes and procedures:

32 a. A screening service shall serve as the facility in the public
33 mental health care treatment system wherein a person believed to be
34 in need of involuntary commitment to outpatient treatment, a short-
35 term care facility, psychiatric facility or special psychiatric hospital
36 undergoes an assessment to determine what mental health services
37 are appropriate for the person and where those services may be
38 most appropriately provided in the least restrictive environment.

39 The screening service may provide emergency and consensual
40 treatment to the person receiving the assessment and may transport
41 the person or detain the person up to 24 hours for the purposes of
42 providing the treatment and conducting the assessment.

43 b. When a person assessed by a mental health screener and
44 involuntary commitment to treatment seems necessary, the screener
45 shall provide, on a screening document prescribed by the division,
46 information regarding the person's history and available alternative
47 facilities and services that are deemed inappropriate for the person.
48 When appropriate and available, and as permitted by law, the

1 screener shall make reasonable efforts to gather information from
2 the person's family or significant others for the purposes of
3 preparing the screening document. If a psychiatrist, in
4 consideration of this document and in conjunction with the
5 psychiatrist's own complete assessment, concludes that the person is
6 in need of commitment to treatment, the psychiatrist shall complete
7 the screening certificate. The screening certificate shall be
8 completed by a psychiatrist except in those circumstances where the
9 division's contract with the screening service provides that another
10 physician may complete the certificate.

11 Upon completion of the screening certificate, screening service
12 staff shall determine, in consultation with the psychiatrist or another
13 physician, as appropriate, the least restrictive environment for the
14 appropriate treatment to which the person shall be assigned or
15 admitted, taking into account the person's prior history of
16 hospitalization and treatment and the person's current mental health
17 condition. Screening service staff shall designate:

18 (1) inpatient treatment for the person if he is immediately or
19 imminently dangerous or if outpatient treatment is deemed
20 inadequate to render the person unlikely to be dangerous to self,
21 others or property within the reasonably foreseeable future; and

22 (2) outpatient treatment for the person when outpatient
23 treatment is deemed sufficient to render the person unlikely to be
24 dangerous to self, others or property within the reasonably
25 foreseeable future.

26 If the screening service staff determines that the person is in
27 need of involuntary commitment to outpatient treatment, the
28 screening service staff shall consult with an outpatient treatment
29 provider to arrange, if possible, for an appropriate interim plan of
30 outpatient treatment in accordance with section 9 of P.L.2009, c.112
31 (C.30:4-27.8a).

32 If a person has been admitted three times or has been an inpatient
33 for 60 days at a short-term care facility during the preceding 12
34 months, consideration shall be given to not placing the person in a
35 short-term care facility.

36 The person shall be admitted to the appropriate facility or
37 assigned to the appropriate outpatient treatment provider, as
38 appropriate for treatment, as soon as possible. Screening service
39 staff are authorized to coordinate initiation of outpatient treatment
40 or transport the person or arrange for transportation of the person to
41 the appropriate facility.

42 c. If the mental health screener determines that the person is
43 not in need of assignment or commitment to an outpatient treatment
44 provider, or admission or commitment to a short-term care facility,
45 psychiatric facility, or special psychiatric hospital, the screener
46 shall;

1 the safety of first responders, the person in crisis, and the public.
2 The program is to require a certain percentage of law enforcement
3 officers, with a goal of 20 percent, to receive this training based on
4 the size and responsibilities of the law enforcement agency and the
5 particular characteristics of the community.

6 Under the bill, the PTC is to consult with the Division of Mental
7 Health and Addiction Services in the Department of Health (DOH),
8 to develop and maintain relevant curriculums for the law
9 enforcement training programs established by the bill. The curricula
10 are to be reviewed and approved every two years and modified as
11 appropriate. They are to include classroom instruction and
12 interactive training to assure realistic learning experiences. At a
13 minimum, each curriculum shall include training on: (1) the cause
14 and nature of mental illness; (2) how to identify indicators of
15 mental illness and appropriately respond in a variety of common
16 situations; (3) conflict resolution and de-escalation techniques for
17 potentially dangerous situations involving mentally ill persons; (4)
18 use of appropriate language when interacting with mentally ill
19 persons; (5) alternatives to lethal force when interacting with
20 potentially dangerous mentally ill; and (6) community and State
21 resources available to serve mentally ill persons and how they can
22 be best utilized by law enforcement to benefit the community.

23 The bill requires the DOH, in conjunction with local government
24 officials, to coordinate and facilitate a Mental Health Services
25 Coordinating Council in each county to identify mental health
26 screening, treatment, and case management resources within each
27 county available to support law enforcement diversion for persons
28 experiencing a mental health crisis. The councils are to include
29 representatives of local law enforcement agencies, correctional
30 facilities, courts, treatment facilities, county departments of social
31 services, veterans' organizations, hospitals and emergency rooms,
32 and mental health advocacy groups.

33 If a person taken into custody for a crime or offense exhibits
34 behavior that appears related to a mental health crisis, the law
35 enforcement officer is authorized to, with due regard for the safety
36 of the person, a victim, the public, and the officer, divert the person
37 to a screening service or other alternative for mental health
38 screening and assessment identified by the DOH. The screening
39 service is responsible for providing referrals through personal
40 contact to the most appropriate, least restrictive treatment setting
41 indicated, linkage and follow-up to maintain contact with the person
42 until the person is engaged with another behavior health service or
43 the person is no longer experiencing a mental health crisis.

44 The officer has discretion in determining whether a criminal
45 complaint should be filed against the person who received the
46 evaluation. There is to be a preference to delay or forego the filing
47 of a criminal complaint until the person has had the opportunity to
48 receive behavioral health treatment services, unless the crime or

1 offense involved violence or the officer perceives a risk to a victim
2 or the public. The officer subsequently may file a criminal
3 complaint against a diverted person if the person fails to cooperate
4 with the screening service or treatment provider, or commits
5 another crime or offense.

6 The bill also authorizes the county prosecutors to approve
7 diversion of a defendant any time after the filing, but before
8 disposition, of the complaint to a mental health screening service or
9 behavioral health treatment service. Court proceedings are to be
10 postponed pending the defendant's treatment. Defendants charged
11 with a crime involving violence are not eligible for diversion and
12 there is a presumption against diversion for defendants charged with
13 certain serious crimes. The court is to review the defendant's case
14 every six months. Charges may be dismissed if certain conditions
15 are met by the defendant and charges may be reinstated if any
16 conditions are not met.

17 The DOH also is required by the bill to develop and implement
18 any pilot program needed to improve response times when a law
19 enforcement officer requests assistance in intervening with a person
20 experiencing a mental health crisis and to expand availability of
21 mental health screening services in emergent situations.