

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 5741

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JUNE 30, 2021

SUMMARY

- Synopsis:** Concerns eligibility, procedures, and post-program relief for certain drug or alcohol dependent persons sentenced to special probation, or regular probation which as a condition of such requires substance use disorders treatment.
- Type of Impact:** Annual State expenditure impact; Annual State revenue decrease; Annual expenditure decrease to counties.
- Agencies Affected:** The Judiciary, Department of Corrections, Department of Human Services, Counties, Municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Expenditure Impact	Indeterminate
State Revenue Decrease	Indeterminate
Local Expenditure Decrease	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill would result in an indeterminate impact on annual State expenditures. On one side of the ledger, the provisions of this bill that expand eligibility for the special probation drug court program would increase the workload and expenses of the Judiciary and potentially the Department of Human Services. The Department of Law and Public Safety could also incur additional costs related to the expungement of more criminal and other records, specifically those related to municipal ordinance violations. On the other side, the Department of Corrections (DOC) would experience lower costs than it otherwise would have incurred absent this bill as more offenders are diverted into the drug court program instead of being incarcerated in State correctional facilities. The OLS does not have sufficient data to project the net impact on State expenditures at this time.
- Counties will also experience indeterminate annual cost savings as more offenders are diverted into the special probation drug court program instead of being housed in county jails. However,

municipal courts will see increased administrative costs due to increase in requests for expungement of records concerning municipal ordinance violations.

- The OLS estimates an indeterminate loss in annual State revenues resulting from the court vacating certain fines and fees when providing expungement relief to eligible participants.

BILL DESCRIPTION

This bill would expand eligibility for special probation drug court, alter or eliminate procedures to provide courts with more flexibility in sentencing drug or alcohol dependent persons and determining appropriate treatment options, and provide greater expungement relief for clearing criminal and other records, and other post-program relief, for persons successfully discharged from their probation sentence following treatment.

Under current law, if a person is successfully discharged from drug court, or probation which included drug treatment, on or after the effective date of P.L.2015, c.261, the Superior Court may order the expungement of all records and information relating to all arrests, detentions, convictions, and proceedings for any criminal offense. P.L.2015, c.261, effective April 18, 2016, among other provisions authorized the automatic expungement of criminal records under certain circumstances. Under this bill, the Superior Court may also order the expungement of all records and information relating to any violation of a municipal ordinance for persons successfully discharged on or after the effective date of P.L.2015, c.261.

The bill provides that persons successfully discharged *prior to* the effective date of P.L.2015, c.261 may also seek the expungement of records concerning municipal ordinance violations. The bill in its current form provides that persons successfully discharged prior to the effective date could seek expungement of all records and information relating to all arrests, detentions, convictions, and proceedings for any criminal offense.

FISCAL ANALYSIS

JUDICIAL BRANCH

In an informal response to an OLS request for fiscal information, the Administrative Office of the Courts (AOC) noted that it would anticipate there being increased expenses under the bill due to the expanded participation in the drug court program.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill would result in an indeterminate impact on annual State and local expenditures. The OLS is unable to estimate the magnitude of the net impact as there is insufficient data to project the increase in the number of offenders who will be diverted into the special probation drug court program under the expanded eligibility provisions of this bill rather than being sentenced to a State correctional facility. The OLS notes that the bill provides that a sentence of special probation would be for a term of up to five years, as opposed to the requirement of a five-year term under current law, which could mitigate some of the Judiciary's increased costs. Moreover, it is also not known what, if any, additional workload will be undertaken by the Department of Human Services to license and approve additional residential treatment facilities

and by the Department of Law and Public Safety to expunge more criminal and other records, specifically those related to municipal ordinance violations.

The specialized drug courts target nonviolent criminal defendants and offenders who have alcohol and other drug dependency problems. In response to the OLS Discussion Points for FY 2020, the Judiciary noted that the funding for the program was sufficient at the time. However, the Judiciary added that an increase in halfway house beds throughout the State would benefit the drug court clients. With the expansion of eligibility, the number of participants is likely to rise from the estimated 6,800 active cases in FY 2021. In response to request for fiscal information for S-1819 of the 2018/2019 legislative session, the AOC noted that the annual cost per drug court participant was \$11,862, or \$32.50 per day.

Furthermore, pursuant to the provisions of this bill, the court may vacate certain fines, fees, penalties, surcharges, or other court ordered financial assessments imposed as part of the person's sentence, which, at the time of granting the expungement, remain subject to collection under the comprehensive enforcement program. This provision could result in an annual decrease in revenues for the State from the loss in collection of fines and fees. The OLS notes that victim restitution cannot be vacated.

The DOC and counties may experience lower annual costs than they otherwise would have incurred absent this bill due to the diversion of more offenders into alcohol and drug treatment facilities rather than housing them in State prisons or county jails. The DOC previously indicated to the OLS that the average annual cost to house an inmate in a State prison facility totaled \$50,590 in FY 2019. However, due to reduced inmate population, the DOC will instead avoid the marginal costs for food, wages, and clothing of \$8.74 per day, or \$3,190 for the fiscal year. The OLS does not have sufficient information on the costs associated with housing inmates in county jails to determine the cost savings that counties may realize. However, municipal courts will see increased administrative costs due to increase in requests for expungement of records concerning municipal ordinance violations.

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

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