ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 241 and 491

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 2021

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Committee Substitute for Senate Bill Nos. 241 and 491 (1R).

This substitute 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.

More specifically, the substitute bill would do the following:

- provide that a sentence to special probation would be for a term of "up to" five years, as opposed to the current law's requirement of a five-year term;

- eliminate ineligibility for special probation based on having two or more previous convictions involving a combination of crimes of the first, second, or third degrees, so there would be no cap based on past convictions, other than if one of those past convictions was for (or there was a pending charge for): murder, aggravated manslaughter, manslaughter, kidnapping, aggravated sexual assault, or sexual assault – one past conviction for aggravated assault would also be eliminated as a disqualifier for special probation;

- indicate that, when determining a special probation sentence involving either residential or nonresidential treatment, the court would consider recommendations from a diagnostic assessment, including the level of care that is clinically appropriate to address a person's treatment needs, rather than following a statutory list of criteria, which if satisfied, automatically required a commitment to a residential facility, with an exception to temporarily suspend, and possibly later permanently suspend, such commitment while instead ordering nonresidential treatment (detailed in N.J.S.2C:35-14, subsections d., j., and k., all of which are deleted in their entirety);

- provide that a person would be eligible for special probation, notwithstanding that the person was convicted of the crime of operating a motor vehicle during a period of license suspension, which carries a mandatory minimum term of incarceration and currently renders the person ineligible, when: (1) the suspension period was the result of a DUI violation or refusing to take a breath test, R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), and the person was previously caught operating a vehicle during the same period of suspension; or (2) the suspension period was the result of a second DUI-related violation, regardless of whether previously caught operating a vehicle during the same period of suspension.

- remove the automatic revoking of special probation for escaping from the custody of a residential treatment facility; and remove the statutory presumption, but not automatic, revoking of special probation for a second or subsequent violation of any term or condition of special probation or any requirements of the course of treatment, or for refusing to undergo urine testing for drug or alcohol usage. Instead, any first or subsequent violation, of any kind whatsoever, would allow the court in its discretion to revoke special probation;

- allow a court, upon permanently revoking a person's special probation, to impose any sentence which includes a term of imprisonment of up to five years, notwithstanding any sentence that might have been imposed, or that would have been required to be imposed, originally for the offense for which the person was sentenced to special probation. The current law applies the original sentencing parameters upon the permanent revocation of special probation;

- if special probation is permanently revoked and the court imposes a sentence, the sentenced person would receive credit for any time served at a halfway house, similar to how the current law provides credit for time served at a residential treatment facility, so long as the halfway house meets the statutory definition of such a facility, meaning it is licensed and approved by the Department of Human Services and is approved by a county probation department for impatient treatment services;

- make a person eligible for subsequent entry into the State's Intensive Supervision Program, even though the person failed to comply with the terms of special probation and such probation was permanently revoked, resulting in the person being sentenced to a term of imprisonment;

- eliminate the provision that a treated person, after consideration of the person's financial resources, pay the portion of the costs associated with the person's special probation residential or nonresidential treatment;

- permit a court, following successful discharge from either special probation or regular probation requiring substance use disorders treatment, to waive or reduce the Drug Enforcement and Demand Reduction penalty imposed as part of a sentence pursuant to

N.J.S.2C:35-15. This penalty ranges from $500 in the case of a disorderly or petty disorderly persons offense to $3,000 in the case of a crime of the first degree;

- allow a court, if a person makes "exemplary progress in the course of treatment" while on special probation, and with the recommendation of the person's probation officer or on the court's own motion, to grant early discharge, subject only to a finding, per current law, that the person "is not likely to relapse or commit an offense if probation supervision and related services are discontinued." The other existing statutory factors for consideration for early discharge, including not committing a substantial violation of any term or condition of special probation within the preceding 12 months, would be repealed;

- at the time of granting an expungement, allow a court to also vacate any fine, fee, penalty, surcharge, or other court-ordered financial assessment imposed by a court as part of the person's sentence, other than restitution to a victim, which, at the time of granting the expungement, remains subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.);

- simplify the application process for treated persons requesting an expungement of their entire criminal records and other related information as described above, for offenses committed prior to the effective date of past special probation reforms pursuant to P.L.2015, c.261 that first introduced the special probation expungement process, by no longer requiring these previously discharged persons to file a duly verified petition for each offense for which expungement is sought, and other requirements of a standard expungement application set forth in N.J.S.2C:52-1 et seq.; and

- provide for a court to electronically notify all appropriate law enforcement and criminal justice agencies who have custody and control of records specified in an expungement order, upon request of a person granted relief, or the Public Defender if representing that person, once the electronic filing and notification system for expungement applications is operational pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1).

The committee amended the substitute to add clarifying language to the special probation statute providing that, pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), upon receipt from the court of a person's application for expungement, the Superintendent of State Police, the Attorney General, and the county prosecutor have 60 days to review and confirm the information against the person's criminal history record information files and to notify the court of any inaccurate or incomplete data contained in the information files, or of any other basis for ineligibility for expungement.

The committee amendments also provide that, in addition to authorizing the Superior Court to order the expungement of all

criminal records upon successful discharge from drug court, the court could also order expungement of any records of violation of a municipal ordinance under these circumstances.

As amended and released by the committee, this bill is identical to Assembly Bill No. 5741(1R), also amended and reported by the committee today.

COMMITTEE AMENDMENTS:

1. Amend the special probation statute to provide that the Superintendent of State Police, the Attorney General, and the county prosecutor shall review and confirm information from the person applying for expungement against the person's criminal history record information files and notify the court of any inaccurate or incomplete data within 60 days, pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1).

2. Add a provision authorizing the Superior Court to order the expungement of any records of violation of a municipal ordinance, in addition to ordering the expungement of criminal records, upon successful discharge from drug court.