

SENATE, No. 490

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator CHRIS A. BROWN

District 2 (Atlantic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Senators Vitale, Gill and O'Scanlon

SYNOPSIS

Establishes procedures for individuals arrested for drug intoxication offenses to be transported to substance abuse treatment, and for municipal court to commit such individuals to treatment in lieu of prosecution.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning substance abuse treatment and supplementing
2 Title 26 of the Revised Statutes.

3

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

6

7 1. Any person who is arrested for a violation of a municipal
8 ordinance or for a disorderly persons offense or a petty disorderly
9 persons offense, and who the arresting police officer has reasonable
10 cause to believe is under the influence of an intoxicating substance
11 other than alcohol, may be taken by a police officer directly to a
12 substance use disorder treatment center or other appropriate facility.
13 To determine whether or not such person is under the influence of
14 an intoxicating substance, the police officer may request the person
15 to submit to any reasonable test, including, but not limited to, tests
16 of the person's coordination, coherency of speech, and breath.

17 The administrator of any substance use disorder treatment center,
18 or of any other facility, shall cause any such person to be examined
19 by a physician or by a medically competent individual designated
20 by the Department of Health and under the supervision of a
21 physician. If the physician or any other medically competent
22 individual designated by the department determines upon
23 examination that such person is under the influence of an
24 intoxicating substance other than alcohol, and the administrator
25 determines that adequate and appropriate treatment is available, the
26 person shall be admitted. Any such person may be detained at the
27 center or other facility until the person is no longer under the
28 influence of an intoxicating substance, but in any event, not longer
29 than 48 hours from the date of admission. At such time as the
30 person is to be discharged from the facility, the person shall be
31 informed by the administrator that if the person is a person with an
32 substance use disorder who would benefit by treatment the person
33 may, in the discretion of the court, be afforded treatment in lieu of
34 prosecution, and that if the person so chooses the person may be
35 examined at the facility for the purpose of determining whether the
36 person is a person with a substance use disorder who would benefit
37 by treatment. If the person requests an examination, the person
38 shall be examined by a physician at the facility during a period of
39 time not to exceed 48 hours. The police shall maintain such
40 security conditions as may be necessary. Prior to releasing the
41 person from the center or other facility, the administrator shall
42 notify the police, who shall transport the person therefrom for
43 proceedings in the case.

44 When a person who is arrested for a violation of a municipal
45 ordinance or for a disorderly persons offense or a petty disorderly
46 persons offense is brought before the court on such charge, the
47 court shall inform the person that the person is entitled to request a
48 medical examination to determine whether or not the person has a

1 substance use disorder if the person has been admitted to a facility
2 pursuant to the provisions of the preceding paragraph and has not
3 received a medical examination by a physician. The court shall
4 further inform the defendant of the consequences which follow a
5 determination by a physician that the person is a person with a
6 substance use disorder who would benefit by treatment. Any
7 request for an examination shall be in writing. If the person makes
8 such request, the proceedings shall be stayed for the period during
9 which the request is under consideration by the court. If the
10 defendant requests an examination, the court shall appoint a
11 physician to conduct the examination at an appropriate location
12 designated by it.

13 In no event shall a request for an examination, any statement
14 made by the defendant during the course of an examination or any
15 finding of a physician pursuant to the provisions of this section be
16 admissible against the defendant in any proceeding.

17 A physician who conducts an examination pursuant to the
18 provisions of this section, shall determine whether or not the
19 defendant is a person with a substance use disorder who would
20 benefit by treatment. The physician shall report the findings to the
21 court together with the facts upon which the findings are based and
22 the reasons therefor as soon as possible but in any event not longer
23 than three days after the completion of the examination.

24 If the physician reports that the defendant is a person with a
25 substance use disorder who would benefit by treatment, the court
26 shall inform the defendant that the defendant may request
27 commitment to the Division of Mental Health and Addiction
28 Services in the Department of Health and advise the person of the
29 consequences of the commitment.

30 If the defendant requests commitment, and if the court finds that
31 the defendant is a person with a substance use disorder who would
32 benefit by treatment, the court may stay the criminal proceeding and
33 commit the defendant to the division as an inpatient or as an
34 outpatient, whichever the court deems appropriate, for a specified
35 period. The term of inpatient treatment shall not exceed 30 days,
36 the term of outpatient treatment shall not exceed 60 days, and the
37 total combined period of commitment, including both inpatient and
38 outpatient treatment, if both are ordered, shall not exceed 90 days.
39 The court shall inform the defendant that if the defendant is
40 committed the proceeding will be stayed for the term of the
41 commitment.

42 In determining whether or not to grant the request for
43 commitment, the court shall consider the report of the physician, the
44 nature of the offense with which the defendant is charged, the past
45 criminal record, if any, of the defendant, and any other relevant
46 evidence.

47 If the court decides that the defendant's request for commitment
48 should be granted, the court shall commit the defendant to the

1 division if the division reports that adequate and appropriate
2 treatment is available at a facility; provided, however, that if the
3 court determines that commitment should be granted and the
4 defendant is charged with a first offense, the proceedings shall be
5 stayed until adequate and appropriate treatment is available at a
6 facility. In cases where the defendant is not charged with a first
7 offense and the division reports that adequate and appropriate
8 treatment is not available, the court may, in its discretion, order that
9 the stay of the proceeding remain outstanding until such time as
10 adequate and appropriate treatment is available.

11 As a condition to the issuance of any commitment order by the
12 court pursuant to the provisions of this section, the defendant shall
13 consent in writing to the terms of the commitment.

14 If the physician reports that the defendant is not a person with a
15 substance use disorder who would benefit by treatment, the
16 defendant shall be entitled to request a hearing to determine
17 whether the person is a person with a substance use disorder who
18 would benefit by treatment. Thereupon the court may, of its own
19 motion, or shall upon the request of the defendant or the defendant's
20 counsel, appoint an independent physician to examine the defendant
21 and to testify at the hearing. If the court determines that the
22 defendant is a person with a substance use disorder who would
23 benefit by treatment, the procedures and standards applicable to a
24 defendant who is determined by the court, following the report of
25 the first examining physician to be a person with a substance use
26 disorder who would benefit by treatment, shall apply to the
27 defendant.

28 If the court does not order that the defendant shall be afforded
29 treatment in lieu of prosecution pursuant to the provisions of this
30 section, the stay of the proceedings shall be vacated.

31 At any time during the term of commitment, the administrator
32 may transfer any inpatient to an outpatient program if the
33 administrator finds that the patient is a proper subject for outpatient
34 treatment; provided, however, that the administrator may retransfer
35 the patient to an inpatient program if the administrator finds that the
36 person is not suitable for outpatient treatment.

37 Any patient committed to the division pursuant to this section
38 shall be discharged from the facility to which the division has
39 caused the patient to be admitted if at any time the administrator
40 determines that treatment will no longer benefit the patient;
41 provided, however, that such patient shall in any event be
42 discharged at the termination of the period of commitment specified
43 in the court order.

44 At the end of the commitment period, when the patient is
45 discharged, or when the patient terminates treatment at the facility,
46 whichever first occurs, the Director of the Division of Mental
47 Health and Addiction Services in the Department of Health shall
48 report to the court on whether or not the defendant successfully

1 completed the treatment program, together with a statement of the
2 reasons for the director's conclusion. In reaching the determination
3 of whether or not the defendant successfully completed the
4 treatment program, the director shall consider, but shall not be
5 limited to, whether the defendant cooperated with the administrator
6 and complied with the terms and conditions imposed on the
7 defendant during the commitment. If the report states that the
8 defendant successfully completed the treatment program, the court
9 shall dismiss the charges pending against the defendant. If the
10 report does not so state, or if the defendant has not completed the
11 term of commitment ordered by the court, then, based on the report
12 and any other relevant evidence, the court may take such action as it
13 deems appropriate, including the dismissal of the charges or the
14 revocation of the stay of the proceedings. In the event that the court
15 convicts a defendant who has been committed in lieu of prosecution
16 pursuant to the provisions of this section and sentences the
17 defendant to a term of incarceration, the court shall reduce the term
18 of incarceration by the period during which the defendant was
19 afforded treatment in lieu of prosecution pursuant to this section.

20 The State, municipal, and local police shall, in cooperation with
21 the department, provide temporary security at facilities to which
22 persons are taken pursuant to this section, where it is necessary that
23 such security be provided for the person arrested.

24
25 2. This act shall take effect immediately, and shall apply to any
26 charges brought on or after the effective date.

27

28

29

STATEMENT

30

31 This bill establishes requirements and procedures for certain
32 individuals arrested while under the influence of an intoxicating
33 substance to be transported or committed to a substance use
34 disorder treatment center.

35 Specifically, when a law enforcement officer believes that a
36 person who was arrested for a violation of a municipal ordinance or
37 for a disorderly persons offense or petty disorderly persons offense
38 is under the influence of an intoxicating substance other than
39 alcohol, the officer may take the person directly to a substance use
40 disorder treatment center or other appropriate facility, and may
41 request that the person submit to reasonable testing to determine if
42 the person is intoxicated. The person will be examined at the
43 facility by a physician or other medically competent individual
44 designated by the Department of Health (DOH). If the examination
45 finds that the person is intoxicated, and the administrator of the
46 facility determines that adequate and appropriate treatment is
47 available, the person will be admitted to the facility, and may be

1 detained until the person is no longer intoxicated, for a maximum
2 period not to exceed 48 hours.

3 The administrator is to inform the person, upon discharge, that
4 the person may be afforded treatment in lieu of prosecution by the
5 court if the person has a substance use disorder, and that if the
6 person so chooses, the facility will examine the person to determine
7 whether the person has a substance use disorder and would benefit
8 by treatment. If the person requests an examination at the facility,
9 the examination is to take place within 48 hours. The police are to
10 maintain such security conditions at the facility as may be necessary
11 and provide the person with transportation to court proceedings.

12 When the defendant appears before the court to answer the
13 charge, the court will inform the defendant that, if the defendant
14 was not examined at the facility, the defendant is entitled to request
15 a medical examination to determine whether the defendant has a
16 substance use disorder, and inform the defendant of the
17 consequences if a physician finds the defendant is a person with a
18 substance use disorder who would benefit by treatment. Any
19 request for an examination is to be made by the defendant in
20 writing. If the defendant requests an examination, the proceedings
21 are stayed and the court will appoint a physician to examine the
22 defendant at an appropriate designated location.

23 In no event will a request for an examination, any statement
24 made by the defendant during the course of an examination, or any
25 finding of a physician be admissible against the defendant in any
26 proceeding.

27 The examining physician is to determine whether the defendant
28 is a person with a substance use disorder who would benefit by
29 treatment and report those findings to the court no later than three
30 days after the examination is completed.

31 If the physician reports that the defendant is a person with a
32 substance use disorder who would benefit by treatment, the court is
33 to inform the defendant that the defendant may request commitment
34 to the Division of Mental Health and Addiction Services in the
35 DOH, and advise the defendant of the consequences of
36 commitment. If the physician reports that the defendant is not a
37 person with a substance use disorder who would benefit by
38 treatment, the defendant may request a hearing to determine
39 whether the defendant is a person with a substance use disorder who
40 would benefit by treatment, and will, upon request or upon the
41 court's own motion, be appointed an independent physician, who
42 will examine the defendant and testify at the hearing. If the court
43 determines that the defendant is a person with a substance use
44 disorder who would benefit by treatment, the court is to inform the
45 defendant that the defendant may request commitment to the
46 division and advise the defendant of the consequences of
47 commitment.

1 If the defendant requests commitment, and if the court finds that
2 the defendant is a person with a substance use disorder who would
3 benefit by treatment, the court may stay the criminal proceeding and
4 commit the defendant to the division as an inpatient or as an
5 outpatient, whichever the court deems appropriate, for a specified
6 period not to exceed 30 days for inpatient treatment, 60 days for
7 outpatient treatment, or 90 total days for both inpatient and
8 outpatient commitment. In determining whether to grant the request
9 for commitment, the court is to consider the report of the physician,
10 the nature of the charged offense, the defendant's past criminal
11 record, if any, and any other relevant evidence. As a condition of
12 the court issuing a commitment order, the defendant will be
13 required to consent in writing to the terms of the commitment.

14 If the court decides that the defendant's request for commitment
15 should be granted, the court will commit the defendant to the
16 division if the division reports that adequate and appropriate
17 treatment is available at a facility; if the charged offense is a first
18 offense, or in the court's discretion if it is not a first offense, the
19 proceedings will be stayed until adequate and appropriate treatment
20 is available at a facility.

21 If the court does not order the defendant to treatment in lieu of
22 prosecution, the stay of the proceedings will be vacated.

23 At any time during the term of commitment, the administrator
24 may transfer an inpatient to an outpatient program if the
25 administrator finds that the patient is a proper subject for outpatient
26 treatment; provided, however, that the administrator may retransfer
27 the patient to an inpatient program if the administrator finds that the
28 person is not suitable for outpatient treatment.

29 A committed patient will be discharged from the commitment
30 facility at the end of the court-ordered commitment period or if, at
31 any time, the administrator determines that treatment will no longer
32 benefit the patient.

33 At the end of the commitment period, when the patient is
34 discharged, or when the patient terminates treatment at the facility,
35 whichever occurs first, the Director of the Division of Mental
36 Health and Addiction Services is to report to the court on whether
37 the defendant successfully completed the treatment program. In
38 determining whether the defendant successfully completed the
39 program, the director is to consider, but not be limited to, whether
40 the defendant cooperated with the administrator and complied with
41 the terms and conditions imposed on the defendant during the
42 commitment. If the report states that the defendant successfully
43 completed the treatment program, the court is to dismiss the charges
44 pending against the defendant. If the report does not so state, or if
45 the defendant has not completed the term of commitment ordered
46 by the court, then, based on the report and any other relevant
47 evidence, the court may take such action as it deems appropriate,
48 including the dismissal of the charges or the revocation of the stay

1 of the proceedings. In the event that the court convicts a defendant
2 who has been committed in lieu of prosecution and sentences the
3 defendant to a term of incarceration, the term of incarceration will
4 be reduced by the period during which the defendant was afforded
5 treatment in lieu of prosecution.

6 The State, municipal, and local police, in cooperation with the
7 department, will provide temporary security at facilities to which
8 persons are taken pursuant to the bill, when it is necessary that such
9 security be provided for the person arrested.

10 The procedures established under this bill are based on current
11 laws that allow person arrested for alcohol intoxication to be
12 transported to an alcohol use disorder treatment center following
13 arrest and committed by a municipal court to an alcohol use
14 disorder treatment center in lieu of prosecution.