

SENATE, No. 251

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

SYNOPSIS

Creates “Mental Health Diversion Program” to divert eligible persons away from criminal justice system; appropriates \$10 million.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning diversion of certain mentally disabled or
2 mentally ill persons from judicial system, supplementing Title
3 2C of the New Jersey Statutes and making an appropriation.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
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8 1. As used in this act, (P.L. , c.):

9 a. “Eligible offense” means cases involving defendants charged
10 with the commission of a nonviolent petty disorderly persons
11 offense, disorderly persons offense, or crime of the third or fourth
12 degree.

13 b. “Eligible person” means a person who allegedly committed
14 an eligible offense and who has a prior diagnosis of mental illness
15 or mental disability or for whom a prosecutor has a reasonable
16 belief that the person has a mental illness based on behaviors and
17 symptoms exhibited during the commission of the offense, while in
18 custody, or based on information provided by family members or
19 associates during the investigation of the offense.

20 c. “Mental illness” or “mental disability” means a mental
21 disorder classified within the most recent version of the American
22 Psychiatric Association Diagnostic and Statistical Manual of Mental
23 Disorders (DSM), including, but not limited to, anxiety disorders,
24 cognitive disorders, adjustment disorders, schizophrenia and other
25 psychotic disorders, bipolar disorder, depression, and post-
26 traumatic stress disorder (PTSD).
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28 2. a. There is hereby established the “Mental Health
29 Diversion Program” under which a defendant in the justice system
30 assessed with a mental illness shall be processed in such a manner
31 as to appropriately address the identified mental illness through
32 treatment services tailored to the individual needs of the participant.
33 This program shall divert certain eligible nonviolent mentally ill
34 and mentally disabled offenders away from the criminal justice
35 system and shall be administered by the Administrative Office of
36 the Courts. The diversion program shall include pretrial
37 intervention and review of the status of compliance or
38 noncompliance of eligible defendants.

39 b. The Administrative Office of the Courts shall work in
40 conjunction with the New Jersey Department of Health, including,
41 but not limited to, the Division of Mental Health Services (DMHS),
42 and State and local government agencies to prepare a directory of
43 entities within New Jersey. The directory shall include entities that
44 serve as a point of entry to facilitate the prosecutorial or judicial
45 referral of eligible persons into existing case management and
46 mental health services, or any other appropriate case management
47 and mental health service entities that are available in the State.
48 These entities shall serve to improve eligible person’s mental

1 health, and shall assist the eligible person with a wide range of
2 skills that will help the person function more independently in the
3 community.

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5 3. a. All municipal court cases involving eligible persons
6 and offenses shall be assigned or transferred to the Mental Health
7 Diversion Program. A defendant will qualify for the program if
8 they previously or currently have been diagnosed by a mental health
9 expert as suffering from a mental illness or disability.
10 Alternatively, eligibility may be met if the defendant displays signs
11 of mental illness or mental disability during the arrest, confinement,
12 or before any court. Eligibility determinations shall be made by the
13 assigned prosecutor, or if the defendant is before the court, the
14 assigned judge.

15 b. At any time after the filing of a criminal complaint, but prior
16 to the disposition of such complaint, an eligible defendant, the
17 public defender assigned to the eligible defendant, or the eligible
18 defendant's own legal counsel may make a motion for transfer into
19 the Mental Health Diversion Program. The motion to transfer shall
20 be accompanied by documentation or testimony in support thereof
21 and shall be heard by the judge assigned to the program, who will
22 make the final determination of eligibility in conjunction with the
23 prosecutor.

24 c. Determinations made by the assigned prosecutor, or the
25 assigned judge, or both, shall consider, among other factors
26 established by the Administrative Office of the Courts, the nature of
27 the eligible offense, the defendant's criminal history, amenability to
28 the services of the program, the availability of case management
29 and mental health services, and the probability that diversion will
30 promote recovery, prevent future criminal behavior, and protect
31 public safety. The assigned judge and prosecutor may also consider
32 the defendants agreement or non-agreement to enter the program.

33 d. The assigned prosecutor, or the assigned judge, or both, shall
34 determine the duration of the eligible person's participation in the
35 Mental Health Diversion Program. The term of participation shall
36 be based on initial clinical evaluation and recommendations, reports
37 of the person's participation, and progress reports from the mental
38 health entities.

39 e. If, after a minimum of six months from the date of the
40 diversion agreement, the prosecutor is satisfied that the eligible
41 person has complied with the terms and conditions of the
42 agreement, has not committed any subsequent crimes, and continues
43 to make progress with recovery, the prosecutor may move before
44 the court for the dismissal of the criminal charge pending against
45 the eligible person and terminate participation in the Mental Health
46 Diversion Program. If the prosecutor finds that the eligible person
47 failed to comply with any term or condition of the diversion

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1 agreement, the prosecutor may notify the court that the State is
2 prepared to proceed with the prosecution of the offense.

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4 4. Nothing in P.L. , c. (pending before this Legislature as
5 this bill) shall be construed to limit in any way the authority or
6 discretion of a prosecutor to divert, prosecute or pursue any other
7 disposition of a criminal matter involving a defendant who suffers
8 from mental illness or mental disability.

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10 5. The Mental Health Diversion Program, in conjunction with
11 the Administrative Office of the Courts, shall collect sufficient data
12 and programmatic information for purposes of program evaluation.
13 Data includes, but is not limited to, primary offenses that result in
14 the Mental Health Diversion Program referral or sentence and
15 program compliance.

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17 6. The Attorney General, in cooperation with the
18 Administrative Director of the Courts, shall prepare an annual
19 report to the Governor and, pursuant to section 2 of P.L. 1991,
20 c.164 (C.52:14-19.1), to the Legislature regarding the Mental
21 Health Diversion Program used to divert eligible defendants from
22 the criminal justice system. The report shall assist policymakers in
23 determining whether these diversion programs should be modified
24 or expanded to achieve the goals of recover for those with mental
25 illness or mental disabilities. The report shall include statistics
26 regarding the number of arrests where the arrestee is eligible for the
27 program; the number of individuals, subsequent to admission in the
28 Mental Health Program, who were sentenced to a term of
29 incarceration or probation; and other relevant information and
30 recommendations at the discretion of the Attorney General.

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32 7. The Attorney General, the Administrative Director of the
33 Courts, and the Department of Health shall publish on their
34 respective websites information regarding the Mental Health
35 Diversion Program and resources available to assist eligible
36 persons.

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38 8. The Supreme Court of New Jersey may adopt court rules
39 appropriate or necessary to effectuate the purposes of this act.

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41 9. The Administrative Director of the Courts shall nominate an
42 individual to be the director of the Mental Health Diversion
43 Program, which shall require the approval of the Chief Justice.

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45 10. a. There is appropriated from the General Fund the sum of
46 \$5 million to the Administrative Office of the Courts for the
47 purposes of effectuating the provisions of P.L. , c. (pending before
48 the Legislature as this bill).

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1 b. There is appropriated from the General Fund the sum of \$5
2 million to the Office of the Attorney General for the purposes of
3 effectuating the provisions of P.L. , c. (pending before the
4 Legislature as this bill).

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6 11. This act shall take effect immediately.

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STATEMENT

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11 This bill establishes the "Mental Health Diversion Program."
12 This program will serve the purpose of diverting eligible
13 individuals with mental illness or mental disability from the
14 criminal justice system and into appropriate treatment. This
15 program will be administered by the Administrative Office of the
16 Courts in conjunction with the New Jersey Department of Health
17 and State and local mental health agencies. This bill defines
18 eligible offense, eligible person, and mental illness and mental
19 disability. This bill requires the assigned prosecutor to work in
20 conjunction with the assigned judge to determine eligibility of
21 persons into the Mental Health Diversion Program. The prosecutor
22 and judge will additionally determine the period of participation in
23 the Mental Health Diversion Program and make decisions regarding
24 termination of participation in the program and the dismissal of
25 criminal charges, which gave rise to the diversion. The
26 Administrative Director of the Courts shall nominate a program
27 director, which will require the approval of the Chief Justice.

28 The program requires the Administrative Office of the Courts to
29 collect data and programmatic information for the purposes of
30 program evaluation. Additionally, the Attorney General, in
31 conjunction with the Administrative Office of the Courts, shall
32 prepare an annual report to the Governor and Legislature regarding
33 the program.

34 This bill appropriates \$5 million from the General Fund to the
35 Administrative Office of the Courts and an additional \$5 million to
36 the Office of the Attorney General to effectuate the provisions of
37 this bill.