

[First Reprint]

SENATE, No. 881

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

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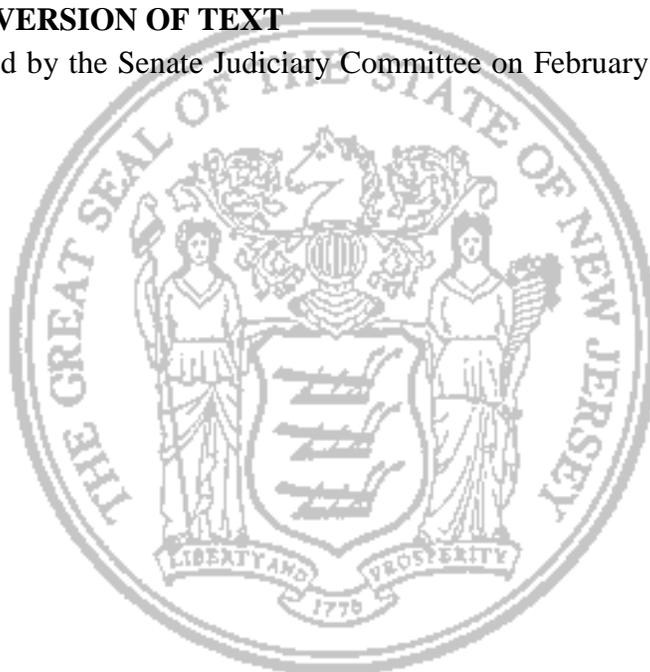
Senator Bateman

SYNOPSIS

Amends special probation statute to give judges additional discretion to admit certain offenders to “drug court” program; establishes pilot program for mandatory admission to special probation.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on February 16, 2012, with amendments.



(Sponsorship Updated As Of: 2/17/2012)

1 AN ACT concerning treatment for drug and alcohol dependent
2 persons **['and] ,**¹ amending N.J.S.2C:35-14 ¹, and supplementing
3 Title 2C of the New Jersey Statutes¹.

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

7
8 1. N.J.S.2C:35-14 is amended to read as follows:

9 2C:35-14. Rehabilitation Program for Drug and Alcohol
10 Dependent Persons Subject to a Presumption of Incarceration or a
11 Mandatory Minimum Period of Parole Ineligibility; Criteria for
12 Imposing Special Probation; Ineligible Offenders; Prosecutorial
13 Objections; Commitment to Residential Treatment Facilities or
14 Participation in a Nonresidential Treatment Program; Presumption
15 of Revocation; Brief Incarceration in Lieu of Permanent
16 Revocation.

17 a. Any person who is ineligible for probation due to a
18 conviction for a crime which is subject to a presumption of
19 incarceration or a mandatory minimum period of parole ineligibility
20 may be sentenced to a term of special probation in accordance with
21 this section, and may not apply for drug and alcohol treatment
22 pursuant to N.J.S.2C:45-1. Nothing in this section shall be
23 construed to prohibit a person who is eligible for probation in
24 accordance with N.J.S.2C:45-1 due to a conviction for an offense
25 which is not subject to a presumption of incarceration or a
26 mandatory minimum period of parole ineligibility from applying for
27 drug or alcohol treatment as a condition of probation pursuant to
28 N.J.S.2C:45-1. Notwithstanding the presumption of incarceration
29 pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and
30 except as provided in subsection c. of this section, whenever a drug
31 or alcohol dependent person who is subject to sentencing under this
32 section is convicted of or adjudicated delinquent for an offense,
33 other than one described in subsection b. of this section, the court,
34 upon notice to the prosecutor, may, on motion of the person, or on
35 the court's own motion, place the person on special probation,
36 which shall be for a term of five years, **【**, provided that the court
37 finds on the record that **】** In determining whether to place the
38 person on special probation, the court may consider the following
39 factors:

40 (1) the **【**person has undergone a **】** results of any professional
41 diagnostic assessment the person has undergone to determine
42 whether and to what extent the person is drug or alcohol dependent
43 and would benefit from treatment; and

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted February 16, 2012.

1 (2) whether the person is a drug or alcohol dependent person
2 within the meaning of N.J.S.2C:35-2 and whether the person was
3 drug or alcohol dependent at the time of the commission of the
4 present offense; and

5 (3) whether the present offense was committed while the person
6 was under the influence of a controlled dangerous substance,
7 controlled substance analog or alcohol or was committed to acquire
8 property or monies in order to support the person's drug or alcohol
9 dependency; and

10 (4) whether substance abuse treatment and monitoring will serve
11 to benefit the person by addressing his drug or alcohol dependency
12 and will thereby reduce the likelihood that the person will thereafter
13 commit another offense; and

14 (5) whether the person **【did not possess】** possessed a firearm at
15 the time of the present offense **【and did not possess】** or possessed a
16 firearm at the time of any pending criminal charge; and

17 (6) whether the person has **【not】** been previously convicted on
18 two or more separate occasions of crimes of the first or second
19 degree **【, other than those listed in paragraph (7)】**; or the person has
20 **【not】** been previously convicted on two or more separate occasions,
21 where one of the offenses is a crime of the third degree, other than
22 crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime
23 of the first or second degree; and

24 (7) **【the person has not been previously convicted or adjudicated**
25 **delinquent for, and does not have a pending charge of murder,**
26 **aggravated manslaughter, manslaughter, robbery, kidnapping,**
27 **aggravated assault, aggravated sexual assault or sexual assault, or a**
28 **similar crime under the laws of any other state or the United States;**
29 **and】** (deleted by amendment, P.L. , c. (C.) pending before
30 the Legislature as this bill).

31 (8) whether a suitable treatment facility licensed and approved
32 by the Division of Addiction Services in the Department of Human
33 Services is able and has agreed to provide appropriate treatment
34 services in accordance with the requirements of this section; and

35 (9) whether **【no】** danger to the community will result from the
36 person being placed on special probation pursuant to this section.

37 Notwithstanding any provision of this section or any other law to
38 the contrary, the court shall not place on special probation any
39 person who has been previously convicted or adjudicated delinquent
40 for, or has a pending charge of murder, aggravated manslaughter,
41 manslaughter, robbery, kidnapping, aggravated assault, aggravated
42 sexual assault or sexual assault, or a similar crime under the laws of
43 any other state or the United States.

44 In determining whether to sentence the person pursuant to this
45 section, the court shall consider all relevant circumstances, and
46 shall take judicial notice of any evidence, testimony or information
47 adduced at the trial, plea hearing or other court proceedings, and

1 shall also consider the presentence report and the results of **[the]**
2 any professional diagnostic assessment to determine whether and to
3 what extent the person is drug or alcohol dependent and would
4 benefit from treatment. The court shall make all findings relevant
5 to its determination on the record.

6 As a condition of special probation, the court shall order the
7 person to enter a residential treatment program at a facility licensed
8 and approved by the Division of Addiction Services in the
9 Department of Human Services or a program of nonresidential
10 treatment by a licensed and approved treatment provider, to comply
11 with program rules and the requirements of the course of treatment,
12 to cooperate fully with the treatment provider, and to comply with
13 such other reasonable terms and conditions as may be required by
14 the court or by law, pursuant to N.J.S.2C:45-1, and which shall
15 include periodic urine testing for drug or alcohol usage throughout
16 the period of special probation. In determining whether to order the
17 person to participate in a nonresidential rather than a residential
18 treatment program, the court shall follow the procedure set forth in
19 subsection j. of this section. Subject to the requirements of
20 subsection d. of this section, the conditions of special probation
21 may include different methods and levels of community-based or
22 residential supervision.

23 b. A person shall not be eligible for special probation pursuant
24 to this section if the person is convicted of or adjudicated
25 delinquent for:

26 (1) a crime of the first degree;

27 (2) a crime of the first or second degree enumerated in
28 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2);

29 (3) a crime, other than that defined in section 1 of P.L.1987,
30 c.101 (C.2C:35-7), for which a mandatory minimum period of
31 incarceration is prescribed under chapter 35 of this Title or any
32 other law; or

33 (4) an offense that involved the distribution or the conspiracy or
34 attempt to distribute a controlled dangerous substance or controlled
35 substance analog to a juvenile near or on school property.

36 c. A person who is subject to sentencing under this section in
37 accordance with subsection a. shall not be eligible for a sentence of
38 special probation pursuant to this section if:

39 (1) the person has been:

40 (a) convicted of or adjudicated delinquent for an offense under
41 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1
42 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there
43 exists a presumption of imprisonment pursuant to subsection d. of
44 N.J.S.2C:44-1 or any other statute; or

45 (b) previously convicted of an offense under subsection a. of
46 N.J.S.2C:35-5 or a similar offense under any other law of this State,
47 any other state or the United States; **[or**

1 (c) previously convicted on two or more separate occasions of
2 crimes of the third degree, other than crimes defined in
3 N.J.S.2C:35-10; and

4 (2) the prosecutor objects to the person being placed on special
5 probation. The court shall not place a person on special probation
6 over the prosecutor's objection except upon a finding by the court of
7 a gross and patent abuse of prosecutorial discretion. If the court
8 makes a finding of a gross and patent abuse of prosecutorial
9 discretion and imposes a sentence of special probation
10 notwithstanding the objection of the prosecutor, the sentence of
11 special probation imposed pursuant to this section shall not become
12 final for 10 days in order to permit the appeal of such sentence by
13 the prosecution.

14 d. Except as otherwise provided in subsection j. of this section,
15 a person convicted of or adjudicated delinquent for a crime of the
16 second degree or of a violation of section 1 of P.L.1987, c.101
17 (C.2C:35-7), or who previously has been convicted of or
18 adjudicated delinquent for an offense under subsection a. of
19 N.J.S.2C:35-5 or a similar offense under any other law of this State,
20 any other state or the United States, who is placed on special
21 probation under this section shall be committed to the custody of a
22 residential treatment facility licensed and approved by the Division
23 of Addiction Services in the Department of Human Services.
24 Subject to the authority of the court to temporarily suspend
25 imposition of all or any portion of the term of commitment to a
26 residential treatment facility pursuant to subsection j. of this
27 section, the person shall be committed to the residential treatment
28 facility immediately, unless the facility cannot accommodate the
29 person, in which case the person shall be incarcerated to await
30 commitment to the residential treatment facility. The term of such
31 commitment shall be for a minimum of six months, or until the
32 court, upon recommendation of the treatment provider, determines
33 that the person has successfully completed the residential treatment
34 program, whichever is later, except that no person shall remain in
35 the custody of a residential treatment facility pursuant to this
36 section for a period in excess of five years. Upon successful
37 completion of the required residential treatment program, the person
38 shall complete the period of special probation, as authorized by
39 subsection a. of this section, with credit for time served for any
40 imprisonment served as a condition of probation and credit for each
41 day during which the person satisfactorily complied with the terms
42 and conditions of special probation while committed pursuant to
43 this section to a residential treatment facility. Except as otherwise
44 provided in subsection l. of this section, the person shall not be
45 eligible for early discharge of special probation pursuant to
46 N.J.S.2C:45-2, or any other provision of the law. The court, in
47 determining the number of credits for time spent in residential

1 treatment, shall consider the recommendations of the treatment
2 provider. A person placed into a residential treatment facility
3 pursuant to this section shall be deemed to be subject to official
4 detention for the purposes of N.J.S.2C:29-5 (escape).

5 e. The probation department or other appropriate agency
6 designated by the court to monitor or supervise the person's special
7 probation shall report periodically to the court as to the person's
8 progress in treatment and compliance with court-imposed terms and
9 conditions. The treatment provider shall promptly report to the
10 probation department or other appropriate agency all significant
11 failures by the person to comply with any court imposed term or
12 condition of special probation or any requirements of the course of
13 treatment, including but not limited to a positive drug or alcohol
14 test or the unexcused failure to attend any session or activity, and
15 shall immediately report any act that would constitute an escape.
16 The probation department or other appropriate agency shall
17 immediately notify the court and the prosecutor in the event that the
18 person refuses to submit to a periodic drug or alcohol test or for any
19 reason terminates his participation in the course of treatment, or
20 commits any act that would constitute an escape.

21 f. (1) Upon a first violation of any term or condition of the
22 special probation authorized by this section or of any requirements
23 of the course of treatment, the court in its discretion may
24 permanently revoke the person's special probation.

25 (2) Upon a second or subsequent violation of any term or
26 condition of the special probation authorized by this section or of
27 any requirements of the course of treatment, the court shall, subject
28 only to the provisions of subsection g. of this section, permanently
29 revoke the person's special probation unless the court finds on the
30 record that there is a substantial likelihood that the person will
31 successfully complete the treatment program if permitted to
32 continue on special probation, and the court is clearly convinced,
33 considering the nature and seriousness of the violations, that no
34 danger to the community will result from permitting the person to
35 continue on special probation pursuant to this section. The court's
36 determination to permit the person to continue on special probation
37 following a second or subsequent violation pursuant to this
38 paragraph may be appealed by the prosecution.

39 (3) In making its determination whether to revoke special
40 probation, and whether to overcome the presumption of revocation
41 established in paragraph (2) of this subsection, the court shall
42 consider the nature and seriousness of the present infraction and any
43 past infractions in relation to the person's overall progress in the
44 course of treatment, and shall also consider the recommendations of
45 the treatment provider. The court shall give added weight to the
46 treatment provider's recommendation that the person's special
47 probation be permanently revoked, or to the treatment provider's

1 opinion that the person is not amenable to treatment or is not likely
2 to complete the treatment program successfully.

3 (4) If the court permanently revokes the person's special
4 probation pursuant to this subsection, the court shall impose any
5 sentence that might have been imposed, or that would have been
6 required to be imposed, originally for the offense for which the
7 person was convicted or adjudicated delinquent. The court shall
8 conduct a de novo review of any aggravating and mitigating factors
9 present at the time of both original sentencing and resentencing. If
10 the court determines or is required pursuant to any other provision
11 of this chapter or any other law to impose a term of imprisonment,
12 the person shall receive credit for any time served in custody
13 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
14 treatment facility pursuant to this section, and for each day during
15 which the person satisfactorily complied with the terms and
16 conditions of special probation while committed pursuant to this
17 section to a residential treatment facility. The court, in determining
18 the number of credits for time spent in a residential treatment
19 facility, shall consider the recommendations of the treatment
20 provider.

21 (5) Following a violation, if the court permits the person to
22 continue on special probation pursuant to this section, the court
23 shall order the person to comply with such additional terms and
24 conditions, including but not limited to more frequent drug or
25 alcohol testing, as are necessary to deter and promptly detect any
26 further violation.

27 (6) Notwithstanding any other provision of this subsection, if
28 the person at any time refuses to undergo urine testing for drug or
29 alcohol usage as provided in subsection a. of this section, the court
30 shall, subject only to the provisions of subsection g. of this section,
31 permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at
32 any time while committed to the custody of a residential treatment
33 facility pursuant to this section commits an act that would constitute
34 an escape, the court shall forthwith permanently revoke the person's
35 special probation.

36 (7) An action for a violation under this section may be brought
37 by a probation officer or prosecutor or on the court's own motion.
38 Failure to complete successfully the required treatment program
39 shall constitute a violation of the person's special probation. A
40 person who fails to comply with the terms of his special probation
41 pursuant to this section and is thereafter sentenced to imprisonment
42 in accordance with this subsection shall thereafter be ineligible for
43 entry into the Intensive Supervision Program, provided however
44 that this provision shall not affect the person's eligibility for entry
45 into the Intensive Supervision Program for a subsequent conviction.
46

1 g. When a person on special probation is subject to a
2 presumption of revocation on a second or subsequent violation
3 pursuant to paragraph (2) of subsection f. of this section, or when
4 the person refuses to undergo drug or alcohol testing pursuant to
5 paragraph (6) of subsection f. of this section, the court may, in lieu
6 of permanently revoking the person's special probation, impose a
7 term of incarceration for a period of not less than 30 days nor more
8 than six months, after which the person's term of special probation
9 pursuant to this section may be reinstated. In determining whether
10 to order a period of incarceration in lieu of permanent revocation
11 pursuant to this subsection, the court shall consider the
12 recommendations of the treatment provider with respect to the
13 likelihood that such confinement would serve to motivate the
14 person to make satisfactory progress in treatment once special
15 probation is reinstated. This disposition may occur only once with
16 respect to any person unless the court is clearly convinced that there
17 are compelling and extraordinary reasons to justify reimposing this
18 disposition with respect to the person. Any such determination by
19 the court to reimpose this disposition may be appealed by the
20 prosecution. Nothing in this subsection shall be construed to limit
21 the authority of the court at any time during the period of special
22 probation to order a person on special probation who is not subject
23 to a presumption of revocation pursuant to paragraph (2) of
24 subsection f. of this section to be incarcerated over the course of a
25 weekend, or for any other reasonable period of time, when the court
26 in its discretion determines that such incarceration would help to
27 motivate the person to make satisfactory progress in treatment.

28 h. The court, as a condition of its order, and after considering
29 the person's financial resources, shall require the person to pay that
30 portion of the costs associated with his participation in any
31 rehabilitation program, nonresidential treatment program or period
32 of residential treatment imposed pursuant to this section which, in
33 the opinion of the court, is consistent with the person's ability to
34 pay, taking into account the court's authority to order payment or
35 reimbursement to be made over time and in installments.

36 i. The court shall impose, as a condition of the special
37 probation, any fine, penalty, fee or restitution applicable to the
38 offense for which the person was convicted or adjudicated
39 delinquent.

40 j. Where the court finds that a person has satisfied all of the
41 eligibility criteria for special probation and would otherwise be
42 required to be committed to the custody of a residential treatment
43 facility pursuant to the provisions of subsection d. of this section,
44 the court may temporarily suspend imposition of all or any portion
45 of the term of commitment to a residential treatment facility and
46 may instead order the person to enter a nonresidential treatment
47 program, provided that the court finds on the record that:

1 (1) the person conducting the diagnostic assessment required
2 pursuant to paragraph (1) of subsection a. of this section has
3 recommended in writing that the proposed course of nonresidential
4 treatment services is clinically appropriate and adequate to address
5 the person's treatment needs; and

6 (2) no danger to the community would result from the person
7 participating in the proposed course of nonresidential treatment
8 services; and

9 (3) a suitable treatment provider is able and has agreed to
10 provide clinically appropriate nonresidential treatment services.

11 If the prosecutor objects to the court's decision to suspend the
12 commitment of the person to a residential treatment facility
13 pursuant to this subsection, the sentence of special probation
14 imposed pursuant to this section shall not become final for ten days
15 in order to permit the appeal by the prosecution of the court's
16 decision.

17 After a period of six months of nonresidential treatment, if the
18 court, considering all available information including but not
19 limited to the recommendation of the treatment provider, finds that
20 the person has made satisfactory progress in treatment and that
21 there is a substantial likelihood that the person will successfully
22 complete the nonresidential treatment program and period of special
23 probation, the court, on notice to the prosecutor, may permanently
24 suspend the commitment of the person to the custody of a
25 residential treatment program, in which event the special
26 monitoring provisions set forth in subsection k. of this section shall
27 no longer apply.

28 Nothing in this subsection shall be construed to limit the
29 authority of the court at any time during the term of special
30 probation to order the person to be committed to a residential or
31 nonresidential treatment facility if the court determines that such
32 treatment is clinically appropriate and necessary to address the
33 person's present treatment needs.

34 k. (1) When the court temporarily suspends the commitment of
35 the person to a residential treatment facility pursuant to subsection
36 j. of this section, the court shall, in addition to ordering
37 participation in a prescribed course of nonresidential treatment and
38 any other appropriate terms or conditions authorized or required by
39 law, order the person to undergo urine testing for drug or alcohol
40 use not less than once per week unless otherwise ordered by the
41 court. The court-ordered testing shall be conducted by the
42 probation department or the treatment provider. The results of all
43 tests shall be reported promptly to the court and to the prosecutor.
44 In addition, the court shall impose appropriate curfews or other
45 restrictions on the person's movements, and may order the person to
46 wear electronic monitoring devices to enforce such curfews or other
47 restrictions as a condition of special probation.

1 (2) The probation department or other appropriate agency shall
2 immediately notify the court and the prosecutor in the event that the
3 person fails or refuses to submit to a drug or alcohol test, knowingly
4 defrauds the administration of a drug test, terminates his
5 participation in the course of treatment, or commits any act that
6 would constitute absconding from parole. If the person at any time
7 while entered in a nonresidential treatment program pursuant to
8 subsection j. of this section knowingly defrauds the administration
9 of a drug test, goes into hiding or leaves the State with a purpose of
10 avoiding supervision, the court shall permanently revoke the
11 person's special probation.

12 1. If the court finds that the person has made exemplary
13 progress in the course of treatment, the court may, upon
14 recommendation of the person's supervising probation officer or on
15 the court's own motion, and upon notice to the prosecutor, grant
16 early discharge from a term of special probation provided that the
17 person: (1) has satisfactorily completed the treatment program
18 ordered by the court; (2) has served at least two years of special
19 probation; (3) did not commit a substantial violation of any term or
20 condition of special probation, including but not limited to a
21 positive urine test, within the preceding 12 months; and (4) is not
22 likely to relapse or commit an offense if probation supervision and
23 related services are discontinued.

24 (cf: P.L.2008, c.15, s.1)

25

26 12. (New section) a. The Supreme Court shall develop and
27 establish a two-year pilot program to determine the effectiveness of
28 mandatory sentencing of qualified offenders to special probation
29 under N.J.S.2C:35-14.

30 b. The Supreme Court shall select one vicinage from the
31 northern region of the State and one vicinage from the southern
32 region of the State to participate in the program. In selecting the
33 pilot program vicinages, the Supreme Court may consider whether a
34 vicinage has requested to participate in the pilot program. For the
35 purposes of this section, "northern" means vicinages 2 (Bergen), 5
36 (Essex), 6 (Hudson), 8 (Middlesex), 10 (Morris/Sussex), 11
37 (Passaic), 12 (Union) and 13 (Somerset/Hunterdon/Warren); and
38 "southern" means vicinages 1 (Atlantic/Cape May), 3 (Burlington),
39 4 (Camden), 7 (Mercer), 9 (Monmouth), 14 (Ocean) and 15
40 (Gloucester/Cumberland/Salem).

41 c. A court located in a vicinage participating in the pilot
42 program established under this section shall sentence any person
43 who is eligible for special probation under the provisions of
44 subsections a. and b. of N.J.S.2C:35-14 to special probation.
45 Subsection c. of N.J.S.2C:35-14 shall not apply in sentencing a
46 person under this subsection.

1 d. Not later than one year following the effective date of this
2 act, and thereafter annually, the Administrative Director of the
3 Courts shall submit to the Governor, and to the Legislature pursuant
4 to section 2 of P.L.1991, c.164 (C.52:14-19.1), a report containing
5 an evaluation of the pilot program. The report shall include the
6 rates of completion and revocation for people admitted to
7 mandatory special probation, the recidivism rates for graduates of
8 mandatory special probation, the costs associated with
9 implementing mandatory special probation, and any other
10 information that may indicate the effectiveness of mandatory
11 special probation, and shall make recommendations concerning the
12 practicability and feasibility of expanding the pilot program
13 Statewide. The Administrative Director of the Courts may
14 accompany this report with recommendations for legislation or
15 other action appropriate for adoption or consideration by the
16 Legislature.

17 e. The Supreme Court may establish such rules and procedures
18 as may be necessary to effectuate the purpose of this act.¹

19

20 ¹**[2.] 3.** This act shall take effect immediately.