

**LEGISLATIVE FISCAL ESTIMATE**  
[First Reprint]  
**SENATE COMMITTEE SUBSTITUTE FOR**  
**SENATE, Nos. 241 and 491**  
**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

DATED: FEBRUARY 3, 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

**Office of Legislative Services Estimate**

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

- 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.

More specifically, among other things, the 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, 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;
- 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.
- remove the automatic revoking of special probation for escaping from the custody of a residential treatment facility.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS finds that this bill would result in an indeterminate impact on annual State 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.

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 7,200 active cases in FY 2020.

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, this amount does not reflect the annual State cost that would be avoided by diverting one offender into the drug court program as the prison population would have to decline by a number large enough for the DOC to lower bed space capacity, thereby reducing its fixed costs, in order to realize those savings. 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.

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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.).