

ASSEMBLY, No. 564

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman TURNER

1 AN ACT concerning pretrial intervention and amending
2 N.J.S.2C:43-12.

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

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7 1. N.J.S.2C:43-12 is amended to read as follows:

8 2C:43-12. Supervisory Treatment--Pretrial Intervention. a. Public
9 policy. The purpose of sections 2C:43-12 through 2C:43-22 of this
10 chapter is to effectuate a Statewide program of Pretrial Intervention.
11 It is the policy of the State of New Jersey that supervisory treatment
12 should ordinarily be limited to persons who have not previously been
13 convicted of any criminal offense under the laws of New Jersey, or
14 under any criminal law of the United States, or any other state when
15 supervisory treatment would:

16 (1) Provide applicants, on an equal basis, with opportunities to
17 avoid ordinary prosecution by receiving early rehabilitative services or
18 supervision, when such services or supervision can reasonably be
19 expected to deter future criminal behavior by an applicant, and when
20 there is apparent causal connection between the offense charged and
21 the rehabilitative or supervisory need, without which cause both the
22 alleged offense and the need to prosecute might not have occurred; or

23 (2) Provide an alternative to prosecution for applicants who might
24 be harmed by the imposition of criminal sanctions as presently
25 administered, when such an alternative can be expected to serve as
26 sufficient sanction to deter criminal conduct; or

27 (3) Provide a mechanism for permitting the least burdensome form
28 of prosecution possible for defendants charged with "victimless"
29 offenses; or

30 (4) Provide assistance to criminal calendars in order to focus
31 expenditure of criminal justice resources on matters involving serious
32 criminality and severe correctional problems; or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 (5) Provide deterrence of future criminal or disorderly behavior by
2 an applicant in a program of supervisory treatment.
- 3 b. Admission of an applicant into a program of supervisory
4 treatment shall be measured according to the applicant's amenability
5 to correction, responsiveness to rehabilitation and the nature of the
6 offense.
- 7 c. The decision and reasons therefor made by the designated judges
8 (or assignment judges), prosecutors and program directors in granting
9 or denying applications for supervisory treatment, in recommending
10 and ordering termination from the program or dismissal of charges, in
11 all cases shall be reduced to writing and disclosed to the applicant.
- 12 d. If an applicant desires to challenge the decision of the
13 prosecutor or program director not to recommend enrollment in a
14 program of supervisory treatment the proceedings prescribed under
15 section 14 shall be followed.
- 16 e. Referral. At any time prior to trial but after the filing of a
17 criminal complaint, or the filing of an accusation or the return of an
18 indictment, with the consent of the prosecutor and upon written
19 recommendation of the program director, the assignment judge or a
20 judge designated by him may postpone all further proceedings against
21 an applicant and refer said applicant to a program of supervisory
22 treatment approved by the Supreme Court. Prosecutors and program
23 directors shall consider in formulating their recommendation of an
24 applicant's participation in a supervisory treatment program, among
25 others, the following criteria:
- 26 (1) The nature of the offense;
- 27 (2) The facts of the case;
- 28 (3) The motivation and age of the defendant;
- 29 (4) The desire of the complainant or victim to forego prosecution;
- 30 (5) The existence of personal problems and character traits which
31 may be related to the applicant's crime and for which services are
32 unavailable within the criminal justice system, or which may be
33 provided more effectively through supervisory treatment and the
34 probability that the causes of criminal behavior can be controlled by
35 proper treatment;
- 36 (6) The likelihood that the applicant's crime is related to a
37 condition or situation that would be conducive to change through his
38 participation in supervisory treatment;
- 39 (7) The needs and interests of the victim and society;
- 40 (8) The extent to which the applicant's crime constitutes part of a
41 continuing pattern of anti-social behavior;
- 42 (9) The applicant's record of criminal and penal violations and the
43 extent to which he may present a substantial danger to others;
- 44 (10) Whether or not the crime is of an assaultive or violent nature,
45 whether in the criminal act itself or in the possible injurious
46 consequences of such behavior;

- 1 (11) Consideration of whether or not prosecution would
2 exacerbate the social problem that led to the applicant's criminal act;
- 3 (12) The history of the use of physical violence toward others;
- 4 (13) Any involvement of the applicant with organized crime;
- 5 (14) Whether or not the crime is of such a nature that the value of
6 supervisory treatment would be outweighed by the public need for
7 prosecution;
- 8 (15) Whether or not the applicant's involvement with other people
9 in the crime charged or in other crime is such that the interest of the
10 State would be best served by processing his case through traditional
11 criminal justice system procedures;
- 12 (16) Whether or not the applicant's participation in pretrial
13 intervention will adversely affect the prosecution of codefendants; and
- 14 (17) Whether or not the harm done to society by abandoning
15 criminal prosecution would outweigh the benefits to society from
16 channeling an offender into a supervisory treatment program.
- 17 f. Review of Supervisory Treatment Applications; Procedure Upon
18 Denial. Each applicant for supervisory treatment shall be entitled to
19 full and fair consideration of his application. If an application is
20 denied, the program director or the prosecutor shall precisely state his
21 findings and conclusion which shall include the facts upon which the
22 application is based and the reasons offered for the denial. If the
23 applicant desires to challenge the decision of a program director not
24 to recommend, or of a prosecutor not to consent to, enrollment into
25 a supervisory treatment program, a motion shall be filed before the
26 designated judge (or assignment judge) authorized pursuant to the
27 rules of court to enter orders.
- 28 g. Limitations. Supervisory treatment may occur only once with
29 respect to any defendant and any person who has previously received
30 supervisory treatment under section 27 of P.L.1970, c.226
31 (C.24:21-27), shall not be eligible for supervisory treatment under this
32 section. However, supervisory treatment, as provided herein, shall be
33 available to a defendant irrespective of whether the defendant contests
34 his guilt of the charge or charges against him.
- 35 h. Termination. Termination of supervisory treatment under this
36 section shall be immediately reported to the assignment judge of the
37 county who shall forward such information to the Administrative
38 Director of the Courts.
- 39 i. Appointment of Program Directors; Authorized Referrals.
40 Programs of supervisory treatment and appointment of the program
41 directors require approval by the Supreme Court with the consent of
42 the assignment judge and prosecutor. Referrals of participants from
43 supervisory treatment programs may be to any public or private office
44 or agency, including but not limited to, programs within the probation
45 service of the court, offering counseling or any other social service
46 likely to aid in the rehabilitation of the participant and to deter the

1 commission of other offenses.

2 j. Health Care Professional Licensing Board Notification. The
3 program director shall promptly notify the State Board of Medical
4 Examiners when a State licensed physician or podiatrist has been
5 enrolled in a supervisory treatment program after he has been charged
6 with an offense involving drugs or alcohol.

7 k. (1) The following persons shall not be eligible for pretrial
8 intervention:

9 (a) Any person charged with a crime of the first or second degree;

10 (b) Any legislator, judge or county prosecutor charged with a
11 crime involving a breach of public trust while serving in office; or

12 (c) Any former legislator, judge or county prosecutor charged with
13 a crime involving a breach of public trust committed while serving in
14 that office.

15 (2) As used in this subsection:

16 (a) "judge" means any justice of the Supreme Court; any judge of
17 the Superior or Tax Court and any judge of a municipal or joint
18 municipal court;

19 (b) "legislator" means a member of the State Legislature.

20 (cf: P.L.1989, c.300, s.22)

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22 2. This act shall take effect immediately.

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25 STATEMENT

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27 This bill would provide that persons charged with a crime of the
28 first or second degree would be ineligible for participation in pretrial
29 intervention. The bill also provides that legislators, judges, county
30 prosecutors and persons formerly serving in those offices would not
31 be eligible for PTI if charged with crime involving a breach of public
32 trust committed while serving in office.

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37 Precludes participation in pretrial intervention in certain cases.