

ASSEMBLY, No. 909

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROCCO

1 AN ACT concerning the mandatory suspension of driving privileges for  
2 certain persons involved with diversionary programs for drug  
3 offenses and amending P.L.1982, c.77, N.J.S.2C:35-16,  
4 N.J.S.2C:36A-1, and N.J.S.2C:43-13.

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

8  
9 1. Section 24 of P.L.1982, c.77 (C.2A:4A-43) is amended to read  
10 as follows:

11 24. Disposition of delinquency cases. a. In determining the  
12 appropriate disposition for a juvenile adjudicated delinquent the court  
13 shall weigh the following factors:

14 (1) The nature and circumstances of the offense;

15 (2) The degree of injury to persons or damage to property caused  
16 by the juvenile's offense;

17 (3) The juvenile's age, previous record, prior social service  
18 received and out-of-home placement history;

19 (4) Whether the disposition supports family strength, responsibility  
20 and unity and the well-being and physical safety of the juvenile;

21 (5) Whether the disposition provides for reasonable participation  
22 by the child's parent, guardian, or custodian, provided, however, that  
23 the failure of a parent or parents to cooperate in the disposition shall  
24 not be weighed against the juvenile in arriving at an appropriate  
25 disposition;

26 (6) Whether the disposition recognizes and treats the unique  
27 physical, psychological and social characteristics and needs of the  
28 child;

29 (7) Whether the disposition contributes to the developmental needs  
30 of the child, including the academic and social needs of the child where  
31 he has mental retardation or learning disabilities; and

32 (8) Any other circumstances related to the offense and the

**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 juvenile's social history as deemed appropriate by the court.

2 b. If a juvenile is adjudged delinquent the court may order  
3 incarceration pursuant to section 25 of this act or any one or more of  
4 the following dispositions:

5 (1) Adjourn formal entry of disposition of the case for a period not  
6 to exceed 12 months for the purpose of determining whether the  
7 juvenile makes a satisfactory adjustment, and if during the period of  
8 continuance the juvenile makes such an adjustment, dismiss the  
9 complaint; provided that if the court adjourns formal entry of  
10 disposition of delinquency for a violation of an offense defined in  
11 chapter 35 or 36 of Title 2C of the New Jersey Statutes, the court  
12 shall assess the mandatory penalty set forth in N.J.S.2C:35-15 [but  
13 may waive imposition of the penalty set forth in N.J.S.2C:35-16 for  
14 juveniles adjudicated delinquent] and shall immediately suspend the  
15 juvenile's privilege of operating a motorized bicycle or motor vehicle  
16 for the period of adjournment of formal entry of disposition. The  
17 court adjourning the disposition shall collect the New Jersey driver's  
18 license or licenses in accordance with the procedures set forth in  
19 N.J.S.2C:35-16;

20 (2) Release the juvenile to the supervision of his or her parent or  
21 guardian;

22 (3) Place the juvenile on probation to the chief probation officer of  
23 the county or to any other suitable person who agrees to accept the  
24 duty of probation supervision for a period not to exceed three years  
25 upon such written conditions as the court deems will aid rehabilitation  
26 of the juvenile;

27 (4) Transfer custody of the juvenile to any relative or other person  
28 determined by the court to be qualified to care for the juvenile;

29 (5) Place the juvenile under the care of the Department of Human  
30 Services under the responsibility of the Division of Youth and Family  
31 Services pursuant to P.L.1951, c.138, s.2(c) (C.30:4C-2(c)) for the  
32 purpose of providing services in or out of the home. Within 14 days,  
33 unless for good cause shown, but not later than 30 days, the  
34 Department of Human Services shall submit to the court a service  
35 plan, which shall be presumed valid, detailing the specifics of any  
36 disposition order. The plan shall be developed within the limits of  
37 fiscal and other resources available to the department. If the court  
38 determines that the service plan is inappropriate, given existing  
39 resources, the department may request a hearing on that  
40 determination;

41 (6) Place the juvenile under the care and custody of the  
42 Commissioner of the Department of Human Services for the purpose  
43 of receiving the services of the Division of Mental Retardation of that  
44 department, provided that the juvenile has been determined to be  
45 eligible for those services under P.L.1965, c.59, s.16 (C.30:4-25.4);

46 (7) Commit the juvenile, pursuant to the laws governing civil

1 commitment, to the Department of Human Services under the  
2 responsibility of the Division of Mental Health and Hospitals for the  
3 purpose of placement in a suitable public or private hospital or other  
4 residential facility for the treatment of persons who are mentally ill, on  
5 the ground that the juvenile, if not committed, would be a probable  
6 danger to himself or others or property by reason of mental illness;

7 (8) Fine the juvenile an amount not to exceed the maximum  
8 provided by law for such a crime or offense if committed by an adult  
9 and which is consistent with the juvenile's income or ability to pay and  
10 financial responsibility to his family, provided that the fine is specially  
11 adapted to the rehabilitation of the juvenile or to the deterrence of the  
12 type of crime or offense. If the fine is not paid due to financial  
13 limitations, the fine may be satisfied by requiring the juvenile to submit  
14 to any other appropriate disposition provided for in this section;

15 (9) Order the juvenile to make restitution to a person or entity who  
16 has suffered loss resulting from personal injuries or damage to  
17 property as a result of the offense for which the juvenile has been  
18 adjudicated delinquent. The court may determine the reasonable  
19 amount, terms and conditions of restitution. If the juvenile  
20 participated in the offense with other persons, the participants shall be  
21 jointly and severally responsible for the payment of restitution. The  
22 court shall not require a juvenile to make full or partial restitution if  
23 the juvenile reasonably satisfies the court that he does not have the  
24 means to make restitution and could not reasonably acquire the means  
25 to pay restitution;

26 (10) Order that the juvenile perform community services under the  
27 supervision of a probation department or other agency or individual  
28 deemed appropriate by the court. Such services shall be compulsory  
29 and reasonable in terms of nature and duration. Such services may be  
30 performed without compensation, provided that any money earned by  
31 the juvenile from the performance of community services may be  
32 applied towards any payment of restitution or fine which the court has  
33 ordered the juvenile to pay;

34 (11) Order that the juvenile participate in work programs which are  
35 designed to provide job skills and specific employment training to  
36 enhance the employability of job participants. Such programs may be  
37 without compensation, provided that any money earned by the juvenile  
38 from participation in a work program may be applied towards any  
39 payment of restitution or fine which the court has ordered the juvenile  
40 to pay;

41 (12) Order that the juvenile participate in programs emphasizing  
42 self-reliance, such as intensive outdoor programs teaching survival  
43 skills, including but not limited to camping, hiking and other  
44 appropriate activities;

45 (13) Order that the juvenile participate in a program of academic  
46 or vocational education or counseling, such as a youth service bureau,

1 requiring attendance at sessions designed to afford access to  
2 opportunities for normal growth and development. This may require  
3 attendance after school, evenings and weekends;

4 (14) Place the juvenile in a suitable residential or nonresidential  
5 program for the treatment of alcohol or narcotic abuse, provided that  
6 the juvenile has been determined to be in need of such services; or

7 (15) Order the parent or guardian of the juvenile to participate in  
8 appropriate programs or services when the court has found either that  
9 such person's omission or conduct was a significant contributing factor  
10 towards the commission of the delinquent act, or, under its authority  
11 to enforce litigant's rights, that such person's omission or conduct has  
12 been a significant contributing factor towards the ineffective  
13 implementation of a court order previously entered in relation to the  
14 juvenile;

15 (16) (a) Place the juvenile in a nonresidential program operated by  
16 a public or private agency, providing intensive services to juveniles for  
17 specified hours, which may include education, counseling to the  
18 juvenile and the juvenile's family if appropriate, vocational training,  
19 employment counseling, work or other services; or

20 (b) Place the juvenile under the custody of the Department of  
21 Corrections for placement with any private group home or private  
22 residential facility with which the department has entered into a  
23 purchase of service contract;

24 (17) Instead of or in addition to any disposition made according to  
25 this section, the court may postpone, suspend, or revoke for a period  
26 not to exceed two years the driver's license, registration certificate, or  
27 both of any juvenile who used a motor vehicle in the course of  
28 committing an act for which he was adjudicated delinquent. In  
29 imposing this disposition and in deciding the duration of the  
30 postponement, suspension, or revocation, the court shall consider the  
31 severity of the delinquent act and the potential effect of the loss of  
32 driving privileges on the juvenile's ability to be rehabilitated. Any  
33 postponement, suspension, or revocation shall be imposed  
34 consecutively with any custodial commitment; or

35 (18) Order that the juvenile satisfy any other conditions reasonably  
36 related to the rehabilitation of the juvenile.

37 c. (1) If the county in which the juvenile has been adjudicated  
38 delinquent has a juvenile detention facility meeting the physical and  
39 program standards established pursuant to this subsection by the  
40 Department of Corrections, the court may, in addition to any of the  
41 dispositions not involving placement out of the home enumerated in  
42 this section, incarcerate the juvenile in the youth detention facility in  
43 that county for a term not to exceed 60 consecutive days. Counties  
44 which do not operate their own juvenile detention facilities may  
45 contract for the use of approved commitment programs with counties  
46 with which they have established agreements for the use of

1 pre-disposition juvenile detention facilities. The Department of  
2 Corrections shall promulgate such rules and regulations from time to  
3 time as deemed necessary to establish minimum physical facility and  
4 program standards for the use of juvenile detention facilities pursuant  
5 to this subsection.

6 (2) No juvenile may be incarcerated in any county detention facility  
7 unless the county has entered into an agreement with the Department  
8 of Corrections concerning the use of the facility for sentenced  
9 juveniles. Upon agreement with the county, the Department of  
10 Corrections shall certify detention facilities which may receive  
11 juveniles sentenced pursuant to this subsection and shall specify the  
12 capacity of the facility that may be made available to receive such  
13 juveniles; provided, however, that in no event shall the number of  
14 juveniles incarcerated pursuant to this subsection exceed 50% of the  
15 maximum capacity of the facility.

16 (3) The court may fix a term of incarceration under this subsection  
17 where:

18 (a) The act for which the juvenile was adjudicated delinquent, if  
19 committed by an adult, would have constituted a crime or repetitive  
20 disorderly persons offense;

21 (b) Incarceration of the juvenile is consistent with the rehabilitative  
22 goals of this act and the court is clearly convinced that the aggravating  
23 factors substantially outweigh the mitigating factors as set forth in  
24 section 25 of this act; and

25 (c) The detention facility has been certified for admission of  
26 adjudicated juveniles pursuant to paragraph (2).

27 (4) If as a result of incarceration of adjudicated juveniles pursuant  
28 to this subsection, a county is required to transport a predisposition  
29 juvenile to a juvenile detention facility in another county, the costs of  
30 such transportation shall be borne by the Department of Corrections.

31 d. Whenever the court imposes a disposition upon an adjudicated  
32 delinquent which requires the juvenile to perform a community service,  
33 restitution, or to participate in any other program provided for in this  
34 section other than subsection c., the duration of the juvenile's  
35 mandatory participation in such alternative programs shall extend for  
36 a period consistent with the program goal for the juvenile and shall in  
37 no event exceed one year beyond the maximum duration permissible  
38 for the delinquent if he has been committed to a correctional  
39 institution.

40 (cf: P.L.1988, c.72, s.1)

41

42 2. N.J.S.2C:35-16 is amended to read as follows:

43 2C:35-16. Mandatory Forfeiture or Postponement of Driving  
44 Privileges.

45 In addition to any disposition authorized by this title, the provisions  
46 of section 24 of P.L.1982, c.77 (C.2A:4A-43), or any other statute

1 indicating the dispositions that can be ordered for an adjudication of  
2 delinquency, and notwithstanding the provisions of subsection c. of  
3 N.J.S.2C:43-2 every person convicted of or adjudicated delinquent for  
4 a violation of any offense defined in this chapter or chapter 36 of this  
5 title shall forthwith forfeit his right to operate a motor vehicle over the  
6 highways of this State for a period to be fixed by the court at not less  
7 than six months or more than two years which shall commence on the  
8 day the sentence is imposed. In the case of any person who at the time  
9 of the imposition of sentence is less than 17 years of age, the period  
10 of the suspension of driving privileges authorized herein, including a  
11 suspension of the privilege of operating a motorized bicycle, shall  
12 commence on the day the sentence is imposed and shall run for a  
13 period as fixed by the court of not less than six months or more than  
14 two years after the day the person reaches the age of 17 years. If the  
15 driving privilege of any person is under revocation, suspension, or  
16 postponement for a violation of any provision of this title or Title 39  
17 of the Revised Statutes at the time of any conviction or adjudication  
18 of delinquency for a violation of any offense defined in this chapter or  
19 chapter 36 of this title, the revocation, suspension, or postponement  
20 period imposed herein shall commence as of the date of termination of  
21 the existing revocation, suspension, or postponement.

22 The court before whom any person is convicted of or adjudicated  
23 delinquent for a violation of any offense defined in this chapter or  
24 chapter 36 of this title shall collect forthwith the New Jersey driver's  
25 license or licenses of the person and forward such license or licenses  
26 to the Director of the Division of Motor Vehicles along with a report  
27 indicating the first and last day of the suspension or postponement  
28 period imposed by the court pursuant to this section. If the court is  
29 for any reason unable to collect the license or licenses of the person,  
30 the court shall cause a report of the conviction or adjudication of  
31 delinquency to be filed with the Director. That report shall include the  
32 complete name, address, date of birth, eye color, and sex of the person  
33 and shall indicate the first and last day of the suspension or  
34 postponement period imposed by the court pursuant to this section.  
35 The court shall inform the person orally and in writing that if the  
36 person is convicted of personally operating a motor vehicle during the  
37 period of license suspension or postponement imposed pursuant to this  
38 section, the person shall, upon conviction, be subject to the penalties  
39 set forth in R.S.39:3-40. A person shall be required to acknowledge  
40 receipt of the written notice in writing. Failure to receive a written  
41 notice or failure to acknowledge in writing the receipt of a written  
42 notice shall not be a defense to a subsequent charge of a violation of  
43 R.S.39:3-40. If the person is the holder of a driver's license from  
44 another jurisdiction, the court shall not collect the license but shall  
45 notify forthwith the Director who shall notify the appropriate officials  
46 in the licensing jurisdiction. The court shall, however, in accordance

1 with the provisions of this section, revoke the person's non-resident  
2 driving privilege in this State.

3 [In addition to any other condition imposed, a court may in its  
4 discretion suspend, revoke or postpone in accordance with the  
5 provisions of this section the driving privileges of a person admitted  
6 to supervisory treatment under N.J.S.2C:36A-1 or N.J.S.2C:43-12  
7 without a plea of guilty or finding of guilt] The court shall suspend the  
8 driving privileges of a person admitted to supervisory treatment  
9 pursuant to N.J.S.2C:36A-1 or N.J.S.2C:43-12 during the first six  
10 months of supervisory treatment.

11 (cf: P.L.1988, c.44, s.7)

12

13 3. N.J.S.2C:36A-1 is amended to read as follows:

14 2C:36A-1. Conditional discharge for certain first offenses;  
15 expunging of records.

16 a. Whenever any person who has not previously been convicted of  
17 any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or a  
18 disorderly persons or petty disorderly persons offense defined in  
19 chapter 35 or 36 of this title or, subsequent to the effective date of this  
20 title, under any law of the United States, this State or any other state  
21 relating to marijuana, or stimulant, depressant, or hallucinogenic  
22 drugs, is charged with or convicted of any disorderly persons offense  
23 or petty disorderly persons offense under chapter 35 or 36 of this title,  
24 the court upon notice to the prosecutor and subject to subsection c. of  
25 this section, may on motion of the defendant or the court:

26 (1) Suspend further proceedings and with the consent of the person  
27 after reference to the State Bureau of Identification criminal history  
28 record information files, place him under supervisory treatment upon  
29 such reasonable terms and conditions as it may require including the  
30 mandatory condition of suspension of driving privileges during the first  
31 six months of supervisory treatment; or

32 (2) After plea of guilty or finding of guilty, and without entering  
33 a judgment of conviction, and with the consent of the person after  
34 proper reference to the State Bureau of Identification criminal history  
35 record information files, place him on supervisory treatment upon  
36 reasonable terms and conditions as it may require, or as otherwise  
37 provided by law.

38 b. In no event shall the court require as a term or condition of  
39 supervisory treatment under this section, referral to any residential  
40 treatment facility for a period exceeding the maximum period of  
41 confinement prescribed by law for the offense for which the individual  
42 has been charged or convicted, nor shall any term of supervisory  
43 treatment imposed under this subsection exceed a period of three  
44 years. If a person is placed under supervisory treatment under this  
45 section after a plea of guilty or finding of guilt, the court as a term and  
46 condition of supervisory treatment shall suspend the person's driving

1 privileges for a period to be fixed by the court at not less than six  
2 months or more than two years. In the case of a person who at the  
3 time of placement under supervisory treatment under this section is  
4 less than 17 years of age, the period of suspension of driving privileges  
5 authorized herein, including a suspension of the privilege of operating  
6 a motorized bicycle, shall commence on the day the person is placed  
7 on supervisory treatment and shall run for a period as fixed by the  
8 court of not less than six months or more than two years after the day  
9 the person reaches the age of 17 years.

10 If the driving privilege of a person is under revocation, suspension,  
11 or postponement for a violation of this title or Title 39 of the Revised  
12 Statutes at the time of the person's placement on supervisory treatment  
13 under this section, the revocation, suspension or postponement period  
14 imposed herein shall commence as of the date of the termination of the  
15 existing revocation, suspension or postponement. The court which  
16 places a person on supervisory treatment under this section shall  
17 collect and forward the person's driver's license to the Division of  
18 Motor Vehicles and file an appropriate report with the division in  
19 accordance with the procedure set forth in N.J.S.2C:35-16. The court  
20 shall also inform the person of the penalties for operating a motor  
21 vehicle during the period of license suspension or postponement as  
22 required in N.J.S.2C:35-16.

23 Upon violation of a term or condition of supervisory treatment the  
24 court may enter a judgment of conviction and proceed as otherwise  
25 provided, or where there has been no plea of guilty or finding of  
26 guilty, resume proceedings. Upon fulfillment of the terms and  
27 conditions of supervisory treatment the court shall terminate the  
28 supervisory treatment and dismiss the proceedings against him.  
29 Termination of supervisory treatment and dismissal under this section  
30 shall be without court adjudication of guilt and shall not be deemed a  
31 conviction for purposes of disqualifications or disabilities, if any,  
32 imposed by law upon conviction of a crime or disorderly persons  
33 offense but shall be reported by the clerk of the court to the State  
34 Bureau of Identification criminal history record information files.  
35 Termination of supervisory treatment and dismissal under this section  
36 may occur only once with respect to any person. Imposition of  
37 supervisory treatment under this section shall not be deemed a  
38 conviction for the purposes of determining whether a second or  
39 subsequent offense has occurred under section 29 of P.L.1970, c.226  
40 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

41 c. Proceedings under this section shall not be available to any  
42 defendant unless the court in its discretion concludes that:

43 (1) The defendant's continued presence in the community, or in a  
44 civil treatment center or program, will not pose a danger to the  
45 community; or

46 (2) That the terms and conditions of supervisory treatment will be

1 adequate to protect the public and will benefit the defendant by serving  
2 to correct any dependence on or use of controlled substances which he  
3 may manifest; and

4 (3) The person has not previously received supervisory treatment  
5 under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or  
6 the provisions of this chapter.

7 d. A person seeking conditional discharge pursuant to this section  
8 shall pay to the court a fee of \$45.00. The court shall forward all  
9 money collected under this subsection to the treasurer of the county  
10 in which the court is located. This money shall be used to defray the  
11 cost of juror compensation within that county. A person may apply  
12 for a waiver of this fee, by reason of poverty, pursuant to the Rules  
13 Governing the Courts of the State of New Jersey.  
14 (cf: P.L.1988, c.44, s.12)

15

16 4. N.J.S.2C:43-13 is amended to read as follows:

17 2C:43-13. Supervisory Treatment Procedure.

18 a. Agreement. The terms and duration of the supervisory  
19 treatment shall be set forth in writing, signed by the prosecutor and  
20 agreed to and signed by the participant. One of the terms shall be the  
21 mandatory suspension of driving privileges during the first six months  
22 of supervisory treatment. If the participant is represented by counsel,  
23 defense counsel shall also sign the agreement. Each order of  
24 supervisory treatment shall be filed with the county clerk.

25 b. Charges. During a period of supervisory treatment the charge  
26 or charges on which the participant is undergoing supervisory  
27 treatment shall be held in an inactive status pending termination of the  
28 supervisory treatment pursuant to subsection d. or e. of this section.

29 c. Period of treatment. Supervisory treatment may be for such  
30 period, as determined by the designated judge or the assignment judge,  
31 not to exceed three years, provided, however, that the period of  
32 supervisory treatment may be shortened or terminated as the program  
33 director may determine with the consent of the prosecutor and the  
34 approval of the court.

35 d. Dismissal. Upon completion of supervisory treatment, and with  
36 the consent of the prosecutor, the complaint, indictment or accusation  
37 against the participant may be dismissed with prejudice.

38 e. Violation of conditions. Upon violation of the conditions of  
39 supervisory treatment, the court shall determine, after summary  
40 hearing, whether said violation warrants the participant's dismissal  
41 from the supervisory treatment program or modification of the  
42 conditions of continued participation in that or another supervisory  
43 treatment program. Upon dismissal of participant from the  
44 supervisory treatment program, the charges against the participant may  
45 be reactivated and the prosecutor may proceed as though no  
46 supervisory treatment had been commenced.

1 f. Evidence. No statement or other disclosure by a participant  
2 undergoing supervisory treatment made or disclosed to the person  
3 designated to provide such supervisory treatment shall be disclosed,  
4 at any time, to the prosecutor in connection with the charge or charges  
5 against the participant, nor shall any such statement or disclosure be  
6 admitted as evidence in any civil or criminal proceeding against the  
7 participant. Nothing provided herein, however, shall prevent the  
8 person providing supervisory treatment from informing the prosecutor,  
9 or the court, upon request or otherwise as to whether or not the  
10 participant is satisfactorily responding to supervisory treatment.

11 g. Delay. No participant agreeing to undergo supervisory  
12 treatment shall be permitted to complain of a lack of speedy trial for  
13 any delay caused by the commencement of supervisory treatment.

14 A person applying for admission to a program of supervisory  
15 treatment shall pay to the court a fee of \$45.00. The court shall  
16 forward all money collected under this subsection to the treasurer of  
17 the county in which the court is located. This money shall be used to  
18 defray the cost of juror compensation within that county. A person  
19 may apply for a waiver of this fee, by reason of poverty, pursuant to  
20 the Rules Governing the Courts of the State of New Jersey.  
21 (cf: P.L.1988, c.44, s.15)

22

23 5. This act shall take effect immediately.

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#### STATEMENT

27

28 This bill removes the statutory language which made permissive  
29 certain suspensions or postponements of driving privileges for  
30 drug-related offenses. The bill requires that juveniles for whom a  
31 formal entry of adjudication is postponed for a drug-related offense  
32 shall be subject to a mandatory suspension of driving privileges during  
33 this period of adjournment. Previously, the statute permitted the court  
34 to waive imposition of the suspension or postponement. This  
35 provision would now make the suspension run concurrently with the  
36 period of adjournment. It does not trigger postponement.

37 The bill also removes the court's discretion to avoid imposing the  
38 suspension or postponement for persons admitted to supervisory  
39 treatment or persons admitted to pretrial intervention. The suspension  
40 of driving privileges during a period of supervisory treatment would  
41 be a term and condition of the treatment. The suspension would run  
42 concurrently with the period of treatment for the first six months of  
43 treatment.

44 The sponsor believes that these measures are necessary to ensure  
45 that the loss of driving privileges remains a strong deterrent to persons  
46 involved or considering involvement with drugs. Particularly for

1 juveniles, the possibility of losing this privilege may exert a strong  
2 deterrent effect.

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7 Makes suspension of driving privileges mandatory for persons,  
8 including juveniles, who are diverted for drug offenses.