

SENATE, No. 660

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Senator GORMLEY

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

33 (5) Provide deterrence of future criminal or disorderly behavior by
34 an applicant in a program of supervisory treatment.

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.

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

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

1 program director shall promptly notify the State Board of Medical
2 Examiners when a State licensed physician or podiatrist has been
3 enrolled in a supervisory treatment program after he has been charged
4 with an offense involving drugs or alcohol.

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

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

8 (b) Any legislator judge or county prosecutor charged with a crime
9 while serving in office; or

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

13 (2) As used in this subsection:

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

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

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

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20 2. This act shall take effect immediately.

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23 STATEMENT

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25 This bill concerns admission to pretrial intervention and amends
26 N.J.S. 2C:43-12 by adding a new subsection k. which provides that
27 the following persons shall not be eligible for pretrial intervention:

28 Any person charged with a crime of the first or second degree;

29 Any legislator, judge or county prosecutor charged with a crime
30 while serving in office; or

31 Any former legislator, judge or county prosecutor charged with a
32 crime involving a breach of public trust committed while serving in
33 office.

34 "Judge" means any justice of the Supreme Court; any judge of the
35 Superior or Tax Court and any judge of a municipal or joint municipal
36 court and "legislator" means a member of the State Legislature.

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41 Precludes participation in pretrial intervention in certain cases.