

# ASSEMBLY, No. 5737

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED NOVEMBER 20, 2023

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**SYNOPSIS**

Amends criteria of eligibility for Mental Health Diversion Program.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the Mental Health Diversion Program and  
2 amending P.L. , c. (C. ) (pending before the Legislature  
3 as Senate Bill No. 524 and Assembly Bill No. 1700 of  
4 2022/2023).

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

8  
9 1. Section 2 of P.L. , c. (C. ) (pending before the  
10 Legislature as Senate Bill No. 524 and Assembly Bill No. 1700 of  
11 2022/2023) is amended to read as follows:

12 2. As used in this act:

13 “Eligible offense” means a crime of the third or fourth degree  
14 that does not involve violence or the threat of violence. A crime or  
15 offense does not involve violence or the threat of violence if none  
16 of the following apply: the victim sustains bodily injury as defined  
17 in subsection a. of N.J.S.2C:11-1, or the actor is armed with and  
18 uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1,  
19 or threatens by word or gesture to use a deadly weapon or threatens  
20 to inflict bodily injury. “Eligible offense” shall not include a crime  
21 of the first degree or a presumptively ineligible offense.

22 “Eligible person” means a person who: (1) is mentally competent  
23 as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an  
24 eligible offense, or allegedly committed a presumptively ineligible  
25 offense but is approved for participation by the prosecutor, and is  
26 not otherwise disqualified by the provisions of this act; and (3) has  
27 been diagnosed with a mental disorder, either previously or through  
28 a mental health evaluation conducted through the program, and  
29 there is a nexus between the person’s mental disorder and the  
30 commission of the alleged crime as determined by a licensed mental  
31 health professional.

32 “Mental Health Diversion Program” or “program” means the  
33 criminal diversionary program established pursuant to this act that  
34 shall have the purpose of diverting eligible persons away from the  
35 criminal justice system and into appropriate case management and  
36 mental health services following interaction with law enforcement  
37 and where there is a nexus between the commission of the alleged  
38 offense and the eligible person’s mental disorder.

39 “Mental Health Diversion Team” is a collaboration of  
40 professionals led by the Superior Court Judge and comprised of  
41 Assistant Prosecutors, designated Public Defenders, a licensed  
42 mental health professional, a case manager, a specially trained  
43 mental health probation officer, and a collaborative justice  
44 specialist. If resources are available, a certified drug and alcohol  
45 counselor shall be included as a member of the diversion team.

**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 “Mental disorder ” means a serious mental disorder, other than a  
2 personality disorder, classified within the current version of the  
3 American Psychiatric Association Diagnostic and Statistical Manual  
4 of Mental Disorders (DSM), including, but not limited to, psychotic  
5 disorder, bipolar disorder, major depressive disorder, post-traumatic  
6 stress disorder (PTSD), and co-occurring substance use disorders.

7 “Presumptively ineligible offense” means a crime of the second  
8 degree, a crime of the third or fourth degree that involves violence  
9 or the threat of violence, an offense enumerated in subsection a., b.,  
10 c., or e. of N.J.S.2C:39-5, [sexual offenses subject to Megan’s Law  
11 P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of Title  
12 2C of the New Jersey Statutes] or an arson offense as defined in  
13 chapter 17 of Title 2C of the New Jersey Statutes. For the purposes  
14 of this section, a crime or offense involves violence or the threat of  
15 violence if the victim sustains bodily injury as defined in subsection  
16 a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly  
17 weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by  
18 word or gesture to use a deadly weapon or threatens to inflict bodily  
19 injury. A crime of the first degree and sexual offenses, subject to  
20 subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2) or pursuant  
21 to chapter 14 of Title 2C of the New Jersey Statutes, shall be  
22 ineligible under all circumstances.

23 “Psychosocial assessment” or “psychosocial evaluation” means a  
24 written evaluation of an individual's mental and emotional  
25 functioning.

26  
27 2. Section 6 of P.L. , c. (C. ) (pending before the  
28 Legislature as Senate Bill No. 524 and Assembly Bill No. 1700  
29 2022/2023) is amended to read as follows:

30 6. a. Application process. An eligible person who seeks to  
31 apply to the Mental Health Diversion Program shall, by submitting  
32 an application, agree to postpone their speedy trial rights.  
33 Applicants who are detained pre-trial shall agree to a reasonable  
34 amount of excludable time while legal and clinical determinations  
35 of eligibility are made.

36 b. Legal determination. The prosecutor shall have the discretion  
37 to determine if an eligible person qualifies for diversion to the  
38 Mental Health Diversion Program established or maintained  
39 pursuant to P.L. , c. (C. ) (pending before the Legislature as Senate  
40 Bill No. 525 and Assembly Bill No. 1700 of 2022/2023) after  
41 consideration of the nature of the eligible offense, the causative  
42 relationship between the person’s diagnosed or apparent mental  
43 disorder and the commission of the offense as determined by a  
44 mental health professional, the amenability of the person to  
45 participation in the services of the program, the availability of case  
46 management and mental health services, the desires of any victim,  
47 the person’s history of prior convictions, any accompanying  
48 violations of probation, and the probability that diversion will  
49 promote the person’s recovery, prevent future criminal behavior,

1 and protect public safety. The prosecutor's office shall make a  
2 determination as to legal eligibility within a reasonable time frame.  
3 If an applicant is detained, no more than 30 days of excludable time  
4 **【should】 shall** be granted as against an applicant for a legal  
5 determination.

6 (1) A person who allegedly committed a presumptively  
7 ineligible offense shall not be permitted to participate in the Mental  
8 Health Diversion Program unless the prosecutor further determines,  
9 on a case-by-case basis, that mental health treatment will serve to  
10 benefit the eligible person by addressing the person's mental  
11 disorder and will thereby reduce the likelihood that the person will  
12 thereafter commit another offense and no increased danger to the  
13 community will result from the person being admitted into the  
14 Mental Health Diversion Program.

15 (2) If the person was previously convicted of a violent crime  
16 enumerated in subsection d. of section 2 of P.L.1997, c.117  
17 (C.2C:43-7.2.), an application may be considered on a case-by-case  
18 basis. For purposes of this paragraph, a crime or offense involves  
19 violence or the threat of violence if the victim sustains bodily injury  
20 as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed  
21 with and uses a deadly weapon or threatens by word or gesture to  
22 use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1,  
23 or threatens to inflict bodily injury.

24 (3) Offenses enumerated in subsection a., b., c., or, e. of  
25 N.J.S.2C:39-5 are presumptively ineligible, however, each  
26 application may be considered by the prosecutor on a case-by-case  
27 basis subject to prosecutorial discretion.

28 (4) A person charged with **【a sexual offense as defined in**  
29 **chapter 14 of Title 2C of the New Jersey Statutes that is subject to**  
30 **P.L.2001, c.167 (C.2C:7-12 et seq.) known as Megan's Law and a**  
31 **person currently charged with】** an arson offense shall be ineligible  
32 unless the prosecutor determines on a case-by-case basis that an  
33 exception is warranted.

34 (5) The prosecutor shall consult with victims of an eligible  
35 offense prior to approving an eligible person's admission into the  
36 Mental Health Diversion Program and shall give due consideration  
37 to the victims' position on whether the eligible person should be  
38 admitted into the program. Nothing in this subsection shall be  
39 construed to alter or limit the authority or discretion of the  
40 prosecutor to admit an eligible person into the Mental Health  
41 Diversion Program which the prosecutor deems appropriate.  
42 Nothing in this section shall be construed to limit a prosecutor's  
43 discretion to admit any applicant for any ineligible offense on a  
44 case-by-case basis if, in the prosecutor's discretion, doing so is in  
45 the interests of justice.

46 (6) The prosecutor shall have the discretion to determine  
47 whether to approve, disapprove, or conditionally approve a person

1 for diversion into the Mental Health Diversion Program and the  
2 determination shall not be subject to review by any court.

3 c. The prosecutor's approval of an application for diversion into  
4 the Mental Health Diversion Program pursuant to this section may  
5 be conditioned on an admission or plea of guilt by an eligible  
6 person.

7 d. Clinical determination. If a county prosecutor determines that  
8 an applicant meets the legal requirements for admission into the  
9 Mental Health Diversion Program as established in this act, a  
10 clinical determination of eligibility shall be made by a licensed  
11 mental health professional who holds a current, valid license issued  
12 pursuant to subsection a. of section 6 or subsection a. or d. of  
13 section 8 of P.L.1991, c.134 (C.45:15BB-1 et seq.) who shall  
14 conduct an interview with an applicant to determine clinical  
15 appropriateness, and who may also conduct interviews with family  
16 members, where the applicant has completed a release authorizing  
17 such communications. The licensed mental health professional  
18 should have training or certification in co-occurring diagnoses,  
19 treatment, and services. The licensed mental health professional  
20 shall also assess whether there is a nexus between the person's  
21 mental disorder and the alleged crime. The clinical interview may  
22 be done in-person or remotely. If conducted remotely, the  
23 interview shall be conducted through technology that enables the  
24 interviewer and applicant to see one another. The licensed mental  
25 health professional shall submit a psychosocial evaluation to aid the  
26 prosecutorial determination of the applicant's eligibility for the  
27 Mental Health Diversion Program. Psychosocial reports **[should]**  
28 shall be returned to the prosecutor's office and applicant's legal  
29 counsel simultaneously within a reasonable period of time  
30 following clinical interviews so as to not prejudice the prosecutor's  
31 office or the defendant's interests. The evaluation shall not be  
32 shared outside of the mental health evaluation process within the  
33 prosecutor's office. Defense counsel's use of the psychosocial  
34 evaluation is limited to the mental health diversion application  
35 process, and it cannot be used in any other proceeding. The  
36 psychosocial evaluation shall be provided to the judge presiding  
37 over the mental health diversion calendar prior to the issuance of  
38 any orders of acceptance or guilty pleas. Final decisions as to  
39 acceptance shall lie with the prosecutor's office provided  
40 appropriate mental health or co-occurring services are available in  
41 the community.

42 e. To qualify for prosecutorial diversion under this section, an  
43 eligible person shall, in addition to the terms set forth in the  
44 application to participate in the Mental Health Diversion Program,  
45 agree in writing to the following terms, where relevant to the  
46 eligible offense:

47 (1) Participate in case management and mental health services  
48 initiated through the Mental Health Diversion Program or other  
49 similar services;

- 1       (2) Provide through defense counsel their mental health records  
2 to consider the person's eligibility for the program, and cooperate  
3 with any recommended course of treatment, including the use of  
4 medications as prescribed and participation in counseling;
- 5       (3) Authorize the case management or mental health service  
6 provider to release to the prosecutor and defense counsel periodic  
7 status reports regarding the person's participation, cooperation, and  
8 recovery progress with case management and mental health  
9 services;
- 10       (4) Cooperate with case management service providers to  
11 procure housing, education, and employment services, where  
12 appropriate;
- 13       (5) Refrain from the use of alcohol, use of any recreational  
14 drugs, or any illegal drugs;
- 15       (6) Refrain from the possession or use of firearms or other  
16 weapons;
- 17       (7) Refrain from further criminal activity;
- 18       (8) Refrain from any contact with a victim of the offense unless  
19 otherwise permitted;
- 20       (9) The tolling of time for the purposes of the person's right to a  
21 speedy trial while the person is participating in the program;
- 22       (10) Advise the prosecutor of any change in the person's  
23 residential address or any change in the provider of case  
24 management and mental health services; and
- 25       (11) Any other terms and conditions related to the person's  
26 recovery and public safety deemed appropriate by the prosecutor.
- 27       An eligible person, in consultation with the public defender  
28 assigned to the eligible person or the person's own legal counsel,  
29 shall be given the opportunity to review and sign all necessary  
30 agreements and informed consents after consulting with their  
31 designated or retained counsel.
- 32       f. The prosecutor shall determine the duration of the person's  
33 participation in the Mental Health Diversion Program, whether their  
34 acceptance into the diversion program requires a guilty plea or  
35 whether a person may be accepted without having to enter a plea of  
36 guilty. The length of the person's participation in the program shall  
37 not exceed two years from the date of the Order of Acceptance  
38 issued by the court unless the prosecutor requests that the person's  
39 participation in the program be extended based on the person's  
40 treatment needs and progress, and the court for good cause approves  
41 the request. The term of the person's participation shall be based on  
42 the initial clinical evaluation and recommendations, status reports  
43 of the person's participation and attaining established goals, and  
44 progress reports from the case management and mental health  
45 service providers.
- 46       g. The eligible person shall be responsible for executing any  
47 necessary releases to allow for the Mental Health Diversion  
48 Program or other case management and mental health service  
49 provider to **【receives】** receive periodic reports on the person's

1 participation, cooperation, and recovery progress, including the  
2 execution of any necessary signed releases. The person shall contact  
3 the Mental Health Diversion Program or other case management  
4 and mental health service provider within seven days of the date of  
5 the diversion agreement to initiate treatment, services, and any  
6 other required activity.

7 h. If at any time, the prosecutor finds that the person has  
8 willfully failed to comply with any term or condition of the  
9 diversion agreement, the prosecutor shall file a notice with the court  
10 and defense counsel alleging willful failure to comply with the  
11 conditions of diversion. The court shall afford the person notice  
12 and an opportunity to be heard on the issue of **for** the defendant's  
13 continued participation in the program. All actions taken to  
14 terminate an eligible person's participation in a Mental Health  
15 Diversion Program shall be carried out in full compliance with due  
16 process laws and the Rules Governing the Courts of the State of  
17 New Jersey.

18 i. No fee shall be assessed to a person for application,  
19 participation, or treatment in the Mental Health Diversion Program,  
20 and program participants shall not be required to pay for treatment  
21 and services as a condition of participating in the program. Indigent  
22 participants who are sentenced to a term of probation may petition  
23 the court for a waiver of any other applicable fines, to the extent  
24 consistent with law. The mental health diversion team shall assist  
25 program participants in applying for all federal and State benefits  
26 that may cover or offset the cost of necessary treatment and  
27 services, including medication. The Department of Human Services  
28 shall assist a mental health diversion team in identifying available  
29 resources, programs, and benefits.

30 j. An eligible person may be admitted to the Mental Health  
31 Diversion Program one or more times at the discretion of the  
32 prosecutor, subject to the restrictions in this section, if diversion  
33 promotes the person's recovery, prevents the commission of future  
34 offenses, and protects the safety of the public. Nothing in P.L. , c.  
35 (C. ) (pending before the Legislature as Senate Bill No. 524 and  
36 Assembly Bill No. 1700 of 2022/2023) shall preclude an eligible  
37 person from applying for admission to a criminal justice diversion  
38 program, including a program of supervisory treatment pursuant to  
39 N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1,  
40 or conditional dismissal pursuant to section 1 of P.L.2013, c.158  
41 (C.2C:43-13.1), as an alternative to the Mental Health Diversion  
42 Program to the extent that the person meets the eligibility criteria  
43 and qualifies for those programs. Nothing in  
44 P.L. , c. (C. ) (pending before the Legislature as this bill) shall  
45 preclude an otherwise eligible person with pending charges, prior  
46 convictions, or prior diversion through supervisory treatment  
47 pursuant to N.J.S.2C:43-12, conditional discharge pursuant to  
48 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of  
49 P.L.2013, c. 158 (C.2C:43-13.1) from applying to the Mental

1 Health Diversion Program. A dismissal of a criminal complaint  
2 resulting from successful participation in a Mental Health Diversion  
3 Program pursuant to this section shall bar a person's subsequent  
4 eligibility for a program of supervisory treatment pursuant to  
5 N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1,  
6 or conditional dismissal pursuant to section 1 of P.L.2013, c.158  
7 (C.2C:43-13.1); however an eligible person may seek subsequent  
8 admission to the Mental Health Diversion Program and may be  
9 admitted at the discretion of the prosecutor.

10 k. The dismissal of charges for a crime of the second, third, or  
11 fourth degree, which did not involve violence or the threat of  
12 violence based on a person's successful participation in Mental  
13 Health Diversion Program pursuant to this section shall not be  
14 deemed:

15 (1) a conviction for purposes of disqualifications or disabilities,  
16 if any, imposed by law upon conviction of a petty disorderly  
17 persons or disorderly persons offense or a crime, but shall be  
18 reported to the State Bureau of Identification criminal history  
19 record information files for purposes of determining future  
20 eligibility or exclusion from other diversion programs; or

21 (2) a conviction for the purpose of determining whether a  
22 second or subsequent offense has occurred under any law of this  
23 State.

24 l. Except as otherwise provided in this section, nothing in  
25 P.L. , c. (C. ) (pending before the Legislature as Senate Bill  
26 No. 524 and Assembly Bill No. 1700 of 2022/2023) shall limit the  
27 prosecutor's discretion to otherwise divert or provide any other  
28 available disposition for a person alleged to have committed any  
29 crime or offense other than an eligible offense, and in compelling  
30 circumstances may allow the person to participate in a Mental  
31 Health Diversion Program established or maintained in accordance  
32 with section 3 of P.L. , c. (C. ) (pending before the  
33 Legislature as Senate Bill No. 524 and Assembly Bill No. 1700 of  
34 2022/2023).

35  
36 3. This act shall take effect immediately upon the enactment of  
37 P.L. , c. (C. ) (pending before the Legislature as Senate Bill  
38 No. 524 and Assembly Bill No. 1700 of 2022/2023).

#### 41 STATEMENT

42  
43 This bill amends the criteria for eligibility for diversion into the  
44 Mental Health Diversion Program, established pursuant to the  
45 Senate Bill No. 524 and Assembly Bill No. 1700 of 2022/2023,  
46 which passed both house on June 30, 2023.

47 Under the bill, sexual offenses defined under Chapter 14 of Title  
48 2C of the New Jersey Statutes, including, but not limited to,  
49 aggravated sexual assault, sexual assault, and aggravated criminal

1 sexual contact; and sexual offenses under Megan’s Law, including  
2 certain child endangerment crimes, are ineligible offenses which  
3 disqualify a person from admission into the Mental Health  
4 Diversion Program under all circumstances.

5 Under Senate Bill No. 524 and Assembly Bill No. 1700 of  
6 2022/2023, the aforementioned sexual offenses were defined as  
7 presumptively ineligible offenses that would only be eligible for  
8 admission into the Mental Health Diversion Program on a case-by-  
9 case basis in the prosecutor’s discretion.