

SENATE, No. 4039

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 27, 2023

Sponsored by:

Senator VINCENT J. POLISTINA

District 2 (Atlantic)

Co-Sponsored by:

Senator Diegnan

SYNOPSIS

Creates behavioral health pilot program.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/27/2023)

1 AN ACT establishing a behavioral health court pilot program and
2 supplementing Title 2C of the New Jersey Statutes.

3

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

6

7 1. The Administrative Office of the Courts shall establish a
8 behavioral health court pilot program in accordance with section 2
9 of P.L. , c. (C.) (pending before the Legislature as this bill) in
10 no fewer than two counties and no fewer than five municipalities.
11 The pilot program shall take place only in municipalities and
12 counties that apply to the Administrative Office of the Courts to
13 participate.

14

15 2. a. Any person who is ineligible for probation due to a
16 conviction for a crime which is subject to a presumption of
17 incarceration or a mandatory minimum period of parole
18 ineligibility, or whom the court otherwise finds appropriate for
19 sentencing under this section, may be sentenced to a term of
20 behavioral health special probation in accordance with this section.
21 Notwithstanding the presumption of incarceration pursuant to the
22 provisions of subsection d. of N.J.S.2C:44-1, whenever a person is
23 in need of behavioral health care services and is subject to
24 sentencing under this section is convicted of or adjudicated
25 delinquent for an offense, other than one described in subsection b.
26 of this section, the court, upon notice to the prosecutor, may, on
27 motion of the person, or on the court's own motion, place the
28 person on behavioral health special probation, pursuant to P.L. , c.
29 (C.)(pending before the Legislature as this bill), which shall be for
30 a term of no less than one year and no more than three years, as
31 determined in the court's discretion, provided that the court finds in
32 the record that:

33

34 (1) the person has undergone a professional diagnostic
35 assessment to determine whether and to what extent the person is
36 suffering from behavioral health issues;

36

37 (2) the person is in need of behavioral health care services
38 within the meaning of section 2 of P.L.1997, c.192 (C.26:2S-2) and
39 was in need of behavioral health care services at the time of the
40 commission of the present offense;

40

41 (3) behavioral health care services will serve to benefit the
42 person by addressing the person's behavioral health issues and will
43 thereby reduce the likelihood that the person will thereafter commit
44 another offense;

44

45 (4) the person did not possess a firearm at the time of the
46 present offense and did not possess a firearm at the time of any
47 pending criminal charge;

47

48 (5) the person has not been previously convicted on two or more
separate occasions of crimes of the first or second degree, other

1 than those listed in paragraph (6) of this subsection; or the person
2 has not been previously convicted on two or more separate crimes,
3 where one of the crimes is a crime of the third degree and one of the
4 crimes is a crime of the first or second degree;

5 (6) the person has not been previously convicted or adjudicated
6 delinquent for, and does not have a pending charge of murder,
7 aggravated manslaughter, manslaughter, kidnapping, aggravated
8 assault, aggravated sexual assault or sexual assault, or a similar
9 crime under the laws of any other state or the United States;

10 (7) a suitable treatment facility licensed and approved by the
11 Department of Human Services is able and has agreed to provide
12 appropriate treatment services; and

13 (8) no danger to the community will result from the person
14 being placed on behavioral health special probation pursuant to this
15 section.

16 In determining whether to sentence the person pursuant to this
17 section, the court shall consider all relevant circumstances, and
18 shall take judicial notice of any evidence, testimony, or information
19 adduced at the trial, plea hearing, or other court proceedings, and
20 shall also consider the presentence report and the results of the
21 professional diagnostic assessment to determine whether and to
22 what extent the person is in need of behavioral health care services
23 and would benefit from treatment.

24 As a condition of behavioral health special probation, the court
25 shall order the person to enter a behavioral health care service
26 treatment program at a facility licensed and approved by the
27 Division of Mental Health and Addiction Services in the
28 Department of Human Services to administer behavioral health care
29 services.

30 b. A person shall not be eligible for behavioral health special
31 probation pursuant to this section if the person is convicted of or
32 adjudicated delinquent for:

33 (1) a crime of the first degree;

34 (2) a crime of the first or second degree enumerated in
35 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), a crime
36 of the second degree involving N.J.S.2C:15-1 or N.J.S.2C:18-2; or

37 (3) an offense that involved the distribution or the conspiracy or
38 attempt to distribute a controlled dangerous substance, or its analog,
39 to a juvenile near or on school property.

40 c. The probation department or other appropriate agency
41 designated by the court to monitor or supervise the person's
42 behavioral health special probation shall report periodically to the
43 court as to the person's progress in behavioral health treatment and
44 compliance with court-imposed terms and conditions. The
45 behavioral health treatment provider shall promptly report to the
46 probation department or other appropriate agency all significant
47 failures by the person to comply with any court-imposed term or
48 condition of behavioral health special probation or any

1 requirements of the course of treatment, and shall immediately
2 report any act that would constitute an escape. The probation
3 department or other appropriate agency shall immediately notify the
4 court and the prosecutor in the event that, for any reason, the
5 behavioral health care service terminates the person's participation
6 in the course of treatment.

7 d. (1) Upon a first violation of any term or condition of the
8 behavioral health special probation authorized by this section or of
9 any requirements of the course of treatment, the court, in its
10 discretion, may permanently revoke the person's behavioral health
11 special probation.

12 (2) Upon a second or subsequent violation of any term or
13 condition of the behavioral health special probation authorized by
14 this section or of any requirements of the course of behavioral
15 health treatment, the court shall permanently revoke the person's
16 behavioral health special probation, unless the court finds on the
17 record that there is a substantial likelihood that the person will
18 successfully complete the treatment program if permitted to
19 continue on behavioral health special probation, and the court is
20 clearly convinced, considering the nature and seriousness of the
21 violations, that no danger to the community will result from
22 permitting the person to continue on behavioral health special
23 probation pursuant to this section. The court's determination to
24 permit the person to continue on behavioral health special probation
25 following a second or subsequent violation pursuant to this
26 paragraph may be appealed by the prosecution.

27 In making its determination whether to revoke behavioral health
28 special probation, and whether to overcome the presumption of
29 revocation established in paragraph (2) of this subsection, the court
30 shall consider the nature and seriousness of the present infraction
31 and any past infractions in relation to the person's overall progress
32 in the course of treatment, and shall also consider the
33 recommendations of the treatment provider. The court shall give
34 added weight to the treatment provider's recommendation that the
35 person's behavioral health special probation be permanently
36 revoked, or to the treatment provider's opinion that the person is not
37 amenable to treatment or is not likely to complete the treatment
38 program successfully.

39 (3) If the court permanently revokes the person's behavioral
40 health special probation pursuant to this subsection, the court shall
41 impose any sentence that might have been imposed, or that would
42 have been required to be imposed, originally for the offense for
43 which the person was convicted or adjudicated delinquent. If the
44 court determines or is required pursuant to any other provision of
45 this chapter or any other law to impose a term of imprisonment, the
46 person shall receive credit for any time served in custody pursuant
47 to N.J.S.2C:45-1, and for each day during which the person
48 satisfactorily complied with the terms and conditions of behavioral

1 health special probation while committed pursuant to this section to
2 a residential treatment facility.

3 (4) Following a violation, if the court permits the person to
4 continue on behavioral health special probation pursuant to this
5 section, the court shall order the person to comply with such
6 additional terms and conditions, as are necessary to deter and
7 promptly detect any further violation.

8 e. The court may, in lieu of permanently revoking the person's
9 behavioral health special probation, impose a term of incarceration
10 for a period of not less than 30 days nor more than two months,
11 after which the person's term of behavioral health special probation
12 pursuant to this section may be reinstated. In determining whether
13 to order a period of incarceration in lieu of permanent revocation
14 pursuant to this subsection, the court shall consider the
15 recommendations of the service provider with respect to the
16 likelihood that such confinement would serve to motivate the
17 person to make satisfactory progress in behavioral health care
18 services once behavioral health special probation is reinstated. This
19 disposition may occur only once with respect to any person unless
20 the court is clearly convinced that there are compelling and
21 extraordinary reasons to justify reimposing this disposition with
22 respect to the person. Any such determination by the court to
23 reimpose this disposition may be appealed by the prosecution.

24 f. (1). A person who was successfully discharged from a term
25 of behavioral health special probation as provided in this section
26 may seek an expungement of all records and information relating to
27 the arrest, detention, conviction, and proceeding for any offense
28 enumerated in Title 2C of the New Jersey Statutes that existed at
29 the time of discharge from behavioral health special probation by
30 presenting an application to the Superior Court in the county in
31 which the person was sentenced to behavioral health special
32 probation, which contains a duly verified petition as provided in
33 N.J.S.2C:52-7 for each crime or offense sought to be expunged. A
34 person who was convicted of any offense barred from expungement
35 pursuant to subsection b. or c. of N.J.S.2C:52-2, or who has been
36 convicted of any crime or offense since the date of discharge from
37 behavioral health special probation shall not be eligible to apply for
38 an expungement under this paragraph.

39 (2) In addition, no application for expungement shall be
40 considered until any pending charges are disposed. It shall be the
41 obligation of the prosecutor to notify the court of any disqualifying
42 convictions or any other factors related to public safety that should
43 be considered by the court when deciding to grant an expungement
44 under this paragraph. The Superior Court shall consider the
45 person's verified petition and may order the expungement of all
46 records and information relating to all arrests, detentions,
47 convictions, and proceedings of the person that existed at the time
48 of discharge from behavioral health special probation as

1 appropriate. The court shall grant the relief requested, unless it
2 finds that the need for the availability of the records outweighs the
3 desirability of having the person freed from any disabilities
4 associated with their availability, or it finds that the person is
5 otherwise ineligible for expungement pursuant to this paragraph.
6

7 3. The Administrative Office of the Courts shall monitor the
8 behavioral health court pilot program and report to the Legislature
9 12 months after the organization of the pilot program and within six
10 months after the expiration of the pilot program. The reports shall
11 include the impact of the pilot program on criminal sentencing and
12 the court's calendar and workload. The reports also shall evaluate
13 the effectiveness of the pilot program and recommend whether the
14 program should be continued or expanded.
15

16 4. This act shall take effect immediately and shall expire three
17 years after the effective date.
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20 STATEMENT
21

22 This bill establishes a behavioral health court pilot program.

23 The goal of the behavioral health court pilot program is to divert
24 certain persons suffering from behavioral health issues from the
25 State prison system and into treatment programs, thereby reducing
26 the demand for State prison bed spaces and providing treatment to
27 eligible offenders.

28 Under the bill, a person will be eligible for court directed
29 diversion when the individual has undergone a professional
30 diagnostic assessment and: (1) has no history of possessing a
31 firearm during the commission of an offense; (2) has no previous
32 convictions or pending charges for a serious violent offense; (3) has
33 no convictions on two or more separate occasions; (4) presents no
34 danger to the community if placed on probation; (5) is in need of
35 behavioral health care services; and (6) will benefit from the
36 behavioral health treatment and monitoring.

37 An individual who violates any term or condition of the
38 behavioral health special probation related to behavioral health care
39 treatment may have their probation revoked by the court. Upon a
40 second violation, the court is required to revoke the behavioral
41 health special probation unless the court finds that there is a
42 substantial likelihood that the person will successfully complete the
43 treatment program if permitted to continue. If a court permanently
44 revokes a person's behavioral health special probation, the court is
45 required to impose any sentence that might have been imposed, or
46 that would have been required to be imposed, for the offense for
47 which the person was convicted.

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1 The court has the option, in lieu of revocation of behavioral
2 health special probation, to impose a term of incarceration for a
3 period of not less than 30 days nor more than two months, after
4 which the person's term of behavioral health special probation
5 pursuant to this section may be reinstated.

6 A person successfully discharged from a term of behavioral
7 health special probation may seek expungement of all records and
8 information relating to the arrest, detention, conviction, and
9 proceeding for any offense that existed at the time of discharge.