

## CHAPTER 23

**AN ACT** concerning treatment for drug and alcohol dependent persons, amending N.J.S.2C:35-14 and N.J.S.2C:44-6, and supplementing Title 2C of the New Jersey Statutes.

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

C.2C:35-14.1 Defendant required to submit to professional diagnostic assessment, exceptions.

1. a. Except as provided in subsection c., the court shall require a defendant to submit to a professional diagnostic assessment if:

(1) there is a reasonable basis to believe that the defendant may be a drug dependent person as defined in N.J.S.2C:35-2;

(2) the defendant is charged with:

(a) a crime that is subject to a presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1; or

(b) any crime of the third degree if the defendant has previously been convicted of a crime subject to the presumption of imprisonment or that resulted in imposition of a State prison term; and

(3) the defendant is eligible to be considered for a sentence to special probation pursuant to the provisions of N.J.S.2C:35-14.

b. For the purposes of this section, any of the following circumstances shall provide a reasonable basis to believe that a person may be drug dependent:

(1) the present offense involves a controlled dangerous substance;

(2) the defendant has previously been convicted of an offense involving a controlled dangerous substance, was admitted to pretrial intervention or supervisory treatment, or received a conditional discharge for a charge involving a controlled dangerous substance;

(3) the defendant has any other pending charge in this State, any other state, or a federal court involving a controlled dangerous substance;

(4) the defendant has any time previously received any form of drug treatment or counseling;

(5) the defendant appears to have been under the influence of a controlled dangerous substance during the commission of the present offense, or it reasonably appears that the present offense may have been committed to acquire property or monies to purchase a controlled dangerous substance for the defendant's personal use;

(6) the defendant admits to the unlawful use of a controlled dangerous substance within the year preceding the arrest for the present offense;

(7) the defendant has had a positive drug test within the last 12 months; or

(8) there is information, other than the circumstances enumerated in paragraphs (1) through (7) of this subsection, which indicates that the defendant may be a drug dependent person or would otherwise benefit by undergoing a professional diagnostic assessment within the meaning of paragraph (1) of subsection a. of N.J.S.2C:35-14.

c. The court shall not be required to order a diagnostic assessment pursuant to subsection a. of this section if it is clearly convinced that such assessment will not serve any useful purpose. If the court does not order a diagnostic assessment, the court shall place on the record the reasons for its decision.

d. Nothing in this section shall be construed to limit or constrain the court's authority and discretion to order drug testing, drug screening, or a professional diagnostic assessment at any time.

C.2C:35-14.2 Sentence of special probation for certain defendants.

2. a. In all cases where a professional diagnostic assessment within the meaning of paragraph (1) of subsection a. of N.J.S.2C:35-14 has been ordered and completed pursuant to section 1 of P.L.2012, c.23 (C.2C:35-14.1), the court shall make a determination at sentencing or prior to sentencing whether the defendant may be a drug dependent person as defined in N.J.S.2C:35-2.

b. Notwithstanding any law to the contrary, where the court finds that a defendant is a person in need of treatment as defined in subsection f. of this section and that the defendant additionally meets all the requirements of N.J.S.2C:35-14, the court shall sentence a defendant to special probation pursuant to the provisions of N.J.S.2C:35-14 for the purpose of participating in a court-supervised drug treatment program, regardless of whether the defendant has sought or consents to such a sentence, unless:

(1) the court finds that a sentence of imprisonment must be imposed consistent with the provisions of chapters 43 and 44 of Title 2C of the New Jersey Statutes, in which case a sentence of imprisonment shall be imposed; or

(2) the court is clearly convinced that:

(a) the treatment, monitoring, and supervision services that will be provided under N.J.S.2C:45-1 are adequate to address the defendant's clinical needs;

(b) the defendant's treatment needs would not be better addressed by sentencing the defendant to special probation pursuant to N.J.S.2C:35-14;

(c) no danger to the community would result from placing the person on regular probation pursuant to N.J.S.2C:45-1; and

(d) a sentence of probation authorized under N.J.S.2C:45-1 would be consistent with the provisions of chapters 43 and 44 of Title 2C of the New Jersey Statutes.

c. In making the findings and determinations required by this section, the court shall consider all relevant circumstances, and shall take judicial notice of any evidence, testimony, or information adduced at the trial, plea hearing, or other court proceedings, and also shall also consider the presentence report and the results of any professional diagnostic assessment. The court shall place on the record the reasons for its decision.

d. If, pursuant to paragraph (2) of subsection b. of this section, the court imposes a sentence of probation authorized by N.J.S.2C:45-1, such sentence shall not become final for 10 days in order to permit the appeal of the sentence by the prosecution.

e. Nothing in this section shall be construed to alter the presumption of imprisonment contained in subsection d. of N.J.S.2C:44-1 or to require or authorize the reduction or waiver of a mandatory period of parole ineligibility required by law, or to modify the exceptions to such requirements provided for by law, including but not limited to those provided in N.J.S.2C:35-12 and N.J.S.2C:35-14.

f. For the purposes of this section, the term "person in need of treatment" means a defendant who:

(1) the court has determined to be a drug dependent person as defined in N.J.S.2C:35-2;

(2) has been convicted of:

(a) a crime that is subject to a presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1; or

(b) any other crime of the third degree if the person has previously been convicted of a crime subject to a presumption of imprisonment or a crime that resulted in the imposition of a State prison term; and

(3) is eligible to be considered for a sentence to special probation pursuant to the provisions of N.J.S.2C:35-14.

C.2C:35-14.3 Phase-in of implementation of provisions of law relative to special probation.

3. The Administrative Director of the Courts is authorized to phase-in the implementation of the provisions of P.L.2012, c.23 (C.2C:35-14.1 et al.) related to a program of mandatory sentencing and treatment of qualified offenders to special probation based on monies annually appropriated from the General Fund. Within 60 days of the effective date of this act, the program shall be established in no fewer than three court vicinages, and with further implementation occurring in no less than three additional vicinages in each fiscal year thereafter in a manner to be determined by the Administrative Director of the Courts provided that sufficient State funds have been appropriated. The Administrative Director of the Courts shall select appropriate vicinages for the implementation of the program. The program shall be fully implemented in the State no later than the fifth fiscal year following enactment provided that sufficient State funds have been appropriated.

4. Not later than one year following the effective date of this act, and annually thereafter for five years, the Administrative Director of the Courts shall submit to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), a report containing an evaluation of mandatory special probation. The report shall include the rates of completion and revocation for people admitted to mandatory special probation, the recidivism rates for graduates of mandatory special probation, the costs associated with implementing mandatory special probation, and any other information that may indicate the effectiveness of mandatory special probation. Additionally, the evaluation shall include a comparison of data from vicinages that have phased in mandatory special probation with those that have not, including comparative retention and recidivism data for non-mandatory special probation participants. The Administrative Director of the Courts may make recommendations for legislation or other action appropriate for adoption or consideration by the Legislature.

5. N.J.S.2C:35-14 is amended to read as follows:

Rehabilitation program for drug and alcohol dependent persons subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; criteria for imposing special probation; ineligible offenders; commitment to residential treatment facilities or participation in a nonresidential treatment program; presumption of revocation; brief incarceration in lieu of permanent revocation.

2C:35-14. Rehabilitation Program for Drug and Alcohol Dependent Persons Subject to a Presumption of Incarceration or a Mandatory Minimum Period of Parole Ineligibility; Criteria for Imposing Special Probation; Ineligible Offenders; Prosecutorial Objections; Commitment to Residential Treatment Facilities or Participation in a Nonresidential Treatment Program; Presumption of Revocation; Brief Incarceration in Lieu of Permanent Revocation.

a. Any person who is ineligible for probation due to a conviction for a crime which is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility may be sentenced to a term of special probation in accordance with this section, and may not apply for drug and alcohol treatment pursuant to N.J.S.2C:45-1. Nothing in this section shall be construed to prohibit a person who is eligible for probation in accordance

with N.J.S.2C:45-1 due to a conviction for an offense which is not subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility from applying for drug or alcohol treatment as a condition of probation pursuant to N.J.S.2C:45-1; provided, however, that a person in need of treatment as defined in subsection f. of section 2 of P.L.2012, c.23 (C.2C:35-14.2) shall be sentenced in accordance with that section. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and except as provided in subsection c. of this section, whenever a drug or alcohol dependent person who is subject to sentencing under this section is convicted of or adjudicated delinquent for an offense, other than one described in subsection b. of this section, the court, upon notice to the prosecutor, may, on motion of the person, or on the court's own motion, place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that:

(1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; and

(2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present offense; and

(3) the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and

(4) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; and

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

(6) the person has not been previously convicted on two or more separate occasions of crimes of the first or second degree, other than those listed in paragraph (7); or the person has not been previously convicted on two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime of the first or second degree; and

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

(8) a suitable treatment facility licensed and approved by the Division of Addiction Services in the Department of Human Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of this section; and

(9) no danger to the community will result from the person being placed on special probation pursuant to this section.

In determining whether to sentence the person pursuant to this section, the court shall consider all relevant circumstances, and shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing or other court proceedings, and shall also consider the presentence report and the results of the professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment. The court shall give priority to a person who has moved to be sentenced to special probation over a person who is being considered for a sentence to special probation on the court's own motion or in accordance with the provisions of section 2 of P.L.2012, c.23 (C.2C:35-14.2).

As a condition of special probation, the court shall order the person to enter a residential treatment program at a facility licensed and approved by the Division of Addiction Services in the Department of Human Services or a program of nonresidential treatment by a licensed and approved treatment provider, to comply with program rules and the requirements of the course of treatment, to cooperate fully with the treatment provider, and to comply with such other reasonable terms and conditions as may be required by the court or by law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine testing for drug or alcohol usage throughout the period of special probation. In determining whether to order the person to participate in a nonresidential rather than a residential treatment program, the court shall follow the procedure set forth in subsection j. of this section. Subject to the requirements of subsection d. of this section, the conditions of special probation may include different methods and levels of community-based or residential supervision.

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

(1) a crime of the first degree;

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

(3) a crime, other than that defined in section 1 of P.L.1987, c.101 (C.2C:35-7), for which a mandatory minimum period of incarceration is prescribed under chapter 35 of this Title or any other law; or

(4) an offense that involved the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile near or on school property.

c. (Deleted by amendment, P.L.2012, c.23)

d. Except as otherwise provided in subsection j. of this section, a person convicted of or adjudicated delinquent for a crime of the second degree or of a violation of section 1 of P.L.1987, c.101 (C.2C:35-7), or who previously has been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, who is placed on special probation under this section shall be committed to the custody of a residential treatment facility licensed and approved by the Division of Addiction Services in the Department of Human Services. Subject to the authority of the court to temporarily suspend imposition of all or any portion of the term of commitment to a residential treatment facility pursuant to subsection j. of this section, the person shall be committed to the residential treatment facility immediately, unless the facility cannot accommodate the person, in which case the person shall be incarcerated to await commitment to the residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the court, upon recommendation of the treatment provider, determines that the person has successfully completed the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility pursuant to this section for a period in excess of five years. Upon successful completion of the required residential treatment program, the person shall complete the period of special probation, as authorized by subsection a. of this section, with credit for time served for any imprisonment served as a condition of probation and credit for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. Except as otherwise provided in subsection l. of this section, the person shall not be eligible for early discharge of special probation pursuant

to N.J.S.2C:45-2, or any other provision of the law. The court, in determining the number of credits for time spent in residential treatment, shall consider the recommendations of the treatment provider. A person placed into a residential treatment facility pursuant to this section shall be deemed to be subject to official detention for the purposes of N.J.S.2C:29-5 (escape).

e. The probation department or other appropriate agency designated by the court to monitor or supervise the person's special probation shall report periodically to the court as to the person's progress in treatment and compliance with court-imposed terms and conditions. The treatment provider shall promptly report to the probation department or other appropriate agency all significant failures by the person to comply with any court imposed term or condition of special probation or any requirements of the course of treatment, including but not limited to a positive drug or alcohol test or the unexcused failure to attend any session or activity, and shall immediately report any act that would constitute an escape. The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person refuses to submit to a periodic drug or alcohol test or for any reason terminates his participation in the course of treatment, or commits any act that would constitute an escape.

f. (1) Upon a first violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court in its discretion may permanently revoke the person's special probation.

(2) Upon a second or subsequent violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation unless the court finds on the record that there is a substantial likelihood that the person will successfully complete the treatment program if permitted to continue on special probation, and the court is clearly convinced, considering the nature and seriousness of the violations, that no danger to the community will result from permitting the person to continue on special probation pursuant to this section. The court's determination to permit the person to continue on special probation following a second or subsequent violation pursuant to this paragraph may be appealed by the prosecution.

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

(4) If the court permanently revokes the person's special probation pursuant to this subsection, the court shall impose any sentence that might have been imposed, or that would have been required to be imposed, originally for the offense for which the person was convicted or adjudicated delinquent. The court shall conduct a de novo review of any aggravating and mitigating factors present at the time of both original sentencing and resentencing. If the court determines or is required pursuant to any other provision of this chapter or any other law to impose a term of imprisonment, the person shall receive credit for any time served in custody pursuant to N.J.S.2C:45-1 or while awaiting placement in a treatment facility pursuant to this section, and for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed

pursuant to this section to a residential treatment facility. The court, in determining the number of credits for time spent in a residential treatment facility, shall consider the recommendations of the treatment provider.

(5) Following a violation, if the court permits the person to continue on special probation pursuant to this section, the court shall order the person to comply with such additional terms and conditions, including but not limited to more frequent drug or alcohol testing, as are necessary to deter and promptly detect any further violation.

(6) Notwithstanding any other provision of this subsection, if the person at any time refuses to undergo urine testing for drug or alcohol usage as provided in subsection a. of this section, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at any time while committed to the custody of a residential treatment facility pursuant to this section commits an act that would constitute an escape, the court shall forthwith permanently revoke the person's special probation.

(7) An action for a violation under this section may be brought by a probation officer or prosecutor or on the court's own motion. Failure to complete successfully the required treatment program shall constitute a violation of the person's special probation. A person who fails to comply with the terms of his special probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall thereafter be ineligible for entry into the Intensive Supervision Program, provided however that this provision shall not affect the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction.

g. When a person on special probation is subject to a presumption of revocation on a second or subsequent violation pursuant to paragraph (2) of subsection f. of this section, or when the person refuses to undergo drug or alcohol testing pursuant to paragraph (6) of subsection f. of this section, the court may, in lieu of permanently revoking the person's special probation, impose a term of incarceration for a period of not less than 30 days nor more than six months, after which the person's term of special probation pursuant to this section may be reinstated. In determining whether to order a period of incarceration in lieu of permanent revocation pursuant to this subsection, the court shall consider the recommendations of the treatment provider with respect to the likelihood that such confinement would serve to motivate the person to make satisfactory progress in treatment once special probation is reinstated. This disposition may occur only once with respect to any person unless the court is clearly convinced that there are compelling and extraordinary reasons to justify reimposing this disposition with respect to the person. Any such determination by the court to reimpose this disposition may be appealed by the prosecution. Nothing in this subsection shall be construed to limit the authority of the court at any time during the period of special probation to order a person on special probation who is not subject to a presumption of revocation pursuant to paragraph (2) of subsection f. of this section to be incarcerated over the course of a weekend, or for any other reasonable period of time, when the court in its discretion determines that such incarceration would help to motivate the person to make satisfactory progress in treatment.

h. The court, as a condition of its order, and after considering the person's financial resources, shall require the person to pay that portion of the costs associated with his participation in any rehabilitation program, nonresidential treatment program or period of residential treatment imposed pursuant to this section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to order payment or reimbursement to be made over time and in installments.

i. The court shall impose, as a condition of the special probation, any fine, penalty, fee or restitution applicable to the offense for which the person was convicted or adjudicated delinquent.

j. Where the court finds that a person has satisfied all of the eligibility criteria for special probation and would otherwise be required to be committed to the custody of a residential treatment facility pursuant to the provisions of subsection d. of this section, the court may temporarily suspend imposition of all or any portion of the term of commitment to a residential treatment facility and may instead order the person to enter a nonresidential treatment program, provided that the court finds on the record that:

(1) the person conducting the diagnostic assessment required pursuant to paragraph (1) of subsection a. of this section has recommended in writing that the proposed course of nonresidential treatment services is clinically appropriate and adequate to address the person's treatment needs; and

(2) no danger to the community would result from the person participating in the proposed course of nonresidential treatment services; and

(3) a suitable treatment provider is able and has agreed to provide clinically appropriate nonresidential treatment services.

If the prosecutor objects to the court's decision to suspend the commitment of the person to a residential treatment facility pursuant to this subsection, the sentence of special probation imposed pursuant to this section shall not become final for ten days in order to permit the appeal by the prosecution of the court's decision.

After a period of six months of nonresidential treatment, if the court, considering all available information including but not limited to the recommendation of the treatment provider, finds that the person has made satisfactory progress in treatment and that there is a substantial likelihood that the person will successfully complete the nonresidential treatment program and period of special probation, the court, on notice to the prosecutor, may permanently suspend the commitment of the person to the custody of a residential treatment program, in which event the special monitoring provisions set forth in subsection k. of this section shall no longer apply.

Nothing in this subsection shall be construed to limit the authority of the court at any time during the term of special probation to order the person to be committed to a residential or nonresidential treatment facility if the court determines that such treatment is clinically appropriate and necessary to address the person's present treatment needs.

k. (1) When the court temporarily suspends the commitment of the person to a residential treatment facility pursuant to subsection j. of this section, the court shall, in addition to ordering participation in a prescribed course of nonresidential treatment and any other appropriate terms or conditions authorized or required by law, order the person to undergo urine testing for drug or alcohol use not less than once per week unless otherwise ordered by the court. The court-ordered testing shall be conducted by the probation department or the treatment provider. The results of all tests shall be reported promptly to the court and to the prosecutor. In addition, the court shall impose appropriate curfews or other restrictions on the person's movements, and may order the person to wear electronic monitoring devices to enforce such curfews or other restrictions as a condition of special probation.

(2) The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person fails or refuses to submit to a drug or alcohol test, knowingly defrauds the administration of a drug test, terminates his participation in the course of treatment, or commits any act that would constitute absconding from parole. If the person at any time while entered in a nonresidential treatment program



pursuant to subsection j. of this section knowingly defrauds the administration of a drug test, goes into hiding or leaves the State with a purpose of avoiding supervision, the court shall permanently revoke the person's special probation.

1. If the court finds that the person has made exemplary progress in the course of treatment, the court may, upon recommendation of the person's supervising probation officer or on the court's own motion, and upon notice to the prosecutor, grant early discharge from a term of special probation provided that the person: (1) has satisfactorily completed the treatment program ordered by the court; (2) has served at least two years of special probation; (3) did not commit a substantial violation of any term or condition of special probation, including but not limited to a positive urine test, within the preceding 12 months; and (4) is not likely to relapse or commit an offense if probation supervision and related services are discontinued.

6. N.J.S.2C:44-6 is amended to read as follows:

Procedure on sentence; presentence investigation and report.

2C:44-6 Procedure on sentence; presentence investigation and report.

a. The court shall not impose sentence without first ordering a presentence investigation of the defendant and according due consideration to a written report of such investigation when required by the Rules of Court. The court may order a presentence investigation in any other case.

b. The presentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation, financial resources, including whether or not the defendant is an enrollee or covered person under a health insurance contract, policy or plan, debts, including any amount owed for a fine, assessment or restitution ordered in accordance with the provisions of Title 2C, any obligation of child support including any child support delinquencies, employment history, personal habits, the disposition of any charge made against any codefendants, the defendant's history of civil commitment, any disposition which arose out of charges suspended pursuant to N.J.S.2C:4-6 including the records of the disposition of those charges and any acquittal by reason of insanity pursuant to N.J.S.2C:4-1, and any other matters that the probation officer deems relevant or the court directs to be included. The defendant shall disclose any information concerning any history of civil commitment. The report shall also include a medical history of the defendant and a complete psychological evaluation of the defendant in any case in which the defendant is being sentenced for a first or second degree crime involving violence and:

(1) the defendant has a prior acquittal by reason of insanity pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to N.J.S.2C:4-6; or

(2) the defendant has a prior conviction for murder pursuant to N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1, endangering the welfare of a child which would constitute a crime of the second degree pursuant to N.J.S.2C:24-4, or stalking which would constitute a crime of the third degree pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10); or

(3) the defendant has a prior diagnosis of psychosis.

The court, in its discretion and considering all the appropriate circumstances, may waive the medical history and psychological examination in any case in which a term of imprisonment including a period of parole ineligibility is imposed. In any case involving a conviction of N.J.S.2C:24-4, endangering the welfare of a child; N.J.S.2C:18-3, criminal

trespass, where the trespass was committed in a school building or on school property; section 1 of P.L.1993, c.291 (C.2C:13-6), attempting to lure or entice a child with purpose to commit a criminal offense; section 1 of P.L.1992, c.209 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the victim of the offense is a child under the age of 18, the investigation shall include a report on the defendant's mental condition.

The presentence investigation shall also include information regarding the defendant's history of substance abuse and substance abuse treatment, if any, including whether the defendant has sought treatment in the past. If any of the factors listed in subsection b. of section 1 of P.L.2012, c.23 (C.2C:35-14.1) apply, the presentence report shall also include consideration of whether the defendant may be a drug dependent person as defined in N.J.S.2C:35-2.

The presentence investigation shall include an analysis of whether the defendant should be required to submit to a professional diagnostic assessment within the meaning of paragraph (1) of subsection a. of N.J.S.2C:35-14 in any case where: the defendant may be a drug dependent person as defined in N.J.S.2C:35-2; the defendant is eligible to be considered for a sentence to special probation pursuant to N.J.S.2C:35-14; and the court has not already ordered the defendant to submit to any such diagnostic assessment in regard to the pending matter.

The presentence report shall also include a report on any compensation paid by the Victims of Crime Compensation Agency as a result of the commission of the offense and, in any case where the victim chooses to provide one, a statement by the victim of the offense for which the defendant is being sentenced. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss to include loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family. The probation department shall notify the victim or nearest relative of a homicide victim of his right to make a statement for inclusion in the presentence report if the victim or relative so desires. Any such statement shall be made within 20 days of notification by the probation department.

The presentence report shall specifically include an assessment of the gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance.

c. If, after the presentence investigation, the court desires additional information concerning an offender convicted of an offense before imposing sentence, it may order any additional psychological or medical testing of the defendant.

d. Disclosure of any presentence investigation report or psychiatric examination report shall be in accordance with law and the Rules of Court, except that information concerning the defendant's financial resources shall be made available upon request to the Victims of Crime Compensation Agency or to any officer authorized under the provisions of section 3 of P.L.1979, c.396 (C.2C:46-4) to collect payment on an assessment, restitution or fine and that information concerning the defendant's coverage under any health insurance contract, policy or plan shall be made available, as appropriate to the Commissioner of Corrections and to the chief administrative officer of a county jail in accordance with the provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

e. The court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant

and on written notice to him of the ground proposed. The defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

f. (Deleted by amendment, P.L.1986, c.85).

7. Section 5 of this act shall take effect six months following enactment and sections 1, 2, 3, 4, and 6 shall take effect on the first day of the 12th month following enactment, except that the Administrative Office of the Courts, the Office of the Attorney General, the Office of the Public Defender, and the Department of Human Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved July 19, 2012.