

The Mental Health Diversion Program

This seminar will focus on the proposed legislation to establish a Mental Health Diversion program. The purpose of the program is to divert eligible persons away from the criminal justice system and into appropriate case management and mental health services as early as possible following an interaction with law enforcement where the person is alleged to have committed an “eligible offense.” The goal is to divert individuals with serious mental illnesses from having a public record of conviction or serving custodial time, to allow participants to engage in mental health treatment and social services, and to reduce recidivism, thereby increasing public safety.

This panel will discuss this proposed new law, and the current mental health programs and initiatives within the criminal justice system of New Jersey that are available to defendants who suffer from mental illness. The panel will also discuss the initiatives that are active in Monmouth County and Essex County, when in the criminal process these programs can/should be applied to, the qualifications for applicants, the programs effect on the defendants' criminal case, and an overview of what is required of the defendants once in the program. Panelists from both county programs will discuss what about their programs is working, as well as what can be improved upon.

Moderator/Speaker:

Timothy F. McGoughran, Esq., NJSBA President
Law Office of Timothy F. McGoughran, LLC, Ocean

Speakers include:

Hon. Edward M. Neafsey, J.S.C. (Ret)
Executive Assistant Prosecutor Gwendolyn J. Williams
Essex County Prosecutor's Office

Assistant Prosecutor Lindsay Ashwal
Recovery Diversion Program Coordinator
Monmouth County Prosecutor's Office

Assistant Prosecutor/Special Deputy Attorney General Morgan McGoughran-Tumulty
Essex County Prosecutor's Office/ECPO Mental Health Initiative

Supervising Assistant Prosecutor Renee T. White
Ocean County Prosecutor's Office
Director, Mental Health and Veterans Diversion Programs

Senate Committee Substitute for S 524 - Concerning offenders with mental health concerns.

I. Summary of Key Provisions

The bill establishes a Statewide Mental Health Diversion Program in 3 vicinages (north, central, south) “to divert individuals with serious mental illnesses from having a public record of conviction or serving custodial time in the county jail or State prison, to allow participants to engage in mental health treatment and social services, and to reduce recidivism.”

The purpose of the Mental Health Diversion Program is to divert eligible defendants “away from the criminal justice system and into appropriate case management and mental health services.”

Program objectives include reducing incarceration rates for the target population, increasing their quality of life, increasing community awareness, and reducing recidivism.

The NJ Attorney General in consultation with the Administrative Office of the Courts (AOC) shall establish the program in three regional vicinages in accordance with the act within one year of the bill’s effective date. Two years after the program is established, the Attorney General in conjunction with the AOC and NJ Department of Human Services may, “subject to the availability of funds,” expand the program to additional vicinages.

Eligible offenses” are crimes of the third or fourth degree that do not involve violence. Crimes of the third or fourth degree involving violence “shall be considered by the prosecutor on a case-by-case basis.”

“Eligible persons” are those who are deemed mentally competent (N.J.S.A. 2C:4-4), have committed an eligible offense, have been diagnosed with a mental illness either previously or through the program, and can show a “nexus” between the mental illness and the alleged crime “as determined by a certified mental health professional.”

“Mental illness” is a serious mental disorder, other than a personality disorder, classified in the current DSM.

The “Mental Health Diversion Team” is “led by the Superior Court Judge, and is comprised of assistant prosecutors, designated public defenders, a certified mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist.” A certified drug and alcohol counselor should be included if resources are available.

A Superior Court Judge serves as program leader and presides over participant appearances, Mental Health Diversion Team meetings, and related court proceedings. The Judge makes the final decision on any sanctions imposed upon a program participant.

Allegations of willful failure to comply with the conditions of diversion shall be heard by the court, and the judge shall determine whether continued participation in the program is appropriate.

The prosecutor determines the duration of the applicant’s participation in the program. A prosecutor may condition admission into the program on a plea of guilty. A prosecutor’s decision on diversion into the Mental Health Diversion Program is “not” subject to review by the court.

A person who applies to the program agrees to postpone their speedy trial rights. Those who are detained pre-trial shall agree to a “reasonable amount of excludable time” while a determination is made.

The prosecutor has discretion to determine if an eligible person “qualifies” for diversion based upon: the causative relationship between the illness and the offense “as determined by a mental health professional,” the person’s amenability to participation, the availability of case management and mental health services, the desires of the victim, the person’s prior history of conviction and Violations of Probation, and the probability that diversion will promote recovery, prevent future criminal behavior and protect public safety. “No more than 30 days of excludable time should be granted against a detained applicant for a legal determination.”

A person who allegedly commits an offense that includes violence or threat of violence, or offenses enumerated in N.J.S.A. 2C: 39-5, a-e, is “presumptively ineligible,” unless the prosecutor determines on a case-by-case basis that mental health treatment will address the person’s mental illness, reduce the likelihood of recidivism, and whose admission into the program poses no increased danger to the community.

Second degree crimes, arson offenses in Title 2C Ch. 17, and offenses subject to Megan’s Law in Title 2C Ch. 14, are ineligible, “unless the prosecutor determines on a case-by-case basis that an exception is warranted.”

Once the prosecutor determines that an applicant meets the legal requirements for admission, a certified mental health professional shall conduct a clinical interview, assess whether there is a nexus between the person’s mental illness and alleged crime, and submit a psychosocial report with a clinical determination of eligibility to the prosecutor and the applicant’s legal counsel.

To qualify, a person shall agree in writing to any of the terms listed in the act, including agreeing to participate in case management and mental health services, providing through defense counsel their mental health records, cooperating with case management service providers to secure housing, education and employment services, refraining from the use of alcohol and/or drugs, refraining from possessing firearms, refraining from further criminal conduct, refraining from contact with the victim, and any other terms deemed appropriate by the prosecutor.

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“No fee shall be assessed” to a person for application, participation, or treatment in the program. An eligible person may be admitted into the program one or more times at the discretion of the prosecutor. (Nothing precludes a person from applying for PTI or a conditional discharge as an alternative to the Mental Health Diversion Program.)

When dismissal of the charges is based on the successful completion of the program, a motion for expungement may be made at the time of dismissal or anytime thereafter.

The law takes effect “on the first day after the seventh month” of enactment.

The AOC is required to develop a differentiated mental health supervision case type within the Probation Division. To the extent resources are available, a probation officer shall coordinate with federal and state providers to promote the person’s “recovery, compliance with the terms of probation, and re-integration into the community.”

The Attorney General will report annually on the number of applications to the program, the number of persons accepted, and the number who have successfully completed the program, along with any recommendations.

II. Fiscal Note Accompanying the Bill

The Office of Legislative Services (OLS) determined the bill will cause an increase in State expenditures to the Judiciary and other agencies. OLS reported the AOC estimate of AOC costs to operate the program: \$4.1 million in FY 2024 (including start-up costs), \$3.1 million in FY 2025, and \$3.2 million in FY 2026.

OLS noted costs for the Judiciary to add additional vicinages to the program will be approximately \$1 million per vicinage.

OLS also noted the Attorney General’s Office, Department of Human Services, Office of the Public Defender, and County Prosecutor Offices will incur additional expenditures, but those costs cannot be determined until the program is operational.

Finally, OLS noted that there may be cost savings in the short term by diverting individuals from incarceration and from reduced recidivism.

About the Panelists...

Timothy F. McGoughran is the founding Partner of the Law Office of Timothy F. McGoughran, LLC in Ocean, New Jersey. He concentrates his practice exclusively in family law and handles matters related to divorce, custody, alimony, domestic violence, adoption, prenuptial agreements, parenting rights, same-sex marriage and other issues. He has also served as a Municipal Court Judge in Ocean Township and is a former Municipal Prosecutor for the Township.

Mr. McGoughran is admitted to practice in New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey and the United States Supreme Court. A member of the New Jersey State, Pennsylvania, Ocean County and Monmouth Bar Associations, he is President of the New Jersey State Bar Association, Past Chair of the NJSBA Family Law Section Executive Committee, serves on the Executive Committee of the Association's Military and Veterans Affairs Section and is a member of the Legal Education Committee. Mr. McGoughran is also Past President of the Monmouth Bar Association and Past Co-Chair of the Monmouth Bar Association's Family Law Committee. He has been a Trustee for Monmouth County on the NJSBA's Board of Trustees and has co-chaired the Legislation and Meeting Arrangements and Program Committees.

In 2010 and 2013 Mr. McGoughran was the recipient of the Distinguished Legislative Service Award bestowed by the New Jersey State Bar Association, and the Monmouth Bar Association Family Law Committee presented him with the Family Lawyer of the Year Award in 2012. He is a regular lecturer on law and ethics topics.

Mr. McGoughran received his B.A. from the University of Pittsburgh and his J.D. from Seton Hall Law School. He was a law clerk to the Honorable Robert W. O'Hagan, JSC.

Morgan McGoughran-Tumulty is an Assistant Prosecutor in the Essex County Prosecutor's Office in Newark, New Jersey.

Ms. McGoughran-Tumulty received her B.A. from Marymount Manhattan College and her J.D. from Rutgers Law School-Newark, where she was the recipient of the Frank and Marilyn Askin Award for Excellence in Clinical Studies.

Honorable Edward M. Neafsey, JSC (Ret.) is an associate of the Eagleton Institute of Politics, Rutgers University, in New Brunswick, New Jersey. Prior to his retirement from the bench he was a Judge of the Superior Court, Mercer County, and from 2004 to 2009 was a Superior Court Judge in Monmouth County.

Judge Neafsey has been a Certified Criminal Trial Attorney and is a former First Assistant Attorney General, Office of the New Jersey Attorney General, and also served as Director of the Office of Government Integrity, Acting Director of the Office of State Police Affairs, and Inspector General and Insurance Fraud Prosecutor for the Attorney General's Office. He is Past Chair of the New Jersey State Bar Association Military Law and Veterans Affairs Section, the NJSBA Criminal Law Section and the New Jersey Supreme Court Minority Concerns Subcommittee on Criminal Justice and the Minority Defendant. He is a volunteer mentor in the state's veterans

diversion program and has mentored veterans facing charges in Monmouth and Atlantic County Superior Courts.

Judge Neafsey has served as an Adjunct Professor at Rutgers University Law School and Kean University, and is the recipient of the Professional Leadership Award from Leadership New Jersey and the Distinguished Service Award from the Union County Juvenile Police Officers' Association. He has written numerous articles in which have appeared in local and national publications, including the Rutgers' Eagleton Institute of Politics research article "Beach and Ocean Pollution Disaster: The Response of Two Governors."

Judge Neafsey received his B.A. from Assumption College and his J.D. from Southwestern University School of Law. He also served as a Captain in the United States Army JAG Corps (earning an Army Commendation Medal) and received a Certificate in Peace Studies from the Irish School of Ecumenics in Dublin, Ireland.

Gwendolyn J. Williams is Executive Assistant Prosecutor at the Essex County Prosecutor's Office in Newark, New Jersey. Her job responsibilities include assuming the responsibility for support staff issues, including hiring coordination and collective bargaining as well as other administrative tasks. She served as a Deputy Chief Assistant Prosecutor in the Essex County Prosecutor's Office from 2013 to 2017.

As Deputy Chief Assistant Prosecutor, Ms. Williams was responsible for the supervision of units including Victim Witness, Juvenile Trial, Community Justice, Drug Court and Mental Health; and served as the Director of the Juvenile Trial, Community Justice and Drug Court Units in the office. As the Director of the Juvenile Trial Unit, which is responsible for handling matters that concern juveniles in the criminal justice system in Essex County, she supervised a staff of six attorneys, five detectives, six clericals, two victim witness advocates and several law and college interns. Ms. Williams has been a part of programs including The Greater Newark Safe Cities Initiative, The Gun Strategy Program, The Trigger Lock Program, Weed and Seed, Fugitive Safe Surrender, the World Against Violence (W.A.V.) Youth Conferences, the Summer Youth Internship Program and the Speakers Bureau. She meets with community residents and leaders to discuss pertinent quality of life issues regarding their neighborhoods.

Ms. Williams has been a member of the National Black Prosecutors Association since 1994 and was Regional Director of Region 6 from 1997-2002. She has served as a part-time lecturer at the School of Criminal Justice, Rutgers University, Newark Campus, from 2015 to present.

Ms. Williams received her B.A. from Rutgers University and her J.D. from the University of the District of Columbia Law School (formerly known as Antioch School of Law).