

State of New Jersey

N J L R C

New Jersey Law Revision Commission

TENTATIVE REPORT

relating to

Rehabilitative Sentencing of Drug Offenders

December 1999

This tentative report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the tentative report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS MUST BE RECEIVED BY THE COMMISSION NOT LATER THAN MARCH 1, 2000.

Please send comments concerning this tentative report or direct any related inquiries, to:

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Introduction

New Jersey's controlled dangerous substance law, chapter 35 of the Criminal Code was enacted as the Comprehensive Drug Reform Act of 1986. 2C:35-1. That law provides:

It is the intention of the Legislature to provide for the strict punishment, deterrence and incapacitation of the most culpable and dangerous offenders, and to facilitate where feasible the rehabilitation of drug dependent persons so as ultimately to reduce the demand for illegal controlled dangerous substances and the incidence of drug-related crime.
2C:35-1.1

To implement this policy, the Legislature enacted 2C:35-14 which allows a judge to set aside the usual presumption of imprisonment and sentence an offender to a drug treatment program rather than to prison. A court can exercise this option only when it finds both that no danger to the community will result from placing the offender in a drug treatment program, and that the placement will serve to end the offender's dependency on drugs. 2C:35-14(a). The Legislature placed other restrictions on the drug treatment option: certain second offenders were not eligible without the agreement of the prosecutor, and certain serious offenders were eligible only for a six-month in-patient placement. 2C:35-14(b) and (c).

However, the words of the statute create another restriction on the use of drug treatment, one that does not appear to have been intended by the Legislature. The statute provides that a "drug dependent person may be sentenced to drug treatment. Under a literal reading of the statute, the judge at sentencing may not recognize treatment that took place before the date of sentence; and if the person is no longer drug dependent at the time of sentence, he must go to prison. The precise situation was dealt with in State v. Soricelli, 156 N.J. 525 (1999). In the year between the offense and sentence, Soricelli participated in several drug treatment programs with a "very positive" result. When sentence was imposed, he was no longer drug dependent, making a sentence to a drug treatment program impossible. The Supreme Court held that in such a case, the statute requires a prison sentence. The Court noted that the result did not advance the legislative policy, but found that it was required by the words of the statute:

Ironically, if defendant's drug rehabilitation were incomplete or less successful he would appear to be an appropriate candidate for a five-year probationary sentence conditioned on commitment to a residential drug treatment rehabilitation facility for a minimum of six months, pursuant to N.J.S.A. 2C:35-14. Defendant's apparent rehabilitation, however, renders him ineligible for that sentence.... 156 N.J. at 538.

The Supreme Court went on to refer the matter to the Legislature for correction:

We commend the issue to the Legislature for its consideration because its authorization of treatment rather than incarceration for certain unrehabilitated offenders suggests that an alternative to incarceration logically should be available, subject to discretionary determinations by the prosecutor and sentencing court, for totally rehabilitated drug offenders. See Final Report of the Supreme Court Task Force on Drugs and the Courts (April 1991), at 51 (noting that critics of Comprehensive Drug Reform Act believe that treatment rather than mandatory incarceration is a more constructive sentencing disposition for drug offenders amenable to rehabilitation.)

It is clear that this statute is in need of correction. As a letter to the Law Revision Commission noted, it is the responsible offender who deals with his own problem immediately without waiting for the sentencing court to force him to do it. That offender should not be treated more harshly. If the law is to allow drug treatment as an option, it should do so based on the policies that the statute states, safety of the community and effectiveness of treatment. When an offender begins treatment immediately, these policies are furthered. If the defendant has received effective treatment before the time of sentence, that should not bar a rehabilitative sentence.

The Commission recommends the following amendments to 2C:35-14:

2C:35-14. Rehabilitation Program for Drug Dependent Persons; Mandatory Commitment to Residential Treatment Facilities; Revocation

a. 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 b. of this section, whenever a ~~drug dependent~~ person who was drug dependent at the time of the offense is convicted of an offense under N.J.S. 2C:35-5, N.J.S. 2C:35-6, section 1 of P.L. 1987, c. 101 (C. 2C:35-7), N.J.S. 2C:35-10, N.J.S. 2C:35-11, or N.J.S. 2C:35-13, other than a crime of the first degree, the court, upon notice to the prosecutor, may, on motion of the defendant and where the court finds that no danger to the community will result and that the placement will serve to benefit the defendant by serving to correct his or her dependency on controlled substances, place the defendant on probation, which shall be for a term of five years. As a condition of that probation, the court shall order the defendant to enter a drug rehabilitation program or to continue a drug rehabilitation program already begun, subject to such other reasonable terms and conditions as may be required by the court and by law, pursuant to N.J.S. 2C:45-1, and which shall include periodic urine testing for drug usage throughout the period of probation.

b. Except upon the joint application of the defendant and the prosecuting attorney, no person convicted of an offense under N.J.S. 2C:35-6 or section 1 of P.L. 1987, c. 101 (C. 2C:35-7), or who has been previously convicted of 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, shall be eligible for sentence in accordance with this section.

c. A person convicted of a crime of the second degree or of a violation of section 1 of P.L. 1987, c. 101 (C. 2C:35-7), who is placed in a drug rehabilitation program under this section shall be committed to the custody of a residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the defendant successfully completes the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility for a period in excess of five years. When treatment has begun before the imposition of sentence, the judge may credit the time already spent in a residential treatment program toward the six-month minimum. Upon successful completion of the required residential treatment program, the defendant shall complete the period of probation, as authorized by subsection a. of this section, with credit for time served in the residential treatment facility and for any imprisonment served as a condition of probation. A person placed into a residential treatment facility under this subsection shall be deemed to be subject to official detention for the purposes of N.J.S. 2C:29-5 (escape).

d. Upon a first violation of any term or condition of the probation authorized by this section or of any term or condition of the applicable drug rehabilitation program, the court in its discretion may, and upon a subsequent violation shall, revoke the defendant's probation and impose on the defendant any sentence that might have been imposed originally for the offense of which he was convicted. In that event, the defendant shall receive credit for any time served pursuant to N.J.S. 2C:45-1, and any time spent by the defendant in a residential treatment facility. An action for a violation under this subsection may be brought by a probation officer or prosecutor. Notwithstanding any other provision of this subsection, if a defendant at any time refuses to undergo urine testing for drug usage as provided in subsection a. of this section, the court shall, upon the application of the probation officer or prosecutor, revoke the defendant's probation. Failure to successfully complete the required drug rehabilitation program shall constitute a violation of the defendant's probation. A defendant who fails to comply with the terms of his probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall be ineligible for entry into the Intensive Supervision Program.

e. The court, as a condition of its order, and after considering the defendant's financial resources, may at any time require the defendant to pay for all or some portion of the costs associated with his or her participation in any rehabilitation program or period of residential treatment authorized by this section.

COMMENT

The proposed amendment would allow a judge to impose a drug treatment sentence on a person who has voluntarily begun drug treatment and as a result is no longer drug dependant. Correction of this statute is suggested by the Supreme Court in *State v. Soricelli*, 156 N.J. 525 (1999).