



**ANALYSIS OF THE NEW JERSEY BUDGET**

**THE JUDICIARY**

**FISCAL YEAR**

**2014 - 2015**

# NEW JERSEY STATE LEGISLATURE

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Questions or comments may be directed to the OLS Judiciary Section (609-847-3865) or the Legislative Budget and Finance Office (609-847-3105).

# THE JUDICIARY

Budget Pages..... C-7, C-8, C-16, C-17, C-24, D-437 to  
D-444, H-13.

## **Fiscal Summary (\$000)**

	Expended FY 2013	Adjusted Appropriation FY 2014	Recommended FY 2015	Percent Change 2014-15
State Budgeted	\$651,904	\$687,919	\$692,419	.7%
Federal Funds	\$112,862	\$122,796	\$125,628	2.3%
<u>Other</u>	<u>\$74,642</u>	<u>\$68,172</u>	<u>\$68,891</u>	<u>1.1%</u>
Grand Total	\$839,408	\$878,887	\$886,938	.9%

## **Personnel Summary - Positions By Funding Source**

	Actual FY 2013	Revised FY 2014	Funded FY 2015	Percent Change 2014-15
State	7,336	7,383	7,373	( .1%)
<u>Non State Funded</u>	<u>1,539</u>	<u>1,527</u>	<u>1,513</u>	<u>( .9%)</u>
Total Positions	8,875	8,910	8,886	( .3%)

FY 2013 (as of December) and revised FY 2014 (as of January) personnel data reflect actual payroll counts. FY 2015 data reflect the number of positions funded, as provided by the Judiciary.

Link to Website: <http://www.njleg.state.nj.us/legislativepub/finance.asp>

## Highlights

- The Judiciary is recommended to receive a total of \$54.854 million in FY 2015 for the Drug Court program, \$4.5 million more than the FY 2014 adjusted appropriation of \$50.354 million. The recommendation would provide an additional \$4.5 million for treatment services. P.L.2012, c.23 modified the criteria for admission into the drug court program, to allow more persons to be eligible and have access to the program and authorized a phased-in mandatory drug court program. No additional funding is recommended for Drug Court Operations or for Drug Court Judgeships. The program received an additional \$4.5 million in FY 2014 for the same purpose.
- All other State budgeted appropriations, totaling \$637.6 million are recommended at the same level as in FY 2014.
- The Judiciary anticipates the receipt of \$125.628 million in Federal funding in FY 2015, an increase of \$2.832 million above the FY 2014 adjusted appropriation of \$122.796 million. The change reflects a \$4.132 million increase in the Title IV-D Child Support and Paternity Program offset by reductions in other federal programs. The program, established in 1975, is a Federal/State partnership whose primary mission is to enforce child support obligations against non-custodial parents. Under Title IV-D, the federal government reimburses the State and counties for 66 percent of the cost of conducting child support activities. The additional funding represents the federal portion of the increase in salaries and fringe benefits costs.
- The Judiciary has historically received authorization to carry forward unexpended balances into the following fiscal year. FY 2015 recommended budget language would permit the re-appropriation of up to \$10 million in unexpended balances from FY 2014, subject to the approval of the Director of the Division of Budget and Accounting.

### Background Paper

- Special Probation (Drug Court) – Summary of the Recent Legislative Reform and Its On-Going Implementation.....p. 9

## Fiscal and Personnel Summary

### AGENCY FUNDING BY SOURCE OF FUNDS (\$000)

	Expended FY 2013	Adj. Approp. FY 2014	Recom. FY 2015	Percent Change	
				2013-15	2014-15
<b>General Fund</b>					
Direct State Services	\$651,904	\$687,919	\$692,419	6.2%	0.7%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
Capital Construction	0	0	0	0.0%	0.0%
Debt Service	0	0	0	0.0%	0.0%
<b>Sub-Total</b>	<b>\$651,904</b>	<b>\$687,919</b>	<b>\$692,419</b>	<b>6.2%</b>	<b>0.7%</b>
<b>Property Tax Relief Fund</b>					
Direct State Services	\$0	\$0	\$0	0.0%	0.0%
Grants-In-Aid	0	0	0	0.0%	0.0%
State Aid	0	0	0	0.0%	0.0%
<b>Sub-Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.0%</b>	<b>0.0%</b>
<b>Casino Revenue Fund</b>	\$0	\$0	\$0	0.0%	0.0%
<b>Casino Control Fund</b>	\$0	\$0	\$0	0.0%	0.0%
<b>State Total</b>	<b>\$651,904</b>	<b>\$687,919</b>	<b>\$692,419</b>	<b>6.2%</b>	<b>0.7%</b>
<b>Federal Funds</b>	\$112,862	\$122,796	\$125,628	11.3%	2.3%
<b>Other Funds</b>	\$74,642	\$68,172	\$68,891	( 7.7%)	1.1%
<b>Grand Total</b>	<b>\$839,408</b>	<b>\$878,887</b>	<b>\$886,938</b>	<b>5.7%</b>	<b>0.9%</b>

### PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

	Actual FY 2013	Revised FY 2014	Funded FY 2015	Percent Change	
				2013-15	2014-15
State	7,336	7,383	7,373	0.5%	( 0.1%)
Non State Funded	1,539	1,527	1,513	( 1.7%)	( 0.9%)
<b>Total Positions</b>	<b>8,875</b>	<b>8,910</b>	<b>8,886</b>	<b>0.1%</b>	<b>( 0.3%)</b>

FY 2013 (as of December) and revised FY 2014 (as of January) personnel data reflect actual payroll counts. FY 2015 data reflect the number of positions funded, as provided by the Judiciary.

### AFFIRMATIVE ACTION DATA

Total Minority Percent	39%	42%	42%	---	---
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**Significant Changes/New Programs (\$000)**

<u>Budget Item</u>	<u>Adj. Approp. FY 2014</u>	<u>Recomm. FY 2015</u>	<u>Dollar Change</u>	<u>Percent Change</u>	<u>Budget Page</u>
<b>SPECIAL PURPOSE</b>					
<b>Drug Court Treatment/Aftercare</b>	<b>\$31,008</b>	<b>\$35,508</b>	<b>\$ 4,500</b>	<b>14.5%</b>	<b>D-443</b>
<b>Drug Court Operations</b>	<b>\$16,777</b>	<b>\$16,777</b>	<b>\$0</b>	<b>—</b>	<b>D-443</b>
<b>Drug Court Judgeships</b>	<b>\$2,569</b>	<b>\$2,569</b>	<b>\$0</b>	<b>—</b>	<b>D-443</b>
<b>TOTAL</b>	<b>\$50,354</b>	<b>\$54,854</b>	<b>\$ 4,500</b>	<b>8.9%</b>	

The FY 2015 recommended increase would provide additional funds for treatment of drug court participants. Budget language provides for the transfer of Drug Court Treatment appropriations to the Department of Human Services to fund treatment, aftercare and administrative services associated with the Drug Court program. Evaluation data (budget page D-440) indicate that the drug court program would serve 7,482 participants in FY 2015, an increase of 1,049 (16.3 percent) above FY 2014 and that 3,979 participants will graduate during FY 2015, up 427 (12 percent) from FY 2014. P.L. 2012, c.23 reformed New Jersey's Drug Court program by eliminating prosecutorial objection to admission to drug court, expanding the eligibility criteria for voluntary drug court, and authorizing a phased-in mandatory drug court program.

**FEDERAL FUNDS**

<b>Superior Court</b>	<b>—</b>				
<b>Appellate Division</b>	<b>\$50</b>	<b>\$0</b>	<b>(\$ 50)</b>	<b>( 100.0%)</b>	<b>D-443</b>

FY 2014 Federal Funding for the eFiling project was a one-year competitive grant and was used to hire a contractor to help with the business requirements for a "build-a-brief" application. No funding is required in FY 2015, but additional funding may be applied for in future years to build the system.

<b>Civil Courts</b>	<b>\$450</b>	<b>\$0</b>	<b>(\$ 450)</b>	<b>( 100.0%)</b>	<b>D-443</b>
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The "Improving the Completeness of Firearms" program was competitive federal grant that the Judiciary originally intended to pursue in FY 2014, but decided not to due to the lack of personnel to complete the project. There are no plans to seek this funding in FY 2015.

**Significant Changes/New Programs (\$000) (Cont'd)**

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2014</u>	<u>Recomm.</u> <u>FY 2015</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
<b>Family Courts</b>	<b>\$39,171</b>	<b>\$39,789</b>	<b>\$ 618</b>	<b>1.6%</b>	<b>D-443</b>
<b>Probation Services</b>	<b>\$78,879</b>	<b>\$81,443</b>	<b>\$ 2,564</b>	<b>3.3%</b>	<b>D-443</b>
<b>Trial Court Services</b>	<b>\$4,246</b>	<b>\$4,396</b>	<b>\$ 150</b>	<b>3.5%</b>	<b>D-443</b>
<b>TOTAL</b>	<b>\$122,296</b>	<b>\$125,628</b>	<b>\$ 3,332</b>	<b>2.7%</b>	

The majority of the FY 2015 estimate of federal funds for these components of the State Court system pertains to the Title IV-D Child Support and Paternity Program. The program, established in 1975, is a Federal/State partnership whose primary mission is to enforce child support obligations against non-custodial parents. Under Title IV-D, the federal government reimburses the State and counties for 66 percent of the cost of conducting child support activities. The increase represents the federal portion of the increase in salaries and fringe benefits costs.

Under Family Courts, the Child Support and Paternity program is anticipated to increase by \$618,000, from \$37.846 million in FY 2014 to \$38.464 million in FY 2015. The NJ Court Improvements Database program is anticipated to receive \$300,000 in FY 2015, the same level of funding as the FY 2014 adjusted appropriation. Federal funding for NJ State Court Improvement Training is anticipated to remain at the FY 2014 level of \$300,000. The NJ State Court Improvement Fund is anticipated to receive \$400,000 in FY 2015, the same level of funding as the FY 2014 adjusted appropriation. The State Access and Visitation Program is anticipated to receive \$325,000, the same level as that received in FY 2014.

Under Probation Services, the Child Support and Paternity program is anticipated to increase by \$3.364 million, from \$78.079 million in FY 2014 to \$81.443 million in FY 2015. The SMART Probation program, which received \$800,000 in FY 2014 is anticipated to receive no funding in FY 2015. This is a three-year pilot program and there is no need to apply for additional funding for FY 2015. The SMART Probation program, funded under the Federal FY 2012 Second Chance Act, provided resources to states and other units of government to develop more effective and evidenced-based probation practices that effectively address offenders' needs and reduce recidivism. According to the Judiciary, this project will redistribute cases to probation officers based on risk. Rutgers will evaluate whether there is a benefit to assigning cases of the same risk category to probation officers. A probation officer will now be assigned all high risk, all medium risk or all low risk cases. The number of cases assigned to probation officers will be smaller if they have a higher risk.

The entire \$4.396 million in federal funds anticipated in FY 2015 for Trial Court Services is for the Child Support and Paternity program.

**Significant Changes/New Programs (\$000) (Cont'd)**

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2014</u>	<u>Recomm.</u> <u>FY 2015</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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**ALL OTHER FUNDS**

<b>Supreme Court</b>	<b>\$19,884</b>	<b>\$21,628</b>	<b>\$ 1,744</b>	<b>8.8%</b>	<b>D-443</b>
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The Supreme Court oversees the operation of several self-funded activities. The Bar Admissions Financial Committee is funded through a fee charged to all applicants to the New Jersey Bar and revenues reflect the number of applicants to the New Jersey Bar. The Judiciary anticipates FY 2015 collections of \$4.08 million for this program, \$375,000, or 10.12 percent more than the FY 2014 collection level of \$3.705 million.

The Board on Attorney Certification is self-funded by fees charged to attorneys seeking certification in Civil Trial, Criminal Trial, Matrimonial Law and Workers Compensation Law in New Jersey. The FY 2015 income for this program is expected to decline by \$95,000 to \$406,000 in FY 2015.

The Ethics Financial Committee and the New Jersey Lawyers Fund for Client Protection are funded through assessments charged to all practicing attorneys. The Ethics Financial Committee collections are expected to increase by \$1.238 million, from \$12.862 million in FY 2014 to \$14.100 million in FY 2015, a 9.63 percent increase. The New Jersey Lawyers Fund for Client Protection is projected to collect \$2.403 million in FY 2015, \$109,000 more than the amount collected in FY 2014. Mandatory Continuing Legal Education is anticipated to collect \$639,000 in FY 2015, \$117,000 more than the 2014 collections.

<b>Civil Courts</b>	<b>\$3,488</b>	<b>\$3,013</b>	<b>(\$ 475)</b>	<b>( 13.6%)</b>	<b>D-443</b>
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The Budget estimates that the Superior Court Trust Fund will collect \$413,000 in FY 2015, a reduction of \$75,000 under the FY 2014 adjusted appropriation of \$488,000. The Superior Court Trust Fund consists of deposits made into court as a result of various actions such as foreclosures, condemnations, liquidations, dissolutions, good faith deposits by insurers, sales of infants' lands, insolvencies, receiverships and interpleaders.

The Special Civil Part, Certified Mailers Fund is estimated to collect \$2.4 million in FY 2015, \$400,000 less than the amount collected in FY 2014. The fund provides for reimbursement to the trial courts for postage and printing costs incurred in sending out Special Civil Part service of process via certified mailers.

<b>Municipal Courts</b>	<b>\$25,010</b>	<b>\$25,410</b>	<b>\$ 400</b>	<b>1.6%</b>	<b>D-443</b>
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The Statewide Automated Traffic System (ATS) is anticipated to collect \$25.4 million in FY 2015, \$400,000 more than the amount collected in FY 2014. The ATS system records all traffic violation matters in most of the State's municipal courts, and facilitates exchange of information with law enforcement agencies and the Motor Vehicle Commission. The Municipal Court Administrator Certification Program is anticipated to collect \$10,000 in FY 2015, the same as the amount collected in FY 2014.



**Significant Changes/New Programs (\$000) (Cont'd)**

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2014</u>	<u>Recomm.</u> <u>FY 2015</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
<b>Probation Services</b>	<b>\$2,940</b>	<b>\$2,840</b>	<b>(\$ 100)</b>	<b>( 3.4%)</b>	<b>D-443</b>

The Comprehensive Enforcement Fund is anticipated to collect \$2.3 million in FY 2015, \$100,000 less than the amount collected in FY 2014. The Comprehensive Enforcement Program (P.L.1995, c.9), provides for the enforcement of court orders and oversees the collection of court ordered fines, assessments, surcharges and judgments in the civil, criminal and family divisions, and Tax Court. In addition, municipal courts may request that any matters not resolved in accordance with their courts be transferred to the Comprehensive Enforcement Program. By statute, the Judiciary is permitted to deduct 25 percent of all funds collected through the program, (except for victim restitution and for Victim of Crime Compensation Board (VCCB) assessments) for deposit in the Comprehensive Enforcement Program Fund. The remaining 75 percent of the collections are paid to the agencies and individuals to whom these funds are owed.

The Court Computerized Collections Fund is anticipated to collect \$540,000 in FY 2015, the same as the amount collected in FY 2014. The Court Computerized Collections Program, which was authorized under P.L.1992, c.169 permits the Administrative Office of the Courts to impose a transaction fee on all persons sentenced to probation every time they make a payment toward court-ordered fines, Victim of Crime Compensation Office (VCCO) assessments, Drug Enforcement Demand Reduction (DEDR) penalties, forensic lab fees and restitution awards. These transaction fees are then deposited into the Court Computerized Collections Fund, and used to automate and improve the Judiciary's collections operation.

<b>Information Services</b>	<b>\$16,450</b>	<b>\$15,600</b>	<b>(\$ 850)</b>	<b>( 5.2%)</b>	<b>D-443</b>
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The FY 2015 recommendation for Information Services includes estimated collections of \$2.2 million for the Electronic Access to Court Records program, a reduction of \$300,000 under the FY 2014 collections. P.L.1994, c.54 authorized the Administrative Office of the Courts to develop and operate a computer system which provides electronic access to court information and allows the public to file court documents electronically. The Court Records Inquiry System provides electronic access to case and judgment information on the Civil Automated Case Management System. The system charges a user fee and is self-supporting.

The Court Technology Improvement Fund is anticipated to collect \$13 million in FY 2015, a decrease of \$550,000 under the amount collected in FY 2014. The fund was established as a dedicated fund to be used for the development, establishment, operation and maintenance of computerized court information systems in the Judiciary.

The County Correctional Information System (CCIS) is anticipated to collect \$400,000 in FY 2015, the same amount as that collected in FY 2014. The CCIS serves as the Statewide automated information system for the entry, retrieval and exchange of data related to the management of county jail populations.

## Significant Language Changes

### Explanation

No significant language changes are recommended for the Judiciary in FY 2015.

EXPLANATION: FY 2014 language not recommended for FY 2015 denoted by strikethrough.  
Recommended FY 2015 language that did not appear in FY 2014 denoted by underlining.

## Background Paper: Special Probation (Drug Court) – Summary of the Recent Legislative Reform and Its On-Going Implementation

Budget Pages.... D-437 to D-444

The State's program of special probation, part of the Judiciary's drug court program, is a form of court supervised drug rehabilitation. The program dates back to the late 1990s, and has recently undergone a major reform with the enactment of P.L.2012, c.23 (C.2C:35-14.1 et al.). There are three key elements to the reform: mandatory sentencing; expanded eligibility for participation; and elimination of prosecutorial objections to participation. In accordance with the legislative enactment's effective date, the changes to eligibility and the elimination of prosecutorial objections are already effective, while the implementation of mandatory sentencing is intended to be phased in Statewide over a five-year period, which began July 1, 2013 (FY 2014).

### A. Background on Drug Courts

The drug court program originated as a "creature of the judiciary" in 1997, State v. Meyer, 192 N.J. 421, 430-431 (2007), as a means of focusing judicial resources on drug-dependent offenders who were overburdening the criminal justice system. See generally, Administrative Office of the Courts, Manual for Operation of Adult Drug Courts In New Jersey, 5-6 (July 2002) (hereinafter Drug Court Manual). Initially, the target was non-violent offenders eligible for disposition under our Criminal Code for "special probation," as set forth in N.J.S.A. 2C:35-14, which authorizes treatment and supervision for drug-dependent offenders who otherwise were bound for prison for having committed an offense carrying either (1) a statutory presumption of incarceration or (2) a mandatory prison term. Meyer, 192 N.J. at 431-432; Drug Court Manual, *supra*, at 6.

By 2002, drug court eligibility was expanded, solely by court directive, so that other offenders, not eligible for special probation under N.J.S.A. 2C:35-14, but instead eligible for regular probation via other provisions of the Criminal Code could be enrolled.<sup>1</sup> Meyer, 192 N.J. at 431-432; Drug Court Manual, *supra*, at 16-17.

Thus, there are two tracks of eligibility for participation in the Judiciary's drug court program. The first track is based upon a drug-dependent offender's eligibility for special probation, as dictated by the Legislature pursuant to the specific provisions set forth in N.J.S.A. 2C:35-14. The second track is based upon an offender's eligibility for regular probation, guided by the general sentencing provisions of the Criminal Code, and implemented by the Judiciary through its promulgation of the Drug Court Manual. See State v. Clarke, 203 N.J. 166, 174-176 (2010).

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<sup>1</sup> This expanded eligibility for the drug court program via regular probation is still limited to non-violent, drug-dependent offenders, as one of the qualifying criteria for enrollment is that "no danger to the community is likely to result from the person being placed on probation." Drug Court Manual, *supra*, at 16; cf. N.J.S.A. 2C:35-14, subsection a., paragraph (9) (finding similarly that "no danger to the community will result from the person being placed on special probation" as requirement for special probation eligibility).

## Background Paper: Special Probation (Drug Court) – Summary of the Recent Legislative Reform and Its On-Going Implementation (Cont'd)

The recent drug court reform applies to only the first track, special probation eligibility, as the second track is implemented solely under court directive and therefore remains under the judicial branch's exclusive purview in accordance with the New Jersey Supreme Court's constitutional power to administer the courts of this State. N.J. Const. (1947), Art. VI, Sec. 2, par. 3; Meyer, 192 N.J. at 430, 434-435.

### B. Drug Court Reform Details

The recent reform consists of three major elements:

#### 1. Mandatory Sentencing

The reform generally mandates special probation drug court sentencing for offenders determined to be "person[s] in need of treatment" following a court-required professional diagnostic assessment. N.J.S.A. 2C:35-14.1 and -14.2 (established by P.L.2012, c.23, ss.1 and 2). The only time that a diagnostic assessment would not be required is when the court is clearly convinced that such assessment will not serve any useful purpose. N.J.S.A. 2C:35-14.1, subsection c.

In all cases in which an assessment is performed and the offender found to be in need of treatment, the court is required to sentence the offender to special probation drug court (assuming that all other eligibility requirements under N.J.S.A. 2C:35-14 are met), unless other statutory provisions require a sentence of imprisonment, or the court is clearly convinced that adequate resources and supervision are available via regular probation consistent with the general sentencing guidelines of the Criminal Code. N.J.S.A. 2C:35-14.2, subsection b.

This system for mandatory sentencing is being phased in Statewide over a five-year period, with implementation occurring in no less than three court vicinages in each fiscal year provided that sufficient State funds continue to be appropriated for such purpose. N.J.S.A. 2C:35-14.3 (established by P.L.2012, c.23, s.3). It began in July 2013, with an additional drug court appropriation of \$4.5 million (\$50.354 million total) provided in the FY 2014 annual appropriations act, P.L.2013, c.77, for the vicinages of Hudson, Ocean, and Somerset/Hunterdon/Warren. An additional \$4.5 million has been recommended for the expansion of mandatory sentencing into the vicinages of Atlantic/Cape May, Mercer, and Passaic.

Assuming that such funding continues, once Statewide implementation is complete, it will replace, in most cases, the old system for special probation drug court sentencing, which previously served only as an optional alternative that required initiation by either the offender or the court on its own motion. See N.J.S.A. 2C:35-14, subsection a. With respect to non-violent offenders who are not, in accordance with N.J.S.A. 2C:35-14.2, "person[s] in need of treatment," eligibility for special probation shall remain available as an optional alternative to imprisonment so long as it is moved for by such offenders or the court, and ultimately approved by the court. N.J.S.A. 2C:35-14, subsection a.

## Background Paper: Special Probation (Drug Court) – Summary of the Recent Legislative Reform and Its On-Going Implementation (Cont'd)

### 2. Expanded Eligibility

The reform also expanded eligibility for special probation drug court by allowing a non-violent, drug-dependent offender who committed either second degree robbery or burglary to be eligible for admission. N.J.S.A. 2C:35-14, subsection a. and subsection b., paragraph (2). Commitment of these crimes previously rendered an offender ineligible for program participation.

In the case of robbery, the reform did away with ineligibility based upon robbery being either the subject of an offender's (a) *current* prosecution, or the subject of (b) *another* prosecution, represented by a previous conviction or a still pending charge. *Id.* In the case of burglary, the reform only did away with ineligibility based upon the burglary being the subject of an offender's *current* prosecution, as the statutory eligibility requirements were not previously impacted by a prior burglary conviction or pending charge for such crime. N.J.S.A. 2C:35-14, subsection a.

Post reform, among the crimes that continue to establish automatic ineligibility, based upon either an offender's current prosecution, or being the subject of another prosecution (a prior conviction or pending charge) are the following crimes of violence: murder; aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault, and sexual assault. See N.J.S.A. 2C:35-14, subsection a., paragraph (7) and subsection b., paragraph (2).

Beyond automatic ineligibility based on involvement with these crimes, an offender's ineligibility can also still result under the statutory scheme, unchanged by the reform, due to other previous criminal acts. An offender is rendered ineligible if that offender has: (a) been previously convicted of any crimes of the first or second degree, that do not establish automatic program ineligibility, on two or more separate occasions; or (b) been previously convicted on two or more separate occasions with one crime being a crime of the first or second degree and one being a crime of the third degree, other than a third degree crime of simple drug possession. N.J.S.A. 2C:35-14, subsection a., paragraph (6).

### 3. Elimination of Prosecutorial Objections to Participation

Lastly, the reform did away with the ability for prosecutors to object to offenders' admission into special probation drug court. N.J.S.A. 2C:35-14, subsection c. (repealed – previous text available in Advance Law to P.L.2012, c.23, s.5). Prior to the reform, prosecutors had the right to object to such placement, which could be overridden only upon a court's finding of "a gross and patent abuse of prosecutorial discretion." In essence, the consent of prosecutors was previously required to gain access to special probation drug court, given the high legal standard needed for a court to overturn an objection should one be filed. See Clarke, 203 N.J. at 175 ("Admission . . . [was] generally obtained with the prosecutor's consent."). Now, "in its present form, the consent of the prosecutor is no longer required for admission to special probation." State v. Bishop 429 N.J. Super. 533, 550 (App. Div. 2013).

## **Background Paper: Special Probation (Drug Court) – Summary of the Recent Legislative Reform and Its On-Going Implementation (Cont'd)**

The removal of prosecutorial objections appears to not only increase the potential for non-violent, drug-dependent offenders to seek special probation as an optional alternative to prison, see N.J.S.A. 2C:35-14, subsection a., but also permits the implementation of the mandatory special probation sentencing for offenders found to be “person[s] in need of treatment” as discussed under point 1 above.

### **D. Conclusion**

Under the provisions of P.L.2012, c.23 (C.2C:35-14.1 et al.), the recent reform of the program of special probation, part of the Judiciary’s drug court program, first began with an expansion of its eligibility requirements and the elimination of prosecutorial objections for blocking participation in the program.

It continued, beginning in July 2013, with an intended five year Statewide phase-in of mandatory special probation sentencing for all offenders found to be “person[s] in need of treatment,” as defined in N.J.S.A. 2C:35-14.2. Such mandatory sentencing was implemented in three court vicinages, Hudson, Ocean, and Somerset/Hunterdon/Warren, using an additional FY 2014 \$4.5 million appropriation for such purpose. For FY 2015, there is a recommended appropriation of an additional \$4.5 million to further Statewide implementation into three more vicinages: Atlantic/Cape May; Mercer; and Passaic. If enacted, this would establish implementation of mandatory special probation drug court sentencing within six of the State’s 15 vicinages in the second full year of the phase-in, keeping the Judiciary on pace to accomplish Statewide implementation within the intended five-year period.

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