

POSITION PAPER

220th NJ Legislature
(2022-23)

Increase Effectiveness of Diversion Programs by Granting Judge’s Discretion to Give Participants Credits Against Certain Fines for Performance of Restorative Services.

ISSUE:

Grant judges discretion to give a person who successfully completes a court-ordered supervisory treatment program for substance use disorder credit against the amount owed on any court-imposed financial obligations.

BILL NUMBERS:

*S268 (Turner D15)
A2135 (Reynolds-Jackson D15, Wimberly D35)*

NCAAR POSITION:

The National Center for Advocacy and Recovery, Inc. (NCAAR) strongly supports this issue. Criminal fines and fees are draconian, inequitable, and do not increase public safety. Reducing or eliminating such fines based on credits earned for engagement in restorative services will reduce barriers to reentry, housing, transportation, and employment, increase positive outcomes for those who successfully complete diversionary programs, and make New Jersey’s criminal justice system more equitable and restorative.

Overview of Diversion Programs, the Role of Criminal Fines and Penalties, and Contingency Management.

Diversion programs, such as Law Enforcement Assisted Diversion (LEAD) and recovery courts (f.k.a. drug courts), which redirect individuals with lower-level criminal charges away from the criminal justice system and into community-based services such as treatment for substance use disorder, supportive housing, and mental health care have been shown to be extremely effective.¹ These programs result in improved outcomes for participants, lower recidivism rates, and decreased costs to the government.² Such programs have been implemented across the nation, and here in New Jersey with positive outcomes. In addition to expanding diversionary programs, an increasing number of states and local governments are recognizing that criminal fees and fines are often “poverty penalties”, create barriers to reentry, housing, and employment, and disproportionately impact members of minoritized populations.³ Consequently, numerous states and municipalities are introducing legislation which would give judge’s discretion to consider a person’s ability to pay when imposing such fines, prohibiting such fines for juveniles, ending suspension of driving privileges for failure to pay fines, and providing credits against such fines for completing community service.⁴

Providing credits or a reduction in fines as a means to incentivize and reward positive behavior is based on the long-standing principle and efficacious intervention, known as contingency management. Contingency management is a behavioral therapy program that focuses on rewarding positive or desired behavior to reinforce and establish a more permanent behavior change. There is a plethora of research to show that contingency management interventions consistently improve substance use disorder treatment outcomes.⁵ Contingency management can be applied to a wide array of people and is effective regardless of patients' background characteristics, pre-existing conditions, or presenting problems.⁶ There appear to be broad benefits of contingency management intervention, including greater drug abstinence, higher utilization of other treatments and medical services, and reductions in risky sexual behavior.⁷ Contingency management may be more effective than other psychosocial interventions such as relapse prevention and cognitive-behavioral therapy.⁸

By Passing S268/A2135 New Jersey Will Be Increasing the Efficacy of Diversionary Programs and Removing Barriers for those who Successfully Complete Such Programs.

This legislation would allow a person who successfully completes a court-ordered supervisory treatment program for substance use disorder, such as Recovery Court, to earn credit against the

amount owed on any court-imposed financial obligations, other than restitution or child support, or other support or maintenance ordered by a court upon. The credit would be based upon the performance of reformatory service ordered by the court as a condition for admission into the supervisory treatment program and could include such activities as substance use disorder treatment or services, educational or vocational services, employment training or services, family counseling, and volunteer or other work. Passing this legislation would synergize the positive impact of New Jersey's diversionary programs. This legislation would also further fulfill the recommendations of the 2018 Report Of The Supreme Court Committee On Municipal Court Operations, Fines, And Fees⁹ and previous criminal justice reform undertaken in 2017.¹⁰ Recognizing the draconian and inequitable toll of criminal fines and fees, New Jersey has already enacted legislation that eliminates certain juvenile justice fines, fees, costs, and other monetary penalties.¹¹ Giving judge's discretion to similarly reduce fines for system impacted adults who engage in restorative services will reduce barriers to reentry, housing, transportation, and employment, increase positive outcomes for those who successfully complete diversionary programs, and make New Jersey's criminal justice system more equitable and restorative.

¹ Bernard, Cora L., Rao Isabelle J., Robison Konner K., & Brandeau, Margaret L. (2020). Health outcomes and cost-effectiveness of diversion programs for low-level drug offenders: A model-based analysis. *PLOS Medicine*. <https://doi.org/10.1371/journal.pmed.1003239>.

² Bernard et al. (2020) citing Collins SE, Lonczak HS, Clifasefi SL. LEAD Program Evaluation: Criminal Justice and Legal System Utilization and Associated Costs: *Harm Reduction Research and Treatment Lab at the University of Washington Harborview Medical Center*; 2015.

³ Bannon, Alicia, Nagrecha, Mitali, & Diller, Rebekah (2010). Criminal justice debt: a barrier to reentry. *Brennan Center for Justice at New York University School of Law*. <https://www.brennancenter.org/our-work/research-reports/criminal-justice-debt-barrier-reentry>

⁴ Assessing Fines and Fees in the Criminal Justice System. (2020). National Conference of State Legislators. <https://www.ncst.org/research/civil-and-criminal-justice/assessing-fines-and-fees-in-the-criminal-justice-system637605706.aspx>

⁵Bolívar HA, Klemperer EM, Coleman SRM, DeSarno M, Skelly JM, Higgins ST. (2021). Contingency Management for Patients Receiving Medication for Opioid Use Disorder: A Systematic Review and Meta-analysis. *JAMA Psychiatry*. 78(10):1092–1102. doi:10.1001/jamapsychiatry.2021.1969; Brown, Hayley D. & DeFulio, Anthony. (2020). Contingency management for the treatment of methamphetamine use disorder: A systematic review. *Drug and Alcohol Dependence*, 216, <https://doi.org/10.1016/j.drugalcdep.2020.108307>; Dallery, J., Raiff, B.R., Grabinski, M.J. *et al.* Technology-Based Contingency Management in the Treatment of Substance-Use Disorders. *Perspect Behav Sci* 42, 445–464 (2019). <https://doi.org/10.1007/s40614-019-00214-1>; and Petry, N. M., Alessi, S. M., Olmstead, T. A., Rash, C. J., & Zajac, K. (2017). Contingency management treatment for substance use disorders: How far has it come, and where does it need to go?. *Psychology of addictive behaviors : journal of the Society of Psychologists in Addictive Behaviors*, 31(8), 897–906. <https://doi.org/10.1037/adb0000287>.

⁶Petry *et al.* (2017).

⁷Bolívar *et al.* (2021).

⁸Brown *et al.* (2020).

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<https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf>

¹⁰This monumental change in New Jersey’s justice system was authorized by Constitutional amendment, N.J. Const., art. I, ¶ 11, and by statute, N.J.S.A. 2A:162-15 to 2A:162-26, and is referred to as “criminal justice reform.”

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<https://www.nj.gov/governor/news/news/562022/20220110e.shtml>

CONTACT

Nikki Tierney
Policy Analyst
732.687.9796
ntierney@ncaarbh.org

360 Corporate Blvd.
Robbinsville, NJ 08691
609.689.0599 (PH) | 609.689.3244 (FX)
POLICY@NCAARBH.ORG