



DRUG ADDICTION IN NEW JERSEY: COMMUNITY-BASED TREATMENT AS A VIABLE ALTERNATIVE TO DRUG COURT

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I. INTRODUCTION

After the New Jersey State Legislature passed a series of overly punitive drug laws in the 1980s to stifle drug use, a myriad of issues ensued. Faced with a swelling prison population and corrections budget, legislators and judges realized that they had to act fast. Rather than repeal the drug laws that were plagued from the start, they turned to the state-wide implementation of a drug court system as a panacea.

New Jersey's drug court system has proven to be more burdensome than beneficial in delivering addiction treatment services to those who require them most. Fortunately, diversionary programs throughout the state concentrated on community, municipal, and local levels hold great promise. Although they are relatively new, such programs have the potential to detect and treat drug addiction at earlier stages, further long-term recovery, and save more money than New Jersey's current drug court system.

Part II of this Note explains how New Jersey's drug court system came into existence and the way its treatment process works. Part III elaborates on the wide array of downsides evident in New Jersey's drug court system. Part IV highlights recent, cutting-edge, local alternatives to New Jersey's drug court system that can positively change the way in which addiction is handled throughout the state.

II. NEW JERSEY'S CURRENT, COUNTY-BASED DRUG COURT STRUCTURE

To best comprehend New Jersey's drug court system and how related problems arose, an analysis of its historical developments as well as its structural framework is warranted. It is essential to understand what motivated New Jersey political officials and judges to deem what was once a pilot program in select counties a "best practice" to be fully implemented throughout the state.¹ It is also critical to examine how eligibility in New Jersey's drug court program is determined and the treatment process takes place.

A. *The Historical Development of Drug Courts in New Jersey*

New Jersey's drug court system developed to help lessen the blow of the state's oppressive legislative response to drug abuse in the 1980s.² In

1. See *Drug Courts*, N.J. CTS., <https://njcourts.gov/courts/criminal/drug.html?lang=en> (last visited Nov. 7, 2021).

2. See Bruce D. Stout & Bennett A. Barlyn, *The Human and Fiscal Toll of America's Drug War: One State's Experience*, 6 ALB. GOV'T L. REV. 525, 529 (2013) (explaining that the war on drugs in New Jersey "in many respects is an exemplar of everything that can go

1987, the state legislature passed the Comprehensive Drug Reform Act (“CDRA”),³ which “remains the legislative cornerstone of New Jersey’s war against illicit narcotics.”⁴ The CDRA established new kinds of drug offenses and graded drug crimes as criminal offenses instead of violations of the state’s health code.⁵ Furthermore, the CDRA imposed mandatory parole ineligibility periods for several of the drug offenses it created.⁶ For instance, one such offense, “distribution or possession with intent to distribute any type or amount of drugs within 1,000 feet” of school property, carries a “three-year mandatory period of incarceration before parole eligibility.”⁷ Additionally, the CDRA created harsh penalties for drug offenders, such as the repeat drug offender provision, requiring “any defendant convicted of manufacturing, distributing or possessing” a controlled dangerous substance “with intent to distribute” to “be sentenced to a mandatory extended term of imprisonment with a corresponding period of parole ineligibility” upon request of the prosecutor, so long as the defendant “has previously been convicted of such a crime.”⁸

Since the CDRA was enacted, its effect has been devastating. Between 1987 and 1999, New Jersey’s state prison population nearly doubled from 15,945 to 30,818 inmates.⁹ Furthermore, many of those imprisoned for criminal penalties established by the CDRA were drug addicted and “posed little to no threat to public safety.”¹⁰ Moreover, by 2002, 36% of New Jersey’s state prison population was incarcerated for a

wrong”); Stephen Hunter et al., *New Jersey’s Drug Courts: A Fundamental Shift from the War on Drugs to a Public Health Approach for Drug Addiction and Drug-Related Crime*, 64 RUTGERS L. REV. 795, 797, 806 (2012) (describing New Jersey’s response to the war on drugs as “among the most draconian of all the states”).

3. N.J. STAT. ANN. § 2C:35 (West 2016).

4. Stout & Barlyn, *supra* note 2, at 529.

5. *Id.* at 531.

6. *Id.* at 532.

7. Hunter et al., *supra* note 2, at 797–98. This particular drug offense created by the CDRA has been found to be especially destructive for Black and Hispanic urban communities in New Jersey, where school zones are prevalent and include “the entire school property . . . and then 1,000 feet in every direction.” *Id.* at 802–03. Also, the offense does not distinguish between drug-addicted offenders who sell drugs to support their habits and major drug traffickers. *Id.* at 800.

8. Stout & Barlyn, *supra* note 2, at 532. The repeat offender law, “at minimum, double[s] a repeat drug offender’s custodial sentence.” *Id.*

9. *Id.* at 536. “The [New Jersey] Department of Corrections attributed 62% of that growth directly to the enactment and enforcement of the CDRA.” *Id.* Several of the inmates had no prior convictions. *Id.* at 537.

10. *Id.* In fact, according to the New Jersey Department of Health and Department of Corrections, “[t]he overwhelming majority” of CDRA provision offenders “had serious drug and alcohol addictions.” *Id.*

drug offense.¹¹ Lastly, between 1987 and 2006, the New Jersey Department of Corrections budget had increased from \$289 million to \$1.1 billion.¹²

Although the CDRA is heavily cited for having created an abundance of harsh criminal penalties concerning drug related crimes, it also contained a key provision that enabled drug courts to evolve into their current form in New Jersey. More specifically, the CDRA provided for a “rehabilitative sentencing option” now referred to as “special probation.”¹³ Codified as title 2C, section 35-14 of the New Jersey Code of Criminal Justice,¹⁴ this section of the CDRA allowed for judges to sentence defendants to a minimum term of “six months of residential drug treatment and five years of . . . ‘special probation’” if they met certain, key criteria.¹⁵ Due to a lack of state funding for drug treatment, section 35-14 was not initially utilized.¹⁶ However, pilot drug courts that began in Camden and Essex counties in 1997 to serve “nonviolent substance abusing defendants” had expanded to Union and Passaic counties by 1999.¹⁷ Meanwhile, the New Jersey Administrative Office of the Courts and several other state agencies had planned to use a combination of state and federal funds to create a “Drug Court Initiative.”¹⁸ The “Drug Court Initiative” specifically targeted individuals who were “eligible for sentencing pursuant” to section 35-14.¹⁹

By May of 2000, the New Jersey Conference of Criminal Presiding Judges “recommended that drug courts be established as a ‘Best Practice’ in the Criminal Division[,]” and in June of that year, the New Jersey

11. *Id.* Many of those incarcerated were “young men of color” and currently, “77% of the state prison population” is comprised of “racial and ethnic minorities.” *Id.* at 538.

12. *Id.* During that time, the State Department of Corrections had become “the fastest growing segment of the New Jersey state budget.” *Id.*

13. Hunter et al., *supra* note 2, at 807–08 (quoting N.J. STAT. ANN. § 2C:35-14(a) (West 2016)).

14. N.J. STAT. ANN. § 2C:35-14(a) (West 2016).

15. Stout & Barlyn, *supra* note 2, at 533 (quoting N.J. STAT. ANN. § 2C:35-14 (West 2016)). The criteria required that the offense was “non-violent, did not involve a weapon, and was not conducted in a school zone.” *Id.* Moreover, the defendant not only had to be convicted of a drug offense, but in addition, must have faced mandatory parole ineligibility. *Id.*

16. *See id.* at 533–34.

17. STATE OF N.J. ADMIN. OFF. OF THE CTS., MANUAL FOR OPERATION OF ADULT DRUG COURTS IN NEW JERSEY 5 (2002) [hereinafter MANUAL]. The initial pilot drug court programs were funded by federal implementation grants. *See id.*

18. *Id.* Other state agencies included the New Jersey Governor’s Advisory Council, the New Jersey Attorney General’s Office, the New Jersey Department of Health and Senior Services, and the New Jersey Department of Corrections. *Id.* The first drug courts to commence operations under the “Drug Court Initiative” began in Camden and Passaic counties in 1997 and later expanded to Essex, Union, and Mercer counties in 1999. *Id.*

19. *Id.* at 6.

Judicial Council agreed and moved for “a comprehensive statewide proposal” known as “Drug Courts: A Plan for Statewide Implementation.”²⁰ In September, 2001, the New Jersey Governor signed L.2001, c.243,²¹ which “provided the Judiciary with funding to expand drug courts beyond the initial five courts.”²² More specifically, L.2001, c.243 established funding for both treatment providers and drug court judicial staff.²³ Finally, in 2002, the New Jersey Administrative Office of the Courts created the “Manual for Operation of Adult Drug Courts in New Jersey” for the purpose of implementing “uniform [policies and procedures] to ensure the equitable operation of drug courts throughout New Jersey.”²⁴ Thus, New Jersey’s county-based drug court structure was born.

B. Eligibility Criteria and Treatment Procedure in New Jersey Drug Courts

The Manual established two routes or “tracks” through which New Jersey drug courts can divert eligible defendants from traditional criminal sentencing and imprisonment.

Under the first track, section 35-14(a) offenders are provided “an alternative to incarceration” if they “are subject to a presumption of incarceration pursuant to [section 44-1(d)].”²⁵ The Manual also provides that “[s]pecial probation” under the first track is available for defendants who are convicted under section 35-7 or had previously been convicted under section 35-5(a).²⁶ If the defendant in question is either subject to a presumption of incarceration pursuant to section 44-1(d) or convicted under section 35-7—or previously convicted under section 35-5(a)—the court must find that they satisfy a series of nine eligibility criteria

20. *Id.*

21. Act of Sept. 6, 2001, ch. 243, 2001 N.J. Laws. 1532.

22. *Drug Courts*, *supra* note 1. The “Statewide Implementation Project” “involved a three-phase process resulting in the establishment of a statewide drug court program” that culminated in 2004. *Id.*

23. *Id.*; Hunter et al., *supra* note 2, at 808.

24. Hunter et al., *supra* note 2, at 808 (alteration in original) (quoting *State v. Meyer*, 930 A.2d 428, 434 (N.J. 2007)).

25. MANUAL, *supra* note 17, at 10. The New Jersey Appellate Division has recently clarified that “the presumption of imprisonment in [section 44-1(d)] is determined by reference to the present offense(s) for which defendant is convicted and is to be sentenced” and not “by reason of his or her past criminal history” or because the defendant “was previously convicted of a crime subject to the presumption.” *State v. Harris*, 247 A.3d 890, 921 (N.J. Super. Ct. App. Div. 2021).

26. MANUAL, *supra* note 17, at 10.

outlined by section 35-14(a).²⁷ Next, if the court considers the defendant eligible under the first track, after sentencing pursuant to section 35-14, they are “placed on special probation for a term of five years” and immediately “committed to a residential treatment facility” for a minimum six month term “or until the court, upon recommendation of the treatment provider, determines that the person has successfully completed the residential treatment program.”²⁸ Finally, defendants who successfully complete the residential treatment program’s requirements are subsequently mandated to “complete the period of special probation,” which includes “aftercare treatment.”²⁹

On the other hand, the Manual provides for a second diversionary track for “[s]ubstance abusing nonviolent offenders” through “general sentencing provisions” who do not meet the eligibility criteria of section 35-14.³⁰ A drug court may consider a defendant eligible under the second track if they meet four criteria: (1) being drug or alcohol dependent and likely benefiting from treatment and monitoring; (2) not having any prior convictions for violent crimes; (3) not possessing a firearm at the time of the offense or any previous offenses; and (4) not presenting a danger to the community.³¹ If eligible, second track defendants are sentenced to a term of probation that cannot “exceed five years[,]” like first track participants pursuant to section 35-14.³² However, unlike first track defendants, those who are diverted via the second track are not subject

27. *Id.* at 10–11. For instance, the defendant must be “a drug or alcohol dependent person within the meaning of [section_35-2] and was drug or alcohol dependent at the time of the commission of the present offense.” N.J. STAT. ANN. § 2C:35-14(a)(2) (West 2016).

28. MANUAL, *supra* note 17, at 14. However, the Manual states that “no person shall remain in the custody of a residential treatment facility for a period in excess of five years.” *Id.*

29. *Id.* at 14–15. The drug court may also impose additional requirements on a defendant who successfully completes the residential treatment program requirements, including but not limited to “intensive supervision by a probation officer, mandatory urine monitoring and regular appearances before the . . . judge.” *Id.* at 15.

30. *Id.* at 16. The second track “includes both prison-bound and non-prison bound offenders.” *Id.* While the New Jersey Appellate Division rejected an attempt to impose the nine eligibility criteria of section 34-14(a) on second track defendants in light of recent modifications to the Manual, it explained that such criteria may still be relevant to the prosecutor and the court. *See State v. Figaro*, 228 A.3d 466, 475–76 (N.J. Super. Ct. App. Div. 2020); N.J. STAT. ANN. § 2C:34-14(a) (West 2016).

31. MANUAL, *supra* note 17, at 16. Furthermore, a treatment facility “who is willing to provide appropriate treatment services” must be identified and such treatment has to be “licensed and approved by the State of New Jersey, Department of Health and Senior Services, Division of Addiction Services” for a Drug Court to approve second track use. *Id.* at 16–17.

32. *Id.* at 17.

to a specified term of statutorily-mandated probation and instead, the length of supervision rests with the drug court judge's discretion.³³

Despite the Manual's seemingly clear two-track system, it did not take long for New Jersey courts to begin to challenge whether a second track actually existed and whether section 35-14 was the sole-means through which defendants could be diverted to drug court.

Three years after the New Jersey Administrative Office of the Courts promulgated the Manual, the New Jersey Appellate Division considered the Law Division's denial of a defendant's request for placement into Ocean County's Drug Court in *State v. Matthews*.³⁴ In *Matthews*, after a defendant pleaded guilty to several third-degree burglary and theft counts, he argued on appeal that his sentence, and denial of admission into the program, violated his plea agreement terms.³⁵ More specifically, the defendant argued that based on the two-track system created by the Manual, the Law Division was permitted to sentence him to drug court under the second track since he qualified for probation under section 45-1, a "general sentencing provision[]" as previously noted.³⁶ However, the Appellate Division ultimately rejected the defendant's argument and affirmed the Law Division.³⁷ In doing so, the court read section 35-14 in conjunction with section 45-1 and held that "when the express conditions enumerated in [section 35-14]—the specific statute—are extant, admission into special probation, i.e. a drug court program, is governed by [section 35-14]."³⁸ Furthermore, the court reasoned that the Manual serves as "a procedural tool for operational guidance for New Jersey judiciary staff" and "does not . . . give a sentencing judge the authority to disregard the constraints in [section 35-14]."³⁹

As a result of *Matthews*, it appeared as if the Manual's delineation of a two-track system for defendants eligible for drug court in New Jersey did not hold much weight. Only the first track seemed to be of

33. *Id.* at 18. Additionally, unlike first track defendants, drug court judges have the option to terminate a second track defendant's probationary term early. *Id.*

34. 875 A.2d 1050, 1051–52 (N.J. Super. Ct. App. Div. 2005), *disapproved of by*, *State v. Meyer*, 930 A.2d 428 (N.J. 2007).

35. *Id.* at 1052.

36. *See id.* at 1053.

37. *Id.* at 1055–56.

38. *Id.* at 1054. The Appellate Division further opined that under a plain language reading of section 35-14, courts "must first consider [section 35-14]—and if sentencing is appropriate under that statute, the court then looks to [section 45-1] to determine if any additional conditions of probation may apply." *Id.* at 1055.

39. *Id.*

importance.⁴⁰ However, in 2007, the New Jersey Supreme Court “specifically disapproved of” *Matthews* and set a clear precedent, establishing the Manual as “the governing document for drug courts.”⁴¹ In *State v. Meyer*, the New Jersey Supreme Court considered whether the Law Division’s admission of a defendant into the Warren County Drug Court was proper, despite his ineligibility for “special probation” under the first track.⁴² In doing so, the Supreme Court affirmed the Law Division, holding that based on the crimes charged, the defendant was eligible for drug court under the second track and that the point of section 35-14 “was not to establish a stand-alone court to handle drug cases.”⁴³ Additionally, the *Meyer* court opined that just because “special probation” is not an option “does not relieve the trial court of its obligation to impose the appropriate conditions of probation, including in-patient or out-patient drug rehabilitation, pursuant to [section 45-1].”⁴⁴

Having been established as the primary authority for drug court procedure in New Jersey, the Manual also sets forth how a drug court’s treatment process takes place. Initially, defendants who wish to have their criminal cases diverted to drug court via the first track or second track “may make [an] application to the drug court program at any time following an arrest and up until the plea cutoff.”⁴⁵ Then, the county prosecutor screens the defendant to determine whether they are legally eligible to participate in the drug court program.⁴⁶ If the defendant is legally eligible, the prosecutor will send a letter to the defense counsel as well as the court, and the defendant is subsequently screened by a substance abuse evaluator.⁴⁷ Next, if the substance abuse evaluator finds that the defendant is clinically eligible for drug court and sends their

40. Cf. Hunter et al., *supra* note 2, at 811 (“For several years after the *Matthews* opinion, drug courts were in disarray. Some drug court judges strictly followed *Matthews*, some found ways to distinguish it, and others just ignored the opinion.”).

41. *Id.* at 813 (citing *State v. Meyer*, 930 A.2d 428, 435 (N.J. 2007)).

42. 930 A.2d 428, 424–25 (N.J. 2007). Although the defendant was indicted for a third-degree drug charge and fourth-degree shoplifting, the county prosecutor’s office considered him ineligible for drug court under section 35-14 due to his prior third-degree convictions. *Id.* at 424.

43. *Id.* at 434, 437.

44. *Id.* at 437.

45. MANUAL, *supra* note 17, at 19. However, in 2013, section 35-14 was amended and two new sections were added “to require admission to the Drug Court program of otherwise eligible offenders regardless of whether they made a voluntary application.” *Drug Courts*, *supra* note 1.

46. MANUAL, *supra* note 17, at 21.

47. *See id.* at 22. The substance abuse evaluator is tasked with ascertaining whether the defendant is clinically suitable for drug court, the proper kind of medical care for the defendant, and the most fitting treatment provider for the defendant’s needs. *See id.* at 22–23.

written evaluation to the judge, prosecutor, and defense counsel, a plea deal will be offered to the defendant.⁴⁸ Finally, if the defendant pleads guilty to the offense charged, they sign a “Drug Court Participation Agreement” and “special bail conditions” can be imposed.⁴⁹ At that time, the drug court treatment process begins.

One key feature of New Jersey’s drug court treatment process is its utilization of a “team approach.”⁵⁰ The “team approach” holds case conferences on a weekly basis, before court proceedings, “to encourage shared decision making” and “provide the judge with information from a number of sources” as to the participant’s progress in the program.⁵¹ The drug court team includes the drug court judge, program coordinator, prosecutor, public defender, substance abuse evaluator, probation supervisor and officers, team leader, investigator, judiciary clerk, and treatment provider representatives.⁵² However, despite the “team approach,” the “judge is the final decision maker.”⁵³ In fact, unlike other probationary terms, drug court is unique since drug court judges are known for their “continuing oversight and personal involvement . . . in the treatment process.”⁵⁴

Another important feature of the drug court treatment process in New Jersey is its intensity.⁵⁵ The Manual describes New Jersey’s drug court program as “rigorous, requiring intensive supervision based on frequent drug testing and court appearances.”⁵⁶ As drug court participants progress through the program’s four stages, hoping to complete or “graduat[e]” from the program, each stage encompasses “various levels and degrees of substance abuse treatment and probationary supervision.”⁵⁷ Furthermore, drug courts can use several

48. *Id.* at 23. The plea offer “identifies drug court participation as an alternative sentence.” *Id.*

49. *Id.* at 24. The “Drug Court Participation Agreement . . . delineates the rules and responsibilities of those subject to drug court supervision.” *Id.* Furthermore, “special bail conditions” may include “weekly drug court appearances, regular reporting to a substance abuse evaluator (or other drug court representative), random urine monitoring, . . . and attendance at 12 step meetings.” *Id.* at 24–25.

50. *See id.* at 28.

51. *See id.* The weekly meetings feature discussions concerning the program’s acceptance, plan, and phases, levels of supervision, drug testing frequency, sobriety impediments, sanction/incentive systems, graduation/expulsion, and discharge plans. *Id.*

52. *Id.* at 28–29.

53. *Id.* at 29. The judge is in charge of the “team of court staff, attorneys, probation officers, substance abuse evaluators, and treatment counselors” who work to “support and monitor a participant’s recovery.” *Id.* at 3.

54. *Id.*

55. *See id.*

56. *Id.*

57. *Id.* at 35, 46.

kinds of sanctions “to address any noncompliance.”⁵⁸ After having consulted with the drug court team, drug court judges can use their discretion to impose sanctions for a number of infractions.⁵⁹ Sanctions can be minor, such as essay writing and verbal chastisement, or serious, including house arrest and periods of incarceration in county jail.⁶⁰ Additionally, section 35-14 imposes its own “specific responses” for “violations of special probation.”⁶¹ First track drug court participants who violate “any term or condition of the special probation” or “any requirements of the course of treatment” may have their “special probation” permanently revoked by the drug court upon their first violation.⁶² Second-time violations of the terms or conditions of the “special probation” or treatment requirements require drug courts to permanently revoke a first track drug court participant’s “special probation.”⁶³

III. THE LIMITATIONS OF NEW JERSEY’S CURRENT, COUNTY-BASED DRUG COURT STRUCTURE IN RECOGNIZING AND TREATING DRUG ADDICTION

While New Jersey’s drug court system might appear to be a plausible solution to rectify the damage caused by the CDRA and treat those who suffer from drug addiction, both structural and collateral problems have impeded its progress. Due to the lack of leniency for violations in section 35-14 and a New Jersey Appellate Division decision that was affirmed by the New Jersey Supreme Court,⁶⁴ first track drug court participants, who often require multiple attempts before being successfully treated, face harsh consequences. Furthermore, drug court judges, who oversee the treatment process, wield immense power that can lead to more harm than good in treating drug court participants’ addictions. Finally, drug court participants face great stigma and hardship during the course of and after the conclusion of the drug court treatment process.

58. *Id.* at 35.

59. *Id.* at 44. Behavior that warrants sanctions includes, but is not limited to, being late to a drug court session, unexcused absences at treatment, and failure to provide requested urinary samples. *Id.*

60. *See id.* at 45–46.

61. *Id.* at 62.

62. N.J. STAT. ANN. § 2C:35-14(f)(1) (West 2016).

63. N.J. STAT. ANN. § 2C:35-14(f)(2) (West 2016). However, there is an exception if the drug court determines that “there is a substantial likelihood that the person will successfully complete the treatment program if permitted to continue on special probation.” *Id.*

64. *State v. Bishop*, 60 A.3d 806 (N.J. Super. Ct. App. Div. 2013), *aff’d*, 123 A.3d 729 (N.J. 2015).

A. *The Bishop Problem and Denial of Addiction Treatment Services*

As previously mentioned, New Jersey's drug courts can levy several kinds of sanctions for non-compliance, including periods of incarceration.⁶⁵ Additionally, the first track maintains its own system of responses for special probation violations that can result in permanent revocation from the program without much room for error.⁶⁶ While championed as a beacon for addiction treatment, New Jersey's drug court system is ultimately just another form of punishment that ignores the realities of drug addiction.⁶⁷

If the drug court revokes a first track drug court participant's special probation, the penalties can be severe. In fact, if first track program revocation occurs, the drug 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."⁶⁸ Such unyielding consequences, permitted under section 35-14, were directly challenged in 2013.⁶⁹ As a result, the Appellate Division was confronted with the question of whether the statutory provision constituted "an abuse of discretion" and violation of sentencing principles espoused in prior New Jersey probation case law.⁷⁰

In *State v. Bishop*, after two "defendants pled guilty to possession with intent to distribute heroin within one thousand feet of school property," the prosecutor consented to allowing the defendants to be admitted to drug court under the first track since they were eligible candidates.⁷¹ While the defendants' plea agreements included the "special probation" term, they "also provided for an 'alternate sentence' of seven years imprisonment with a forty-two-month parole disqualifier."⁷² After the defendants served part of their first track sentences, they later violated the terms of their "special probation" and

65. See *supra* notes 59–60 and accompanying text.

66. See *supra* notes 61–63 and accompanying text.

67. See Hunter et al., *supra* note 2, at 795. As Hunter et al. contend, "drug courts are certainly a form of punishment." *Id.* at 818. Furthermore, "[d]rug court is a criminal sentence and is therefore punitive." *Id.* at 819.

68. N.J. STAT. ANN. § 2C:35-14(f)(4) (West 2016). Consequently, "[d]efendants who fail to complete their courses of treatment to the court's satisfaction are incarcerated because they were required to plead guilty to the drug offense as a condition of their initial acceptance into the program." Hunter et al., *supra* note 2, at 819.

69. See *State v. Bishop*, 60 A.3d 806, 809, 814 (N.J. Super. Ct. App. Div. 2013).

70. See *id.* at 809.

71. See *id.* at 808. Because of the defendants' prior drug convictions, they were subject to "mandatory extended terms, if requested by the prosecutor, pursuant to [section 43-6(f)]." *Id.*

72. *Id.*

both pled guilty to multiple, serious probation violations.⁷³ Subsequently, the prosecutor moved to impose the alternate sentences of seven years with forty-two-month parole disqualifiers on the defendants.⁷⁴

While the defendants in *Bishop* did not contest the revocation of their special probation terms, they argued that the prosecutor waived the ability to pursue the alternate, extended term sentences by initially consenting to entry into drug court.⁷⁵ However, in its interpretation of section 35-14(f)(4), the Appellate Division concluded that the statutory provision “reflects legislative intent to provide a separate [violation of probation] resentencing regime for special probation” and “constitutes a marked departure from the regular probation standard.”⁷⁶ The court based its decision on a plain language reading of the statutory provision as well as several other factors, including its acceptance of the New Jersey *Attorney General Guidelines*, which supported the notion that “the threat of the substantial sentence that would have been imposed originally” but for admittance to the drug court program is needed as leverage to “enable [d]rug [c]ourts to operate effectively.”⁷⁷ Thus, the Appellate Division upheld the alternate sentence imposed by the Law Division.⁷⁸

Bishop's holding is especially troubling for those who struggle with drug addiction. Upon revocation for violations of special probation, first track drug court participants face periods of incarceration.⁷⁹ Additionally, participants who violate special probation could potentially face even more extensive penalties than what they would have been subjected to if convicted of the offense charged because of alternate sentence

73. *Id.* at 809.

74. *Id.* at 808–09. The Law Division imposed the alternate sentences requested by the prosecutor—with the exception of imposing a thirty-six-month parole disqualifier for one of the defendants instead of forty-two—and the defendants appealed. *Id.*

75. *Id.* at 809. As a result, the defendants believed the Law Division did not have the ability to impose the alternate sentences. *Id.*

76. *Id.* at 814–15. The court noted the difference between the statutory provisions for regular probation and “special probation.” *Id.* at 814. More specifically, the court opined that violations of regular probation pursuant to section 45-3(b) entitle courts to impose “any sentence that might have been imposed originally for the offense,” while “special probation” violations under section 35-14(f)(4) allow courts to “impose any sentence that might have been imposed, or *that would have been required to be imposed, originally* for the offense.” *Id.* (emphasis omitted).

77. *Id.* at 815–16.

78. *Id.* at 818. The New Jersey Supreme Court later affirmed the Appellate Court's decision, ensuring that the consequences prescribed by section 35-14 are controlling. *See State v. Bishop*, 123 A.3d 729 (N.J. 2015).

79. *See* N.J. STAT. ANN. § 2C:35-14(f)(4) (West 2016).

requirements that may be included within plea agreements.⁸⁰ Furthermore, special probation program violations are likely since “[i]t has long been known that addictive disorders are chronic and relapsing in nature.”⁸¹ One National Institutes of Health study gathered data over a one-year period from 878 patients who were admitted to a “Yale University-affiliated addiction treatment facility in the New Haven, Connecticut[] area” to assess the number of patients who remained abstinent upon discharge.⁸² Based on urine screening and patient and clinician reports, “less than 25% of primary marijuana- and cocaine-dependent patients were abstinent at discharge.”⁸³ Also, “less than 35% were abstinent from alcohol and opiates.”⁸⁴ Therefore, because of the overly punitive framework underlying New Jersey’s drug court system and the high likelihood of relapse for participants admitted to drug court treatment programs, New Jersey ultimately fails to divert drug offenders from incarceration and deliver drug treatment to those who require it.

B. *The Unchecked Power and Influence of Drug Court Judges*

As noted above, a universal feature of New Jersey’s drug court system is the continuous oversight, personal involvement, and final decision-making power of drug court judges.⁸⁵ Judges retain the “authority to set the terms of treatment” in addition to “regulating it,” establishing drug courts as “the focal point of the treatment process,” rather than treatment centers.⁸⁶ Ultimately, while this structure “is praised by [d]rug

80. See, e.g., *State v. Bishop*, 60 A.3d 806 (N.J. Super. Ct. App. Div. 2013), *aff’d*, 123 A.3d 729 (N.J. 2015).

81. Rajita Sinha, *New Findings on Biological Factors Predicting Addiction Relapse Vulnerability*, 13 CURRENT PSYCHIATRY REPORTS 398, 398 (2011). In fact, despite U.S. Food and Drug Administration approved treatments for various kinds of substance addictions, “more than two thirds of individuals are known to relapse after initiating treatment for substance use disorders.” *Id.* Clinical treatment studies indicate that such relapses can occur within weeks to months after beginning treatment. *Id.* Several studies demonstrate that relapse rates can be “as high as 65% to 70% in the 90-day period following treatment.” *Id.* at 402.

82. *Id.* at 398. While at the treatment facility, patients underwent “empirically based behavioral and pharmacologic therapies.” *Id.* at 399.

83. *Id.*

84. *Id.*

85. See *supra* notes 53–54 and accompanying text. Drug courts are unique as a result of “the judge’s role as personal, hands-on supervisor of individual defendants.” Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 OHIO ST. L.J. 1479, 1491 (2004).

86. Miller, *supra* note 85, at 1492; see also JENNIFER MURPHY, ILLNESS OR DEVIANCE? DRUG COURTS, DRUG TREATMENT, AND THE AMBIGUITY OF ADDICTION 68 (2015) (“The drug court model puts judges in charge of both the client’s treatment plan and his or her criminal record.”).

[c]ourt proponents,”⁸⁷ it creates problems with delivering much-needed drug treatment for a multitude of reasons.

Positioning the drug court judge as the overseer and final arbiter of the treatment process is problematic since it blurs roles and conflates drug treatment with sanctions and punishment.⁸⁸ The centralized focus and relationship between drug court judges and participants is based on the notion that “drug court judges . . . are better able to promote therapeutic goals by gaining a particular and personal knowledge of each offender.”⁸⁹ These goals are justified by a theory of “therapeutic jurisprudence,” a criminal justice approach that acknowledges the potential impact the criminal justice system can have on an offender’s “psychological and emotional well-being.”⁹⁰ However, a sole reliance on therapeutic jurisprudence fails to consider the full extent of consequences that stem from placing judges in “overlapping legal and clinical roles.”⁹¹

Since the “labeling and management of addiction” occurs in court under the direction of the drug court judge, disentangling treatment from other aspects of the program can be an arduous task.⁹² Furthermore, behaviors constituting addiction can mistakenly encompass “a broader range of behaviors than just drug use.”⁹³ Consequently, the drug court system muddles the question of when punishment is necessary “by permitting the re-characterization of punishment as treatment appropriate for curing the addict.”⁹⁴ Although drug court judges might justify the imposition of sanctions as “therapeutic treatment and training” and not actual forms of punishment, it is not clear whether such sanctions, including but not limited to essay writing and/or periods of incarceration, possess any real, clinical benefits.⁹⁵ Thus, as a result of their reliance on the therapeutic jurisprudence, New Jersey drug courts embrace a system in which clinically proven treatment services are withheld from drug court participants and substituted for forms of punishment disguised as treatment by judges who have essentially

87. Micah R. Herskind, *New Jersey’s Drug Courts: Carceral Expansion in the Name of Rehabilitation* 63 (May 15, 2018) (unpublished manuscript) (on file with Princeton University).

88. *See* Miller, *supra* note 85, at 1572.

89. *Id.* at 1494. Drug court judges are tasked with creating “flexible, individuated, responsive interaction” with participants to treat addiction. *Id.*

90. Hunter et al., *supra* note 2, at 824; *see also* MURPHY, *supra* note 86, at 69.

91. MURPHY, *supra* note 86, at 57–59.

92. *Id.* at 59.

93. *Id.* at 90. In an analysis of one U.S. city’s drug court program, “[a]ddiction was openly discussed in the courtroom as a problem of the drug ‘lifestyle.’” *Id.*

94. Miller, *supra* note 85, at 1572. Oftentimes, it is not clear whether drug court judges impose sanctions for “punitive or clinical reasons.” MURPHY, *supra* note 86, at 152.

95. Miller, *supra* note 85, at 1502; *see also* MURPHY, *supra* note 86, at 152, 157.

“transform[ed] [the] process into a deeply invasive and incapacitating form of supervision based primarily upon the offender’s consent.”⁹⁶

The position of power and influence held by drug court judges also negatively impacts program participants since judges may unconsciously succumb to “additional extralegal factors” when considering consequences for drug court program violations and failures.⁹⁷ As mentioned above, an integral feature of the New Jersey drug court system includes weekly meetings where the drug court team provides the judge with information concerning the participant’s progress.⁹⁸ However, drug court judges “may hold biases against defendants based on information collected during the normal course of drug court operations.”⁹⁹ Such biases, in turn, can “negatively impact the defendant at sentencing.”¹⁰⁰ In fact, a study of sentencing patterns for those “who were unsuccessful in an adult felony drug court” revealed that drug court “sentencing disparities . . . based on a legally irrelevant factor,” the unconscious bias of drug court judges directly involved in the program, do exist.¹⁰¹ Thus, rather than prioritizing the delivery of treatment to drug court participants, New Jersey drug court judges are susceptible to implicit bias and might instead focus on setting an example through punishment when participants violate program requirements.

Finally, the unchecked power wielded by New Jersey’s drug court judges is unjustified considering the structural realities of the drug court system. An evaluation of successful drug court practice criteria ascertained that the Essex County Drug Court failed to comply with several top ten practices.¹⁰² More specifically, the study uncovered that the Essex County Drug Court “fail[ed] to maintain a caseload of less than

96. Miller, *supra* note 85, at 1575.

97. See Benjamin R. Gibbs, *Sentencing Drug Court Failures: Judicial Considerations with Increased Offender Information*, 31 CRIM. JUST. POL’Y REV. 237, 240 (2020).

98. See *supra* note 51 and accompanying text. These meetings serve to “provide judges with greater information and understanding of offenders and their life circumstances.” See Gibbs, *supra* note 97, at 238.

99. Gibbs, *supra* note 97, at 238. These biases result from the fact that drug court judges “maintain access to offense and offender characteristics . . . but also possess greater amounts of legitimate and illegitimate offender information” than non-drug court adjudications. *Id.* at 240.

100. *Id.*
101. *Id.* at 245, 256. The study was based on the sentencing outcomes of 320 drug court participants who failed out of the program. *Id.* at 239.

102. See Donna K. Axel & David M. Rosen, *Putting Two Drug Courts to the Top Ten Test: Comparing Essex and Denver Drug Courts with “The Carey Team’s” Best Practices*, 47 VAL. U.L. REV. 839, 840, 854, 857 (2013). The study relied on ten criteria espoused by Shannon M. Carey et al. in their 2012 paper, *What Works? The Ten Key Components of Drug Court: Research-Based Best Practices*. *Id.* at 840.

125 participants per judge.”¹⁰³ In addition, the study found that Essex County Drug Court judges did not meet the requirement of spending at least three minutes per drug court participant on average because the court does not collect time data.¹⁰⁴ However, due to Essex County’s high caseload, it is likely they were not able to meet this requirement.¹⁰⁵ Both criteria are critical in terms of reducing recidivism and increasing cost savings.¹⁰⁶ Therefore, based on the strained resources of New Jersey’s drug court system, it is unlikely that participants are receiving the full extent of treatment services they need to overcome addiction. As a result, drug court judges lack valid support as to why they should retain the control they currently have in the drug treatment process.

C. *Stigma and Adversity During and After Drug Court*

A crucial, yet unintended consequence of New Jersey’s drug court system is the great deal of stigma that follows participants from the moment they enter the treatment program and beyond graduation.¹⁰⁷ “Drug addiction is one of the most scrutinized and stigmatized psychiatric conditions in society . . . and can have harmful effects on the functioning and social exclusion of people with addiction.”¹⁰⁸ However, such stigma initially attaches to drug court participants because they are forced to plead guilty to a criminal offense to receive necessary treatment, not because of their addictions.¹⁰⁹ Subsequently, after being convicted of the criminal offense charged and admitted to drug court, participants are confronted with added stigma due to the manner in which drug courts frame addiction.¹¹⁰ Since drug courts conceptualize addiction as a treatable disease, and because addiction in and of itself is greatly stigmatized, drug courts essentially double the amount stigma that

103. *Id.* at 854. Alarming, one Essex County Drug Court judge dealt with over 500 drug court participants simultaneously. *Id.* at 858.

104. *Id.* at 857. The Essex County Drug Court does not collect data regarding the exact amount of time a drug court judge spends with each participant. *Id.* at 860.

105. *Id.*

106. *See id.* at 858, 860.

107. *See* MURPHY, *supra* note 86, at 151, 166–67.

108. Colleen M. Berryessa & William L. D. Krenzer, *The Stigma of Addiction and Effects on Community Perceptions of Procedural Justice in Drug Treatment Courts*, 50 J. DRUG ISSUES 303, 304 (2020).

109. *See* MURPHY, *supra* note 86, at 151; Herskind, *supra* note 87, at 64 (“In order to even enter Drug Court, one must be willing to permanently brand oneself with a guilty plea.”).

110. *See* MURPHY, *supra* note 86, at 151.

participants already face as convicted criminals.¹¹¹ As a result of the compounded stigma imposed on drug court participants, they are left with “discredited identities” that they have “to carry indefinitely.”¹¹²

Aside from associated stigma, New Jersey’s drug court system carries with it a great deal of day-to-day hardship for participants.¹¹³ According to a 1998 Class of Leadership New Jersey Report titled *Drug Courts in New Jersey: Past, Present and Future*, drug court participants, at a minimum each week, must attend one or more therapy/counseling sessions, attend one to three twelve-step meetings, report to their probation officer, and submit to one or more random urine tests.¹¹⁴ Furthermore, participants are required to simultaneously seek and maintain employment, register with an educational institution, and, if needed, care for dependents.¹¹⁵ In addition, New Jersey’s drug court system imposes significant financial burdens on program participants.¹¹⁶ Lastly, there is a lack of vocational training in New Jersey’s drug court system, which places drug court participants at a disadvantage.¹¹⁷ Even if drug court programs can find job placements for participants, they often consist of “manual labor or custodial position[s].”¹¹⁸ Thus, because of the many hardships and challenges required, as well as disadvantages placed on participants’ future prospects, New Jersey’s drug court system is not the most efficient nor the most effective means for treating those who suffer from addiction.

111. *Id.* Drug court participants are “stigmatized twice: first, in the courtroom, where they were labeled criminals because they had to plead guilty to the charges against them . . . and second, in the drug treatment program, where they were labeled as diseased.” *Id.*

112. *Id.*

113. *See* Herskind, *supra* note 87, at 68–69. “Drug Courts are designed to pose a routine burden on participants’ time, even through the last, least restrictive phase.” *Id.* at 70.

114. *See id.* at 28, 69.

115. *Id.* at 69. Such tasks can be quite cumbersome due to the difficulty of trying to balance “a full-time job with [several.] frequent court appointments.” *See* MURPHY, *supra* note 86, at 86.

116. Herskind, *supra* note 87, at 70. According to February 2018 New Jersey drug court data provided by the Administrative Office of the Courts, “the 5,252 graduates since 2002 have collectively paid \$12.82 million in fees; on average, graduates pay nearly \$2,500 to complete the program.” *Id.* at 71.

117. Karen Williams et al., *Examining a Drug Court Treatment Program in New Jersey: A Perspective from the Field*, 29 ALCOHOLISM TREATMENT Q. 85, 89 (2011).

118. *Id.* The authors based their findings on interviews and assessments of thirty-three participants in a New Jersey drug court program. *Id.* at 87.

IV. WHY COMMUNITY, MUNICIPAL, AND LOCAL-LEVEL ALTERNATIVES ARE BEST SUITED TO DELIVER MUCH-NEEDED RESOURCES TO DRUG OFFENDERS

Although New Jersey's drug court system ultimately falls short of accomplishing its goals—diverting drug offenders from incarceration and providing treatment services to those who are battling addiction—promising alternatives exist at community, municipal, and local levels throughout the state. While they may be in their infancy stages, these programs, like their counterparts in other states, demonstrate great efficacy for achieving what New Jersey's drug courts attempted but failed to do. If implemented throughout New Jersey's twenty-one counties, these cost-effective programs could recognize and treat addiction in its early stages as well as foster support for long term recovery, all while completely side-stepping the drug court system.

A. *The Community, Municipal, and Local-Level Alternatives to New Jersey's Current, County-Based Drug Court Structure*

While numerous community, municipal, and local-level substitutes for New Jersey drug courts exist in localities throughout the state, the scope of this paper is limited to novel programs in Gloucester County. Gloucester County, New Jersey, has recently unveiled two, cutting-edge alternatives to New Jersey's drug court system that show boundless potential for diverting and delivering treatment services to addicts.¹¹⁹ These programs, both of which are completely voluntary, are intended to assist township residents by connecting them to local addiction treatment services.¹²⁰ Also, both programs are currently available in Washington Township, Deptford, Woodbury, and Monroe, New Jersey.¹²¹

119. See Matt Gray, *Gloucester County Unveils 2 Programs to Help Residents Battling Addiction*, NJ.COM (Aug. 25, 2020, 2:16 PM), <https://www.nj.com/gloucester-county/2020/08/gloucester-county-unveils-2-programs-to-help-residents-battling-addiction.html> [hereinafter *Gloucester County Unveils*].

120. See Mackenzie Fitchett, *Washington Township Offers New Programs to Address Addiction*, SUN NEWSPAPERS (Sept. 9, 2020), <https://thesunpapers.com/2020/09/09/washington-township-offers-new-programs-to-address-addiction/>. My Friends House Family Counseling, “an outpatient program for people struggling with addiction in Woodbury Heights that facilitates treatment through therapy, specialists and other programs,” is one of the main treatment providers that has partnered with towns throughout Gloucester County to facilitate these new initiatives. *Id.* My Friends House is willing to speak with residents who desire addiction treatment free of charge. *Gloucester County Unveils*, *supra* note 119.

121. See *Gloucester County Unveils*, *supra* note 119; see also Matt Gray, *Straight to Treatment Addiction Recovery Service Now in 11 Gloucester County Towns*, NJ.COM (June

The first of the two programs, “Road to Recovery,” takes place in municipal courts throughout participating towns in Gloucester County and is designed for residents who have already been “arrested and sentenced for crimes related to their drug habit.”¹²² Road to Recovery participants are required to initially plead guilty to their charge, or charges, to begin the treatment process.¹²³ However, after pleading guilty, program participants can eventually have their sentences reduced or cleared altogether as long as they remain sober.¹²⁴ On the other hand, while the second program, “Straight to Treatment,” delivers similar addiction treatment services, it holds greater promise than Road to Recovery since it is less punitive and completely bypasses the court system.¹²⁵

“Straight to Treatment” enables individuals “to walk into a participating police department and explain that they need help battling an addiction.”¹²⁶ Then, after completing application materials, participants immediately meet with a drug treatment provider who is present on certain days at the police station.¹²⁷ Straight to Treatment relies on and is facilitated by partnerships between the Gloucester County Prosecutor’s Office and participating towns’ police departments.¹²⁸ Local police officers in participating towns, who are at the forefront of the Straight to Treatment program, understand that they can no longer “arrest [their] way out” of drug addiction and must instead serve as “community caretakers.”¹²⁹ Currently, drug treatment providers in Washington Township’s Straight to Treatment program remain

14, 2021, 8:19 AM), <https://www.nj.com/gloucester-county/2021/06/straight-to-treatment-addiction-recovery-service-now-in-11-gloucester-county-towns.html>.

122. Fitchett, *supra* note 120. The ultimate goal of the “Road to Recovery” program is “to reduce recidivism [rates] by connecting addicted offenders with substance abuse recovery coaches, treatment providers, mental health support and other services.” *Gloucester County Unveils*, *supra* note 119.

123. Fitchett, *supra* note 120. “This effort is similar to the drug court program offered in state Superior Court.” *Gloucester County Unveils*, *supra* note 119.

124. Fitchett, *supra* note 120.

125. See Anne Forline, *Straight to Treatment Offers Addiction Recovery for Gloucester County Residents*, S. JERSEY OBSERVER (Oct. 17, 2020), <https://www.southjerseyobserver.com/2020/10/17/straight-to-treatment-offers-addiction-recovery-for-gloucester-county-residents/>.

126. *Id.*

127. *Id.*; *Gloucester County Unveils*, *supra* note 119. While participants have to be residents of Gloucester County, help is still available to those who do not reside in Gloucester County. Fitchett, *supra* note 120.

128. Forline, *supra* note 125.

129. See *Gloucester County Unveils*, *supra* note 119. Organizers hope that those who suffer from substance use disorders will view “police departments . . . as partners in navigating what can be a confusing process.” *Id.*

available in the town's police station from 11 A.M. to 3 P.M. on Mondays to meet with residents and get them immediate addiction help once they complete the application process.¹³⁰ Clayton's Straight to Treatment program offers services akin to Washington Township's on Tuesdays from 2 P.M. to 6 P.M.¹³¹

Both programs have been funded thus far through two recently-passed grants known as "Operation Helping Hand."¹³² In fact, applicants are not required to have any health insurance to participate in the Straight to Treatment initiative.¹³³ In 2018, the New Jersey Attorney General and the Office of the New Jersey Coordinator for Addiction Responses and Enforcement Strategies ("NJ CARES") coordinated to provide \$1,000,000 in grant funding to create and/or expand the Operation Helping Hand model in counties throughout the state.¹³⁴ "Operation Helping Hand," which originally began as a law enforcement pilot initiative in Bergen County to connect drug offenders with treatment options, "may be adapted to meet each participating county's circumstances," so long as the program "involve[s] coordination and collaboration between law enforcement officers, recovery specialists, and mental health professionals to connect individuals suffering from the disease of addiction [to] treatment and/or recovery support services."¹³⁵ For example, counties are permitted to use Operation Helping Hand grant funding to create programs that utilize law enforcement data and resources to "identify individuals at risk for drug overdoses" so that law enforcement officers, recovery specialists, and healthcare providers can intervene and recommend "treatment options—without making any

130. *Id.* Counselors commit themselves to assisting participants with treatment arrangements from the moment they begin the process until they complete it. Fitchett, *supra* note 120.

131. *Gloucester County Unveils*, *supra* note 119. Even if someone wishes to participate in the Straight to Treatment program but is not available to meet with a counselor during the specified days and times, Clayton's police department will still distribute applications and provider contact information to anyone who is interested. *Id.*

132. Fitchett, *supra* note 120 ("The grants negate the need for taxpayer money to support the programs.").

133. *See Gloucester County Unveils*, *supra* note 119.

134. Press Release, The State of New Jersey, Attorney General Grewal, NJ CARES Awarded \$1 Million Grant from NJ Department of Health to Establish, Expand "Operation Helping Hand" Programs in Counties Across the State (Oct. 11, 2018), <https://www.nj.gov/oag/newsreleases18/pr20181011b.html> [hereinafter Press Release 1]. The grant was a sub-grant from the New Jersey Department of Health, which received \$3,724,000 from the U.S. Centers for Disease Control and Prevention. *Id.*

135. *Id.* "Operation Helping Hand" grant funding is contingent on using "law enforcement encounters as the point of entry for treatment and/or recovery support services." *Id.*

arrest.”¹³⁶ Under the 2018 Operation Helping Hand grant, funding was allocated to participating counties’ prosecutor’s offices for a twelve-month period with a base allocation of \$47,619.¹³⁷ However, in 2019, the New Jersey Attorney General and NJ CARES announced that \$2,200,000 in state funding has been directly allocated from the state’s 2019 budget to facilitate the statewide expansion of Operation Helping Hand programs, where law enforcement personnel connect addicts with treatment services, beyond the eighteen counties that have participated since 2018.¹³⁸

B. The Community, Municipal, and Local-Level Alternatives to New Jersey’s Current, County-Based Drug Court Structure Are Better Positioned and Equipped to Handle Drug Addiction

Court-driven drug treatment programs, which “operate at later stages of adjudication” are “reactive” and respond to “the symptoms of a problem and not the cause.”¹³⁹ As a result, the lack of early detection of addiction in drug court programs “translate[s] into missed opportunities to intervene.”¹⁴⁰ However, community, municipal, and local-level alternatives such as Straight to Treatment and others funded through Operation Helping Hand, in which law enforcement officers “work at the gateway of the criminal justice system” and often “encounter overdose, active use, and withdrawal,” create vital “opportunities to incorporate pre-arrest interventions.”¹⁴¹ Formalized community partnerships that enable “law enforcement officers [to] intercept upon first contact and make direct referrals to community programs” have proven to be pivotal

136. *Id.* Burlington County, one of the participating counties that received Operation Helping Hand funds in 2018, created a “non-arrest outreach program” to target those “who have been revived by or interacted with police during calls for emergency services for overdoses.” Press Release, The State of New Jersey, Attorney General Grewal, NJ CARES Announce \$2.2 Million in State Funding to Expand, Enhance “Operation Helping Hand” Programs in Counties Across the State (June 20, 2019), <https://www.nj.gov/oag/newsreleases19/pr20190620a.html> [hereinafter Press Release 2].

137. See Press Release 1, *supra* note 134. The funding lasted from September 1, 2018, to August 31, 2019. *Id.*

138. See Press Release 2, *supra* note 136. The base funding allocation for participating counties’ prosecutor’s offices was increased to \$100,000 for a twelve-month funding period between September 1, 2019, and August 31, 2020. *Id.*

139. Andrea J. Yatsco et al., *Alternatives to Arrest for Illicit Opioid Use: A Joint Criminal Justice and Healthcare Treatment Collaboration*, SUBSTANCE ABUSE: RSCH. & TREATMENT, Aug. 6, 2020, at 1, 2.

140. *Id.* Early intervention is imperative for ensuring that “criminal justice systems do not overstep their role in providing behavioral health treatment to individuals better served in the community.” *Id.*

141. See *id.* at 2–3.

for early detection and intervention efforts necessary for effectively treating drug addiction.¹⁴²

Since 2015, more than two hundred “police departments in [twenty-nine] states have affiliated [themselves] with the Police Assisted Addiction Recovery Initiative” (“PAARI”), which “supports the development of voluntary police-led addiction referral programs.”¹⁴³ One of the earliest voluntary, police-led addiction referral programs in the United States, the Gloucester, Massachusetts Police Department’s “Angel Program,” launched in 2015 to improve treatment access for people suffering from opioid use disorder through a “no-arrest, voluntary screening and referral service.”¹⁴⁴ Like Straight to Treatment, eligible Angel Program participants travel to and remain in the Gloucester Police Department’s station house while police officers screen and assess those who voluntarily seek treatment.¹⁴⁵ In a study of the Angel Program’s performance over the first year after its inception, “[t]he majority of the participants spoke of positive experiences interacting with the police.”¹⁴⁶ Not only did multiple Angel Program participants commend “the work ethic of the officers[,]” but many also stated that the program “felt free from stigma.”¹⁴⁷ Finally, 86% of program participants were identified a placement in a treatment center and 75% attended the placements offered.¹⁴⁸

Other voluntary, police-led addiction referral services throughout the United States have also demonstrated successful results. One such program in Houston, Texas, the Houston Emergency Opioid Engagement System (“HEROES”), like Straight to Treatment, relies on a partnership with law enforcement officers to “locate and connect with high-risk individuals.”¹⁴⁹ However, instead of “waiting for them to present on their own to treatment” law enforcement officers in the HEROES program

142. *Id.* at 2.

143. Davida M. Schiff et al., *A Police-Led Addiction Treatment Referral Program in Gloucester, MA: Implementation and Participants’ Experiences*, 82 J. SUBSTANCE ABUSE TREATMENT 41, 42 (2017). These programs have collectively “focused on using the criminal justice system as an access point to addiction treatment *prior* to arrest.” *Id.*

144. *Id.* Gloucester Police Chief Leonard Campanello created the Angel Program to help battle rising levels of “opioid-related overdose deaths.” *Id.*

145. *See id.* If the treatment referral is accepted, the Gloucester Police Department ensures “immediate transport” to a drug treatment center. *Id.*

146. *Id.* at 42, 44. Participants especially praised the police officers for their “willingness to work hard to identify placement and . . . the non-judgmental services they received.” *Id.* at 44.

147. *Id.*

148. *See id.*

149. Yatsco et al., *supra* note 139, at 3. “HEROES” is described as “a community wide initiative between numerous community partners,” including but not limited to law enforcement officers and recovery centers. *Id.*

apply an “assertive outreach” approach to “reach individuals who have recently overdosed or show[n] other signs of high-risk behaviors.”¹⁵⁰ Once HEROES officers come into contact with potential program participants, they can make treatment referrals, which, akin to Straight to Treatment, “are the choice of the individual and are completely voluntary.”¹⁵¹ Lastly, during the first fourteen months after the creation of the HEROES program in 2018, the treatment referral rate was higher than the average treatment referral rate of other “justice-involved individuals.”¹⁵²

Furthermore, unlike drug courts, community-based outreach programs, where “core treatment and recovery support services” are extended “beyond institutional walls[,]” are crucial for sustaining the long-term recovery of those who suffer from addiction.¹⁵³ Drug courts fail to fully account for the fact that “recovery initiation in institutional settings does not assure sustained recovery maintenance in natural community environments.”¹⁵⁴ The reason is that those who undergo compelled treatment in institutional programs often relapse because they struggle to transition to “recovery maintenance in natural, noninstitutional environments.”¹⁵⁵ However, through community, municipal, and local-level outreach programs, such as Straight to Treatment, addicts can focus instead on acquiring necessary “[r]ecover capital” for long-term maintenance.¹⁵⁶ Also, community outreach programs can better enhance community reintegration because their treatment facilities are more likely to “resemble the surrounding

150. *Id.* HEROES law enforcement officers are “hand-selected” from the Houston Police Department’s Narcotics Division to “conduct outreach to those individuals who had experienced a non-fatal overdose.” *Id.*

151. *Id.* Additionally, like the Straight to Treatment program, after potential HEROES candidates are referred to treatment services, program staff contact such persons for initial consultations and assessments before participants make eventual drug treatment agreements. *See id.*

152. *Id.* at 4, 6.

153. William L. White, *The Mobilization of Community Resources to Support Long-Term Addiction Recovery*, 36 J. SUBSTANCE ABUSE TREATMENT 146, 152 (2009). Outreach is formally defined as “the extension of professional addiction treatment services into the life of the community, including supporting clients within their natural environments following the completion of primary treatment.” *Id.*

154. *Id.* at 146.

155. *Id.* at 151 (“The greater the physical, psychological, and cultural distance between a treatment institution and the natural environments of its clients, the greater is the problem of transfer of learning from the institutional to the natural environment.”).

156. *See id.* at 150–51. “Recovery capital is the quantity and quality of internal and external assets that can be drawn upon to initiate and sustain recovery from severe [alcohol and other drug problems].” *Id.* at 150. The interpersonal connections and contacts between communities, families, networks, and individuals have been found to perform healing functions. *Id.* at 147.

community and the expected posttreatment environments of their clients.”¹⁵⁷

Lastly, community, municipal, and local-level alternatives are “likely to be cost-effective” when compared to drug courts.¹⁵⁸ Jail diversionary pilot programs, such as Law Enforcement Assisted Diversion (“LEAD”) in King County, Washington, have “demonstrated effectiveness” by decreasing the recidivism rate by more than half and also saving the county “\$8,000 in legal fees and processing costs annually.”¹⁵⁹ Additionally, despite concerns that diversionary programs like LEAD will increase healthcare costs, researchers who developed a “microsimulation model of adults in King County, Washington” determined that such programs are “highly cost-effective” even when considering healthcare costs in a vacuum.¹⁶⁰ In sum, community, municipal, and local-level diversionary programs for low-level drug offenders are “likely to substantially reduce spending in the criminal justice system while moderately increasing spending in the healthcare sector.”¹⁶¹

V. CONCLUSION

Recent outreach programs observable in towns throughout Gloucester County, such as Straight to Treatment, show tremendous promise in addiction intervention and treatment. If these initiatives are ultimately successful, other localities throughout New Jersey should adopt and expand on them to best fit their own community needs. Funding plans, like Operation Helping Hand, are a great first step toward implementing community, municipal, and local-level alternatives to the drug court system statewide. However, through budgetary authorization, the New Jersey State Legislature has the ability to directly fund programs like Straight to Treatment and ensure that addicts who seek drug treatment are connected with the most viable treatment options in the shortest amount of time and can do so with

157. *Id.* at 151.

158. Cora L. Bernard et al., *Health Outcomes and Cost-Effectiveness of Diversion Programs for Low-Level Drug Offenders: A Model-Based Analysis*, PLOS MED., Oct. 13, 2020, at 1, 2.

159. *Id.* at 3. “LEAD” serves to “redirect individuals with low-level drug and prostitution offenses away from the criminal justice system and into community-based services such as treatment for substance use disorder.” *Id.*

160. *Id.* at 2. Notwithstanding conservative estimates, the researchers ascertained that the programs like LEAD are “cost-effective both as a healthcare intervention and more broadly as a societal intervention.” *Id.* at 12.

161. *Id.* at 2–3.

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impunity. Additionally, through direct budgetary authorization for programs such as Straight to Treatment, the legislature can effectively undo the harms caused by the CDRA as well as the subsequent reliance on and expansion of the drug court system to manage drug abuse in New Jersey.