

ASSEMBLY, No. 271

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN ARMATO

District 2 (Atlantic)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

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Assemblywoman Chaparro

SYNOPSIS

Designates drug court program as the “special probation recovery court program” in statutes.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/8/2021)

1 **AN ACT** designating the drug court program as the “special
2 probation recovery court program” and amending various parts
3 of the statutory law.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 2 of P.L.1974, c.49 (C.2A:18-61.1) is amended to
9 read as follows:

10 2. No lessee or tenant or the assigns, under-tenants or legal
11 representatives of such lessee or tenant may be removed by the
12 Superior Court from any house, building, mobile home or land in a
13 mobile home park or tenement leased for residential purposes, other
14 than (1) owner-occupied premises with not more than two rental
15 units or a hotel, motel or other guest house or part thereof rented to
16 a transient guest or seasonal tenant; (2) a dwelling unit which is
17 held in trust on behalf of a member of the immediate family of the
18 person or persons establishing the trust, provided that the member
19 of the immediate family on whose behalf the trust is established
20 permanently occupies the unit; and (3) a dwelling unit which is
21 permanently occupied by a member of the immediate family of the
22 owner of that unit, provided, however, that exception (2) or (3) shall
23 apply only in cases in which the member of the immediate family
24 has a developmental disability, except upon establishment of one of
25 the following grounds as good cause:

26 a. The person fails to pay rent due and owing under the lease
27 whether the same be oral or written; provided that, for the purposes
28 of this section, any portion of rent unpaid by a tenant to a landlord
29 but utilized by the tenant to continue utility service to the rental
30 premises after receiving notice from an electric, gas, water or sewer
31 public utility that such service was in danger of discontinuance
32 based on nonpayment by the landlord, shall not be deemed to be
33 unpaid rent.

34 b. The person has continued to be, after written notice to cease,
35 so disorderly as to destroy the peace and quiet of the occupants or
36 other tenants living in said house or neighborhood.

37 c. The person has willfully or by reason of gross negligence
38 caused or allowed destruction, damage or injury to the premises.

39 d. The person has continued, after written notice to cease, to
40 substantially violate or breach any of the landlord's rules and
41 regulations governing said premises, provided such rules and
42 regulations are reasonable and have been accepted in writing by the
43 tenant or made a part of the lease at the beginning of the lease term.

44 e. (1) The person has continued, after written notice to cease,
45 to substantially violate or breach any of the covenants or

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 agreements contained in the lease for the premises where a right of
2 reentry is reserved to the landlord in the lease for a violation of such
3 covenant or agreement, provided that such covenant or agreement is
4 reasonable and was contained in the lease at the beginning of the
5 lease term.

6 (2) In public housing under the control of a public housing
7 authority or redevelopment agency, the person has substantially
8 violated or breached any of the covenants or agreements contained
9 in the lease for the premises pertaining to illegal uses of controlled
10 dangerous substances, or other illegal activities, whether or not a
11 right of reentry is reserved to the landlord in the lease for a
12 violation of such covenant or agreement, provided that such
13 covenant or agreement conforms to federal guidelines regarding
14 such lease provisions and was contained in the lease at the
15 beginning of the lease term.

16 f. The person has failed to pay rent after a valid notice to quit
17 and notice of increase of said rent, provided the increase in rent is
18 not unconscionable and complies with any and all other laws or
19 municipal ordinances governing rent increases.

20 g. The landlord or owner (1) seeks to permanently board up or
21 demolish the premises because he has been cited by local or State
22 housing inspectors for substantial violations affecting the health and
23 safety of tenants and it is economically unfeasible for the owner to
24 eliminate the violations; (2) seeks to comply with local or State
25 housing inspectors who have cited him for substantial violations
26 affecting the health and safety of tenants and it is unfeasible to so
27 comply without removing the tenant; simultaneously with service of
28 notice of eviction pursuant to this clause, the landlord shall notify
29 the Department of Community Affairs of the intention to institute
30 proceedings and shall provide the department with such other
31 information as it may require pursuant to rules and regulations. The
32 department shall inform all parties and the court of its view with
33 respect to the feasibility of compliance without removal of the
34 tenant and may in its discretion appear and present evidence; (3)
35 seeks to correct an illegal occupancy because he has been cited by
36 local or State housing inspectors or zoning officers and it is
37 unfeasible to correct such illegal occupancy without removing the
38 tenant; or (4) is a governmental agency which seeks to permanently
39 retire the premises from the rental market pursuant to a
40 redevelopment or land clearance plan in a blighted area. In those
41 cases where the tenant is being removed for any reason specified in
42 this subsection, no warrant for possession shall be issued until
43 P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1
44 et seq.) have been complied with.

45 h. The owner seeks to retire permanently the residential
46 building or the mobile home park from residential use or use as a
47 mobile home park, provided this subsection shall not apply to
48 circumstances covered under subsection g. of this section.

1 i. The landlord or owner proposes, at the termination of a
2 lease, reasonable changes of substance in the terms and conditions
3 of the lease, including specifically any change in the term thereof,
4 which the tenant, after written notice, refuses to accept; provided
5 that in cases where a tenant has received a notice of termination
6 pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-
7 61.2), or has a protected tenancy status pursuant to the "Senior
8 Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226
9 (C.2A:18-61.22 et al.), or pursuant to the "Tenant Protection Act of
10 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or
11 owner shall have the burden of proving that any change in the terms
12 and conditions of the lease, rental or regulations both is reasonable
13 and does not substantially reduce the rights and privileges to which
14 the tenant was entitled prior to the conversion.

15 j. The person, after written notice to cease, has habitually and
16 without legal justification failed to pay rent which is due and owing.

17 k. The landlord or owner of the building or mobile home park
18 is converting from the rental market to a condominium, cooperative
19 or fee simple ownership of two or more dwelling units or park sites,
20 except as hereinafter provided in subsection l. of this section.
21 Where the tenant is being removed pursuant to this subsection, no
22 warrant for possession shall be issued until this act has been
23 complied with. No action for possession shall be brought pursuant
24 to this subsection against a senior citizen tenant or disabled tenant
25 with protected tenancy status pursuant to the "Senior Citizens and
26 Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.22
27 et al.), or against a qualified tenant under the "Tenant Protection
28 Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the
29 agency has not terminated the protected tenancy status or the
30 protected tenancy period has not expired.

31 l. (1) The owner of a building or mobile home park, which is
32 constructed as or being converted to a condominium, cooperative or
33 fee simple ownership, seeks to evict a tenant or sublessee whose
34 initial tenancy began after the master deed, agreement establishing
35 the cooperative or subdivision plat was recorded, because the owner
36 has contracted to sell the unit to a buyer who seeks to personally
37 occupy it and the contract for sale calls for the unit to be vacant at
38 the time of closing. However, no action shall be brought against a
39 tenant under paragraph (1) of this subsection unless the tenant was
40 given a statement in accordance with section 6 of P.L.1975, c.311
41 (C.2A:18-61.9);

42 (2) The owner of three or less condominium or cooperative units
43 seeks to evict a tenant whose initial tenancy began by rental from an
44 owner of three or less units after the master deed or agreement
45 establishing the cooperative was recorded, because the owner seeks
46 to personally occupy the unit, or has contracted to sell the unit to a
47 buyer who seeks to personally occupy it and the contract for sale
48 calls for the unit to be vacant at the time of closing;

1 (3) The owner of a building of three residential units or less
2 seeks to personally occupy a unit, or has contracted to sell the
3 residential unit to a buyer who wishes to personally occupy it and
4 the contract for sale calls for the unit to be vacant at the time of
5 closing.

6 m. The landlord or owner conditioned the tenancy upon and in
7 consideration for the tenant's employment by the landlord or owner
8 as superintendent, janitor or in some other capacity and such
9 employment is being terminated.

10 n. The person has been convicted of or pleaded guilty to, or if a
11 juvenile, has been adjudicated delinquent on the basis of an act
12 which if committed by an adult would constitute an offense under
13 the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et
14 al., involving the use, possession, manufacture, dispensing or
15 distribution of a controlled dangerous substance, controlled
16 dangerous substance analog or drug paraphernalia within the
17 meaning of that act within or upon the leased premises or the
18 building or complex of buildings and land appurtenant thereto, or
19 the mobile home park, in which those premises are located, and has
20 not in connection with his sentence for that offense either (1)
21 successfully completed or (2) been admitted to and continued upon
22 probation while completing, **【a drug rehabilitation program】** the
23 special probation recovery court program pursuant to N.J.S.2C:35-
24 14; or, being the tenant or lessee of such leased premises,
25 knowingly harbors or harbored therein a person who has been so
26 convicted or has so pleaded, or otherwise permits or permitted such
27 a person to occupy those premises for residential purposes, whether
28 continuously or intermittently, except that this subsection shall not
29 apply to a person harboring or permitting a juvenile to occupy the
30 premises if the juvenile has been adjudicated delinquent upon the
31 basis of an act which if committed by an adult would constitute the
32 offense of use or possession under the said act. No action for
33 removal may be brought pursuant to this subsection more than two
34 years after the date of the adjudication or conviction or more than
35 two years after the person's release from incarceration whichever is
36 the later.

37 o. The person has been convicted of or pleaded guilty to, or if a
38 juvenile, has been adjudicated delinquent on the basis of an act
39 which if committed by an adult would constitute an offense under
40 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic
41 threats against the landlord, a member of the landlord's family or an
42 employee of the landlord; or, being the tenant or lessee of such
43 leased premises, knowingly harbors or harbored therein a person
44 who has been so convicted or has so pleaded, or otherwise permits
45 or permitted such a person to occupy those premises for residential
46 purposes, whether continuously or intermittently. No action for
47 removal may be brought pursuant to this subsection more than two

1 years after the adjudication or conviction or more than two years
2 after the person's release from incarceration whichever is the later.

3 p. The person has been found, by a preponderance of the
4 evidence, liable in a civil action for removal commenced under this
5 act for an offense under N.J.S.2C:20-1 et al. involving theft of
6 property located on the leased premises from the landlord, the
7 leased premises or other tenants residing in the leased premises, or
8 N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic
9 threats against the landlord, a member of the landlord's family or an
10 employee of the landlord, or under the "Comprehensive Drug
11 Reform Act of 1987," N.J.S.2C:35-1 et al., involving the use,
12 possession, manufacture, dispensing or distribution of a controlled
13 dangerous substance, controlled dangerous substance analog or drug
14 paraphernalia within the meaning of that act within or upon the
15 leased premises or the building or complex of buildings and land
16 appurtenant thereto, or the mobile home park, in which those
17 premises are located, and has not in connection with his sentence
18 for that offense either (1) successfully completed or (2) been
19 admitted to and continued upon probation while completing **【a drug**
20 **rehabilitation program】** the special probation recovery court
21 program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee
22 of such leased premises, knowingly harbors or harbored therein a
23 person who committed such an offense, or otherwise permits or
24 permitted such a person to occupy those premises for residential
25 purposes, whether continuously or intermittently, except that this
26 subsection shall not apply to a person who harbors or permits a
27 juvenile to occupy the premises if the juvenile has been adjudicated
28 delinquent upon the basis of an act which if committed by an adult
29 would constitute the offense of use or possession under the said
30 "Comprehensive Drug Reform Act of 1987."

31 q. The person has been convicted of or pleaded guilty to, or if a
32 juvenile, has been adjudicated delinquent on the basis of an act
33 which if committed by an adult would constitute an offense under
34 N.J.S.2C:20-1 et al. involving theft of property from the landlord,
35 the leased premises or other tenants residing in the same building or
36 complex; or, being the tenant or lessee of such leased premises,
37 knowingly harbors therein a person who has been so convicted or
38 has so pleaded, or otherwise permits such a person to occupy those
39 premises for residential purposes, whether continuously or
40 intermittently.

41 r. The person is found in a civil action, by a preponderance of
42 the evidence, to have committed a violation of the human
43 trafficking provisions set forth in section 1 of P.L.2005, c.77
44 (C.2C:13-8) within or upon the leased premises or the building or
45 complex of buildings and land appurtenant thereto, or the mobile
46 home park, in which those premises are located; or, being the tenant
47 or lessee of such leased premises, knowingly harbors or harbored
48 therein a person who has been engaged in human trafficking, or

1 otherwise permits or permitted such a person to occupy those
2 premises for residential purposes, whether continuously or
3 intermittently. No action for removal may be brought pursuant to
4 this subsection more than two years after the alleged violation has
5 terminated. A criminal conviction or a guilty plea to a crime of
6 human trafficking under section 1 of P.L.2005, c.77 (C.2C:13-8)
7 shall be considered prima facie evidence of civil liability under this
8 subsection.

9 For purposes of this section, (1) "developmental disability"
10 means any disability which is defined as such pursuant to section 3
11 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate
12 family" means a person's spouse, parent, child or sibling, or a
13 spouse, parent, child or sibling of any of them; and (3)
14 "permanently" occupies or occupied means that the occupant
15 maintains no other domicile at which the occupant votes, pays rent
16 or property taxes or at which rent or property taxes are paid on the
17 occupant's behalf.
18 (cf: P.L.2013, c.51, s.7)

19

20 2. Section 8 of P.L.2014, c.31 (C.2A:162-22) is amended to
21 read as follows:

22 8. a. Concerning an eligible defendant subject to pretrial
23 detention as ordered by a court pursuant to sections 4 and 5 of
24 P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) or an eligible
25 defendant who is detained in jail due to the inability to post the
26 monetary bail imposed by the court pursuant to subsection c. or d.
27 of section 3 of P.L.2014, c.31 (C.2A:162-17):

28 (1) (a) The eligible defendant shall not remain detained in jail
29 for more than 90 days, not counting excludable time for reasonable
30 delays as set forth in subsection b. of this section, prior to the return
31 of an indictment. If the eligible defendant is not indicted within
32 that period of time, the eligible defendant shall be released from jail
33 unless, on motion of the prosecutor, the court finds that a
34 substantial and unjustifiable risk to the safety of any other person or
35 the community or the obstruction of the criminal justice process
36 would result from the eligible defendant's release from custody, so
37 that no appropriate conditions for the eligible defendant's release
38 could reasonably address that risk, and also finds that the failure to
39 indict the eligible defendant in accordance with the time
40 requirement set forth in this subparagraph was not due to
41 unreasonable delay by the prosecutor. If the court finds that a
42 substantial and unjustifiable risk to the safety of any other person or
43 the community or the obstruction of the criminal justice process
44 would result, and also finds that the failure to indict the eligible
45 defendant in accordance with the time requirement set forth in this
46 subparagraph was not due to unreasonable delay by the prosecutor,
47 the court may allocate an additional period of time, not to exceed 45
48 days, in which the return of an indictment shall occur.

1 Notwithstanding the court's previous findings for ordering the
2 eligible defendant's pretrial detention, or if the court currently does
3 not find a substantial and unjustifiable risk or finds unreasonable
4 delay by the prosecutor as described in this subparagraph, the court
5 shall order the release of the eligible defendant pursuant to section 3
6 of P.L.2014, c.31 (C.2A:162-17).

7 (b) If the eligible defendant is charged or indicted on another
8 matter resulting in the eligible defendant's pretrial detention, the
9 time calculations set forth in subparagraph (a) of this paragraph for
10 each matter shall run independently.

11 (2) (a) An eligible defendant who has been indicted shall not
12 remain detained in jail for more than 180 days on that charge
13 following the return or unsealing of the indictment, whichever is
14 later, not counting excludable time for reasonable delays as set forth
15 in subsection b. of this section, before commencement of the trial.
16 If the trial does not commence within that period of time, the
17 eligible defendant shall be released from jail unless, on motion of
18 the prosecutor, the court finds that a substantial and unjustifiable
19 risk to the safety of any other person or the community or the
20 obstruction of the criminal justice process would result from the
21 eligible defendant's release from custody, so that no appropriate
22 conditions for the eligible defendant's release could reasonably
23 address that risk, and also finds that the failure to commence trial in
24 accordance with the time requirement set forth in this subparagraph
25 was not due to unreasonable delay by the prosecutor. If the court
26 finds that a substantial and unjustifiable risk to the safety of any
27 other person or the community or the obstruction of the criminal
28 justice process would result, and also finds that the failure to
29 commence trial in accordance with the time requirement set forth in
30 this subparagraph was not due to unreasonable delay by the
31 prosecutor, the court may allocate an additional period of time in
32 which the eligible defendant's trial shall commence.
33 Notwithstanding the court's previous findings for ordering the
34 eligible defendant's pretrial detention, or if the court currently does
35 not find a substantial and unjustifiable risk or finds unreasonable
36 delay by the prosecutor as described in this subparagraph, the court
37 shall order the release of the eligible defendant pursuant to section 3
38 of P.L.2014, c.31 (C.2A:162-17). Notwithstanding any other
39 provision of this section, an eligible defendant shall be released
40 from jail pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17)
41 after a release hearing if, two years after the court's issuance of the
42 pretrial detention order for the eligible defendant, excluding any
43 delays attributable to the eligible defendant, the prosecutor is not
44 ready to proceed to voir dire or to opening argument, or to the
45 hearing of any motions that had been reserved for the time of trial.

46 (b) (i) For the purposes of this paragraph, a trial is considered
47 to have commenced when the court determines that the parties are
48 present and directs them to proceed to voir dire or to opening

1 argument, or to the hearing of any motions that had been reserved
2 for the time of trial.

3 (ii) The return of a superseding indictment against the eligible
4 defendant shall extend the time for the trial to commence.

5 (iii) If an indictment is dismissed without prejudice upon motion
6 of the eligible defendant for any reason, and a subsequent
7 indictment is returned, the time for trial shall begin running from
8 the date of the return of the subsequent indictment.

9 (iv) A trial ordered after a mistrial or upon a motion for a new
10 trial shall commence within 120 days of the entry of the order of the
11 court. A trial ordered upon the reversal of a judgment by any
12 appellate court shall commence within 120 days of the service of
13 that court's trial mandate.

14 (c) If the eligible defendant is indicted on another matter
15 resulting in the eligible defendant's pretrial detention, the time
16 calculations set forth in this paragraph for each matter shall run
17 independently.

18 b. (1) The following periods shall be excluded in computing
19 the time in which a case shall be indicted or tried:

20 (a) The time resulting from an examination and hearing on
21 competency and the period during which the eligible defendant is
22 incompetent to stand trial or incapacitated;

23 (b) The time from the filing to the disposition of an eligible
24 defendant's application for supervisory treatment pursuant to
25 N.J.S.2C:36A-1 or N.J.S.2C:43-12 et seq., the special probation
26 recovery court program pursuant to N.J.S.2C:35-14, drug or alcohol
27 treatment as a condition of probation pursuant to N.J.S.2C:45-1, or
28 other pretrial treatment or supervisory program;

29 (c) The time from the filing to the final disposition of a motion
30 made before trial by the prosecutor or the eligible defendant;

31 (d) The time resulting from a continuance granted, in the court's
32 discretion, at the eligible defendant's request or at the request of
33 both the eligible defendant and the prosecutor;

34 (e) The time resulting from the detention of an eligible
35 defendant in another jurisdiction provided the prosecutor has been
36 diligent and has made reasonable efforts to obtain the eligible
37 defendant's presence;

38 (f) The time resulting from exceptional circumstances
39 including, but not limited to, a natural disaster, the unavoidable
40 unavailability of an eligible defendant, material witness or other
41 evidence, when there is a reasonable expectation that the eligible
42 defendant, witness or evidence will become available in the near
43 future;

44 (g) On motion of the prosecutor, the delay resulting when the
45 court finds that the case is complex due to the number of defendants
46 or the nature of the prosecution;

- 1 (h) The time resulting from a severance of codefendants when
2 that severance permits only one trial to commence within the time
3 period for trial set forth in this section;
- 4 (i) The time resulting from an eligible defendant's failure to
5 appear for a court proceeding;
- 6 (j) The time resulting from a disqualification or recusal of a
7 judge;
- 8 (k) The time resulting from a failure by the eligible defendant to
9 provide timely and complete discovery;
- 10 (l) The time for other periods of delay not specifically
11 enumerated if the court finds good cause for the delay; and
- 12 (m) Any other time otherwise required by statute.
- 13 (2) The failure by the prosecutor to provide timely and complete
14 discovery shall not be considered excludable time unless the
15 discovery only became available after the time set for discovery.
16 (cf: P.L.2014, c.31, s.8)

17
18 3. Section 1 of P.L.1999, c.160 (C.2C:33-28) is amended to
19 read as follows:

20 1. a. An actor who solicits or recruits another to join or
21 actively participate in a criminal street gang with the knowledge or
22 purpose that the person who is solicited or recruited will promote,
23 further, assist, plan, aid, agree, or attempt to aid in the commission
24 of criminal conduct by a member of a criminal street gang commits
25 a crime of the fourth degree. For purposes of this section, the actor
26 shall have the requisite knowledge or purpose if he knows that the
27 person who is solicited or recruited will engage in some form,
28 though not necessarily which form, of criminal activity. "Criminal
29 street gang" shall have the meaning set forth in section 1 of
30 P.L.2007, c.341 (C.2C:33-29).

31 b. An actor who, in the course of violating subsection a. of this
32 section, threatens another with bodily injury on two or more
33 separate occasions within a 30-day period commits a crime of the
34 third degree.

35 c. An actor who, in the course of violating subsection a. of this
36 section, inflicts significant bodily injury upon another commits a
37 crime of the second degree.

38 d. Any defendant convicted of soliciting, recruiting, coercing
39 or threatening a person under 18 years of age in violation of
40 subsection a., b. or g. of this section shall be guilty of a crime of the
41 second degree.

42 e. An actor who violates subsection a. of this section while
43 under official detention commits a crime of the second degree. As
44 used in this subsection, "official detention" means detention in any
45 facility for custody of persons under charge or conviction of a crime
46 or offense, or committed pursuant to chapter 4 of this Title, or
47 alleged or found to be delinquent; detention for extradition or
48 deportation; mandatory commitment to a residential treatment

1 facility imposed as a condition of the special probation recovery
2 court program pursuant to subsection d. of N.J.S.2C:35-14; or any
3 other detention for law enforcement purposes. "Official detention"
4 also includes supervision of probation or parole, or constraint
5 incidental to release on bail. Notwithstanding the provisions of
6 N.J.S.2C:44-5 or any other provision of law, the court shall order
7 that the sentence imposed upon a violation of this section be served
8 consecutively to the period or periods of detention the actor was
9 serving at the time of the violation.

10 f. Any defendant convicted of soliciting, recruiting, coercing
11 or threatening a person under 18 years of age in violation of
12 subsection c. or e. of this section shall be sentenced by the court to
13 an extended term of imprisonment as set forth in subsection a. of
14 N.J.S.2C:43-7.

15 g. An actor who in the course of violating subsection a. of this
16 section, does so on school property commits a crime of the third
17 degree.

18 Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5
19 or any other provision of law, a conviction arising under this section
20 shall not merge with a conviction for any criminal offense that the
21 actor committed while involved in criminal street gang related
22 activity, as defined in subsection h. of N.J.S.2C:44-3, nor shall the
23 conviction for any such offense merge with a conviction pursuant to
24 this section and the sentence imposed upon a violation of this
25 section shall be ordered to be served consecutively to that imposed
26 upon any other such conviction.

27 (cf: P.L.2013, c.202)

28
29 4. N.J.S.2C:35-14 is amended to read as follows:

30 2C:35-14. Rehabilitation Program for Drug and Alcohol
31 Dependent Persons Subject to a Presumption of Incarceration or a
32 Mandatory Minimum Period of Parole Ineligibility; Criteria for
33 Imposing Special Probation Recovery Court Program; Ineligible
34 Offenders; Commitment to Residential Treatment Facilities or
35 Participation in a Nonresidential Treatment Program; Presumption
36 of Revocation; Brief Incarceration in Lieu of Permanent
37 Revocation.

38 a. Any person who is ineligible for probation due to a
39 conviction for a crime which is subject to a presumption of
40 incarceration or a mandatory minimum period of parole ineligibility
41 may be sentenced to **【a term of】** the special probation recovery
42 court program in accordance with this section, and may not apply
43 for drug and alcohol treatment pursuant to N.J.S.2C:45-1. Nothing
44 in this section shall be construed to prohibit a person who is eligible
45 for probation in accordance with N.J.S.2C:45-1 due to a conviction
46 for an offense which is not subject to a presumption of incarceration
47 or a mandatory minimum period of parole ineligibility from
48 applying for drug or alcohol treatment as a condition of probation

1 pursuant to N.J.S.2C:45-1; provided, however, that a person in need
2 of treatment as defined in subsection f. of section 2 of P.L.2012,
3 c.23 (C.2C:35-14.2) shall be sentenced in accordance with that
4 section. Notwithstanding the presumption of incarceration pursuant
5 to the provisions of subsection d. of N.J.S.2C:44-1, whenever a
6 drug or alcohol dependent person who is subject to sentencing
7 under this section is convicted of or adjudicated delinquent for an
8 offense, other than one described in subsection b. of this section,
9 the court, upon notice to the prosecutor, may, on motion of the
10 person, or on the court's own motion, **place** sentence the person
11 **on** to the special probation recovery court program, which shall
12 be for a term of five years, provided that the court finds on the
13 record that:

14 (1) the person has undergone a professional diagnostic
15 assessment to determine whether and to what extent the person is
16 drug or alcohol dependent and would benefit from treatment; and

17 (2) the person is a drug or alcohol dependent person within the
18 meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the
19 time of the commission of the present offense; and

20 (3) the present offense was committed while the person was
21 under the influence of a controlled dangerous substance, controlled
22 substance analog or alcohol or was committed to acquire property
23 or monies in order to support the person's drug or alcohol
24 dependency; and

25 (4) substance use disorders treatment and monitoring will serve
26 to benefit the person by addressing the person's drug or alcohol
27 dependency and will thereby reduce the likelihood that the person
28 will thereafter commit another offense; and

29 (5) the person did not possess a firearm at the time of the
30 present offense and did not possess a firearm at the time of any
31 pending criminal charge; and

32 (6) the person has not been previously convicted on two or more
33 separate occasions of crimes of the first or second degree, other
34 than those listed in paragraph (7); or the person has not been
35 previously convicted on two or more separate occasions, where one
36 of the offenses is a crime of the third degree, other than crimes
37 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the
38 first or second degree; and

39 (7) the person has not been previously convicted or adjudicated
40 delinquent for, and does not have a pending charge of murder,
41 aggravated manslaughter, manslaughter, kidnapping, aggravated
42 assault, aggravated sexual assault or sexual assault, or a similar
43 crime under the laws of any other state or the United States; and

44 (8) a suitable treatment facility licensed and approved by the
45 Division of Mental Health and Addiction Services in the
46 Department of **Human Services** Health is able and has agreed to
47 provide appropriate treatment services in accordance with the
48 requirements of this section; and

1 (9) no danger to the community will result from the person
2 being placed on special probation pursuant to this section.

3 In determining whether to sentence the person pursuant to this
4 section, the court shall consider all relevant circumstances, and
5 shall take judicial notice of any evidence, testimony or information
6 adduced at the trial, plea hearing or other court proceedings, and
7 shall also consider the presentence report and the results of the
8 professional diagnostic assessment to determine whether and to
9 what extent the person is drug or alcohol dependent and would
10 benefit from treatment. The court shall give priority to a person
11 who has moved to be sentenced to the special probation recovery
12 court program over a person who is being considered for a sentence
13 to the special probation recovery court program on the court's own
14 motion or in accordance with the provisions of section 2 of
15 P.L.2012, c.23 (C.2C:35-14.2).

16 As a condition of the special probation recovery court program,
17 the court shall order the person to enter a residential treatment
18 program at a facility licensed and approved by the Division of
19 Mental Health and Addiction Services in the Department of
20 **【Human Services】** Health or a program of nonresidential treatment
21 by a licensed and approved treatment provider, which program may
22 include the use of medication-assisted treatment as defined in
23 paragraph (7) of subsection f. of this section, to comply with
24 program rules and the requirements of the course of treatment, to
25 cooperate fully with the treatment provider, and to comply with
26 such other reasonable terms and conditions as may be required by
27 the court or by law, pursuant to N.J.S.2C:45-1, and which shall
28 include periodic urine testing for drug or alcohol usage throughout
29 the period of participation in the special probation recovery court
30 program. In determining whether to order the person to participate
31 in a nonresidential rather than a residential treatment program, the
32 court shall follow the procedure set forth in subsection j. of this
33 section. Subject to the requirements of subsection d. of this section,
34 the conditions of the special probation recovery court program may
35 include different methods and levels of community-based or
36 residential supervision.

37 b. A person shall not be eligible for the special probation
38 recovery court program pursuant to this section if the person is
39 convicted of or adjudicated delinquent for:

40 (1) a crime of the first degree;

41 (2) a crime of the first or second degree enumerated in
42 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), other
43 than a crime of the second degree involving N.J.S.2C:15-1
44 (robbery) or N.J.S.2C:18-2 (burglary);

45 (3) a crime, other than that defined in section 1 of P.L.1987,
46 c.101 (C.2C:35-7), for which a mandatory minimum period of
47 incarceration is prescribed under chapter 35 of this Title or any
48 other law; or

1 (4) an offense that involved the distribution or the conspiracy or
2 attempt to distribute a controlled dangerous substance or controlled
3 substance analog to a juvenile near or on school property.

4 c. (Deleted by amendment, P.L.2012, c.23)

5 d. Except as otherwise provided in subsection j. of this section,
6 a person convicted of or adjudicated delinquent for a crime of the
7 second degree or of a violation of section 1 of P.L.1987, c.101
8 (C.2C:35-7), or who previously has been convicted of or
9 adjudicated delinquent for an offense under subsection a. of
10 N.J.S.2C:35-5 or a similar offense under any other law of this State,
11 any other state or the United States, who is **placed on** sentenced
12 to the special probation recovery court program under this section
13 shall be committed to the custody of a residential substance use
14 disorders treatment facility licensed and approved by the Division
15 of Mental Health and Addiction Services in the Department of
16 **Human Services** Health. Subject to the authority of the court to
17 temporarily suspend imposition of all or any portion of the term of
18 commitment to a residential treatment facility pursuant to
19 subsection j. of this section, the person shall be committed to the
20 residential treatment facility immediately, unless the facility cannot
21 accommodate the person, in which case the person shall be
22 incarcerated to await commitment to the residential treatment
23 facility. The term of such commitment shall be for a minimum of
24 six months, or until the court, upon recommendation of the
25 treatment provider, determines that the person has successfully
26 completed the residential treatment program, whichever is later,
27 except that no person shall remain in the custody of a residential
28 treatment facility pursuant to this section for a period in excess of
29 five years. Upon successful completion of the required residential
30 treatment program, the person shall complete the **period of**
31 sentence to the special probation recovery court program, as
32 authorized by subsection a. of this section, with credit for time
33 served for any imprisonment served as a condition of probation and
34 credit for each day during which the person satisfactorily complied
35 with the terms and conditions of the special probation recovery
36 court program while committed pursuant to this section to a
37 residential treatment facility. Except as otherwise provided in
38 subsection l. of this section, the person shall not be eligible for early
39 discharge **of** from the special probation recovery court program
40 pursuant to N.J.S.2C:45-2, or any other provision of the law. The
41 court, in determining the number of credits for time spent in
42 residential treatment, shall consider the recommendations of the
43 treatment provider. A person placed into a residential treatment
44 facility pursuant to this section shall be deemed to be subject to
45 official detention for the purposes of N.J.S.2C:29-5 (escape).

46 e. The probation department or other appropriate agency
47 designated by the court to monitor or supervise the **person's**

1 person in the special probation recovery court program shall report
2 periodically to the court as to the person's progress in treatment and
3 compliance with court-imposed terms and conditions. The
4 treatment provider shall promptly report to the probation
5 department or other appropriate agency all significant failures by
6 the person to comply with any court imposed term or condition of
7 the special probation recovery court program or any requirements
8 of the course of treatment, including but not limited to a positive
9 drug or alcohol test, which shall only constitute a violation for a
10 person using medication-assisted treatment as defined in paragraph
11 (7) of subsection f. of this section if the positive test is unrelated to
12 the person's medication-assisted treatment, or the unexcused failure
13 to attend any session or activity, and shall immediately report any
14 act that would constitute an escape. The probation department or
15 other appropriate agency shall immediately notify the court and the
16 prosecutor in the event that the person refuses to submit to a
17 periodic drug or alcohol test or for any reason terminates the
18 person's participation in the course of treatment, or commits any act
19 that would constitute an escape.

20 f. (1) Upon a first violation of any term or condition of the
21 special probation recovery court program authorized by this section
22 or of any requirements of the course of treatment, the court in its
23 discretion may permanently revoke the person's participation in the
24 special probation recovery court program.

25 (2) Upon a second or subsequent violation of any term or
26 condition of the special probation recovery court program
27 authorized by this section or of any requirements of the course of
28 treatment, the court shall, subject only to the provisions of
29 subsection g. of this section, permanently revoke the person's
30 participation in the special probation recovery court program unless
31 the court finds on the record that there is a substantial likelihood
32 that the person will successfully complete the treatment program if
33 permitted to continue **【on】** in the special probation recovery court
34 program, and the court is clearly convinced, considering the nature
35 and seriousness of the violations, that no danger to the community
36 will result from permitting the person to continue **【on】** in the
37 special probation recovery court program pursuant to this section.
38 The court's determination to permit the person to continue **【on】** in
39 the special probation recovery court program following a second or
40 subsequent violation pursuant to this paragraph may be appealed by
41 the prosecution.

42 (3) In making its determination whether to revoke the person's
43 participation in the special probation recovery court program, and
44 whether to overcome the presumption of revocation established in
45 paragraph (2) of this subsection, the court shall consider the nature
46 and seriousness of the present infraction and any past infractions in
47 relation to the person's overall progress in the course of treatment,
48 and shall also consider the recommendations of the treatment

1 provider. The court shall give added weight to the treatment
2 provider's recommendation that the person's participation in the
3 special probation recovery court program be permanently revoked,
4 or to the treatment provider's opinion that the person is not
5 amenable to treatment or is not likely to complete the treatment
6 program successfully.

7 (4) If the court permanently revokes the person's participation in
8 the special probation recovery court program pursuant to this
9 subsection, the court shall impose any sentence that might have
10 been imposed, or that would have been required to be imposed,
11 originally for the offense for which the person was convicted or
12 adjudicated delinquent. The court shall conduct a de novo review
13 of any aggravating and mitigating factors present at the time of both
14 original sentencing and resentencing. If the court determines or is
15 required pursuant to any other provision of this chapter or any other
16 law to impose a term of imprisonment, the person shall receive
17 credit for any time served in custody pursuant to N.J.S.2C:45-1 or
18 while awaiting placement in a treatment facility pursuant to this
19 section, and for each day during which the person satisfactorily
20 complied with the terms and conditions of the special probation
21 recovery court program while committed pursuant to this section to
22 a residential treatment facility. The court, in determining the
23 number of credits for time spent in a residential treatment facility,
24 shall consider the recommendations of the treatment provider.

25 (5) Following a violation, if the court permits the person to
26 continue on his participation in the special probation recovery court
27 program pursuant to this section, the court shall order the person to
28 comply with such additional terms and conditions, including but not
29 limited to more frequent drug or alcohol testing, as are necessary to
30 deter and promptly detect any further violation.

31 (6) Notwithstanding any other provision of this subsection, if
32 the person at any time refuses to undergo urine testing for drug or
33 alcohol usage as provided in subsection a. of this section, the court
34 shall, subject only to the provisions of subsection g. of this section,
35 permanently revoke the person's participation in the special
36 probation recovery court program. Notwithstanding any other
37 provision of this section, if the person at any time while committed
38 to the custody of a residential treatment facility pursuant to this
39 section commits an act that would constitute an escape, the court
40 shall forthwith permanently revoke the person's participation in the
41 special probation recovery court program.

42 (7) An action for a violation under this section may be brought
43 by a probation officer or prosecutor or on the court's own motion.
44 Failure to complete successfully the required treatment program
45 shall constitute a violation of the person's participation in the
46 special probation recovery court program. In the case of the
47 temporary or continued management of a person's drug or alcohol
48 dependency by means of medication-assisted treatment as defined

1 herein, whenever supported by a report from the treatment provider
2 of existing satisfactory progress and reasonably predictable long-
3 term success with or without further medication-assisted treatment,
4 the person's use of the medication-assisted treatment, even if
5 continuing, shall not be the basis to constitute a failure to complete
6 successfully the treatment program. A person who fails to comply
7 with the terms of the person's participation in the special probation
8 recovery court program pursuant to this section and is thereafter
9 sentenced to imprisonment in accordance with this subsection shall
10 thereafter be ineligible for entry into the Intensive Supervision
11 Program, provided however that this provision shall not affect the
12 person's eligibility for entry into the Intensive Supervision Program
13 for a subsequent conviction.

14 As used in this section, the term "medication-assisted treatment"
15 means the use of any medications approved by the federal Food and
16 Drug Administration to treat substance use disorders, including
17 extended-release naltrexone, methadone, and buprenorphine, in
18 combination with counseling and behavioral therapies, to provide a
19 whole-patient approach to the treatment of substance use disorders.

20 g. When a person **【on】** sentenced to the special probation
21 recovery court program is subject to a presumption of revocation on
22 a second or subsequent violation pursuant to paragraph (2) of
23 subsection f. of this section, or when the person refuses to undergo
24 drug or alcohol testing pursuant to paragraph (6) of subsection f. of
25 this section, the court may, in lieu of permanently revoking the
26 person's participation in the special probation recovery court
27 program, impose a term of incarceration for a period of not less
28 than 30 days nor more than six months, after which the person's
29 **【term of】** participation in the special probation recovery court
30 program pursuant to this section may be reinstated. In determining
31 whether to order a period of incarceration in lieu of permanent
32 revocation pursuant to this subsection, the court shall consider the
33 recommendations of the treatment provider with respect to the
34 likelihood that such confinement would serve to motivate the
35 person to make satisfactory progress in treatment once the person's
36 participation in the special probation recovery court program is
37 reinstated. This disposition may occur only once with respect to
38 any person unless the court is clearly convinced that there are
39 compelling and extraordinary reasons to justify reimposing this
40 disposition with respect to the person. Any such determination by
41 the court to reimpose this disposition may be appealed by the
42 prosecution. Nothing in this subsection shall be construed to limit
43 the authority of the court at any time during the period of a person's
44 participation in the special probation recovery court program to
45 order a person **【on】** participating in the special probation recovery
46 court program who is not subject to a presumption of revocation
47 pursuant to paragraph (2) of subsection f. of this section to be
48 incarcerated over the course of a weekend, or for any other

1 reasonable period of time, when the court in its discretion
2 determines that such incarceration would help to motivate the
3 person to make satisfactory progress in treatment.

4 h. The court, as a condition of its order, and after considering
5 the person's financial resources, shall require the person to pay that
6 portion of the costs associated with the person's participation in any
7 residential or nonresidential treatment program imposed pursuant to
8 this section which, in the opinion of the court, is consistent with the
9 person's ability to pay, taking into account the court's authority to
10 order payment or reimbursement to be made over time and in
11 installments.

12 i. The court shall impose, as a condition of the participation in
13 special probation recovery court program, any fine, penalty, fee or
14 restitution applicable to the offense for which the person was
15 convicted or adjudicated delinquent.

16 j. Where the court finds that a person has satisfied all of the
17 eligibility criteria for participation in the special probation recovery
18 court program and would otherwise be required to be committed to
19 the custody of a residential substance use disorders treatment
20 facility pursuant to the provisions of subsection d. of this section,
21 the court may temporarily suspend imposition of all or any portion
22 of the term of commitment to a residential treatment facility and
23 may instead order the person to enter a nonresidential treatment
24 program, provided that the court finds on the record that:

25 (1) the person conducting the diagnostic assessment required
26 pursuant to paragraph (1) of subsection a. of this section has
27 recommended in writing that the proposed course of nonresidential
28 treatment services is clinically appropriate and adequate to address
29 the person's treatment needs; and

30 (2) no danger to the community would result from the person
31 participating in the proposed course of nonresidential treatment
32 services; and

33 (3) a suitable treatment provider is able and has agreed to
34 provide clinically appropriate nonresidential treatment services.

35 If the prosecutor objects to the court's decision to suspend the
36 commitment of the person to a residential treatment facility
37 pursuant to this subsection, the sentence **[of]** to the special
38 probation recovery court program imposed pursuant to this section
39 shall not become final for ten days in order to permit the appeal by
40 the prosecution of the court's decision.

41 After a period of six months of nonresidential treatment, if the
42 court, considering all available information including but not
43 limited to the recommendation of the treatment provider, finds that
44 the person has made satisfactory progress in treatment and that
45 there is a substantial likelihood that the person will successfully
46 complete the nonresidential treatment program and period of
47 participation in the special probation recovery court program, the
48 court, on notice to the prosecutor, may permanently suspend the

1 commitment of the person to the custody of a residential treatment
2 program, in which event the special monitoring provisions set forth
3 in subsection k. of this section shall no longer apply.

4 Nothing in this subsection shall be construed to limit the
5 authority of the court at any time during the **term of** sentence to
6 the special probation recovery court program to order the person to
7 be committed to a residential or nonresidential treatment facility if
8 the court determines that such treatment is clinically appropriate
9 and necessary to address the person's present treatment needs.

10 k. (1) When the court temporarily suspends the commitment of
11 the person to a residential treatment facility pursuant to subsection
12 j. of this section, the court shall, in addition to ordering
13 participation in a prescribed course of nonresidential treatment and
14 any other appropriate terms or conditions authorized or required by
15 law, order the person to undergo urine testing for drug or alcohol
16 use not less than once per week unless otherwise ordered by the
17 court. The court-ordered testing shall be conducted by the
18 probation department or the treatment provider. The results of all
19 tests shall be reported promptly to the court and to the prosecutor.
20 If the person is involved with a program that is providing the person
21 medication-assisted treatment as defined in paragraph (7) of
22 subsection f. of this section, only a positive urine test for drug or
23 alcohol use unrelated to the medication-assisted treatment shall
24 constitute a violation of the terms and conditions of participation in
25 the special probation recovery court program. In addition, the court
26 shall impose appropriate curfews or other restrictions on the
27 person's movements, and may order the person to wear electronic
28 monitoring devices to enforce such curfews or other restrictions as a
29 condition of participation in the special probation recovery court
30 program.

31 (2) The probation department or other appropriate agency shall
32 immediately notify the court and the prosecutor in the event that the
33 person fails or refuses to submit to a drug or alcohol test, knowingly
34 defrauds the administration of a drug test, terminates the person's
35 participation in the course of treatment, or commits any act that
36 would constitute absconding from parole. If the person at any time
37 while entered in a nonresidential treatment program pursuant to
38 subsection j. of this section knowingly defrauds the administration
39 of a drug test, goes into hiding, or leaves the State with a purpose of
40 avoiding supervision, the court shall permanently revoke the
41 person's participation in the special probation recovery court
42 program.

43 l. If the court finds that the person has made exemplary
44 progress in the course of treatment, the court may, upon
45 recommendation of the person's supervising probation officer or on
46 the court's own motion, and upon notice to the prosecutor, grant
47 early discharge from **a term of** participation in the special
48 probation recovery court program provided that the person: (1) has

1 satisfactorily completed the treatment program ordered by the court;
2 (2) has served at least two years **【of】** the special probation recovery
3 court program; (3) within the preceding 12 months, did not commit
4 a substantial violation of any term or condition of the special
5 probation recovery court program, including but not limited to a
6 positive urine test, which shall only constitute a violation for a
7 person using medication-assisted treatment as defined in paragraph
8 (7) of subsection f. of this section if the positive test is unrelated to
9 the person's medication-assisted treatment; and (4) is not likely to
10 relapse or commit an offense if probation supervision and related
11 services are discontinued.

12 m. (1) The Superior Court may order the expungement of all
13 records and information relating to all prior arrests, detentions,
14 convictions, and proceedings for any offense enumerated in Title
15 2C of the New Jersey Statutes upon successful discharge from **【a**
16 **term of】** the special probation recovery court program as provided
17 in this section, regardless of whether the person was sentenced to
18 the special probation recovery court program under this section,
19 section 2 of P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, if the
20 person satisfactorily completed a substance abuse treatment
21 program as ordered by the court and was not convicted of any
22 crime, or adjudged a disorderly person or petty disorderly person,
23 during the term of participation in the special probation recovery
24 court program. The provisions of N.J.S.2C:52-7 through
25 N.J.S.2C:52-14 shall not apply to an expungement pursuant to this
26 paragraph and no fee shall be charged to a person eligible for relief
27 pursuant to this paragraph. The court shall grant the relief
28 requested unless it finds that the need for the availability of the
29 records outweighs the desirability of having the person freed from
30 any disabilities associated with their availability, or it finds that the
31 person is otherwise ineligible for expungement pursuant to
32 paragraph (2) of this subsection. An expungement under this
33 paragraph shall proceed in accordance with rules and procedures
34 developed by the Supreme Court.

35 (2) A person shall not be eligible for expungement under
36 paragraph (1) of this subsection if the records include a conviction
37 for any offense barred from expungement pursuant to subsection b.
38 or c. of N.J.S.2C:52-2. It shall be the obligation of the prosecutor to
39 notify the court of any disqualifying convictions or any other
40 factors related to public safety that should be considered by the
41 court when deciding to grant an expungement under paragraph (1)
42 of this subsection.

43 (3) The Superior Court shall provide a copy of the expungement
44 order granted pursuant to paragraph (1) of this subsection to the
45 prosecutor and to the person and, if the person was represented by
46 the Public Defender, to the Public Defender. The person or, if the
47 person was represented by the Public Defender, the Public Defender
48 on behalf of the person, shall promptly distribute copies of the

1 expungement order to appropriate agencies who have custody and
2 control of the records specified in the order so that the agencies may
3 comply with the requirements of N.J.S.2C:52-15.

4 (4) If the person whose records are expunged pursuant to
5 paragraph (1) of this subsection is convicted of any crime following
6 discharge from special probation, the full record of arrests and
7 convictions may be restored to public access and no future
8 expungement shall be granted to such person.

9 (5) A person who, prior to the effective date of P.L.2015, c.261,
10 was successfully discharged from **【a term of】** the special probation
11 recovery court program as provided in this section, regardless of
12 whether the person was sentenced to the special probation recovery
13 court program under this section, section 2 of P.L.2012, c.23
14 (C.2C:35-14.2), or N.J.S.2C:45-1, may seek an expungement of all
15 records and information relating to all arrests, detentions,
16 convictions, and proceedings for any offense enumerated in Title
17 2C of the New Jersey Statutes that existed at the time of discharge
18 from the special probation recovery court program by presenting an
19 application to the Superior Court in the county in which the person
20 was sentenced to the special probation recovery court program,
21 which contains a duly verified petition as provided in N.J.S.2C:52-7
22 for each crime or offense sought to be expunged. The petition for
23 expungement shall proceed pursuant to N.J.S.2C:52-1 et seq. except
24 that the requirements related to the expiration of the time periods
25 specified in N.J.S.2C:52-2 through section 1 of P.L.1980, c.163
26 (C.2C:52-4.1) shall not apply. A person who was convicted of any
27 offense barred from expungement pursuant to subsection b. or c. of
28 N.J.S.2C:52-2, or who has been convicted of any crime or offense
29 since the date of discharge from the special probation recovery
30 court program shall not be eligible to apply for an expungement
31 under this paragraph. In addition, no application for expungement
32 shall be considered until any pending charges are disposed. It shall
33 be the obligation of the prosecutor to notify the court of any
34 disqualifying convictions or any other factors related to public
35 safety that should be considered by the court when deciding to grant
36 an expungement under this paragraph. The Superior Court shall
37 consider the person's verified petition and may order the
38 expungement of all records and information relating to all arrests,
39 detentions, convictions, and proceedings of the person that existed
40 at the time of discharge from the special probation recovery court
41 program as appropriate. The court shall grant the relief requested
42 unless it finds that the need for the availability of the records
43 outweighs the desirability of having the person freed from any
44 disabilities associated with their availability, or it finds that the
45 person is otherwise ineligible for expungement pursuant to this
46 paragraph. No fee shall be charged to a person eligible for relief
47 pursuant to this paragraph.
48 (cf: P.L.2015, c.261, s.1)

1 5. Section 1 of P.L.2012, c.23 (C.2C:35-14.1) is amended to
2 read as follows:

3 1. a. Except as provided in subsection c., the court shall
4 require a defendant to submit to a professional diagnostic
5 assessment if:

6 (1) there is a reasonable basis to believe that the defendant may
7 be a drug dependent person as defined in N.J.S.2C:35-2;

8 (2) the defendant is charged with:

9 (a) a crime that is subject to a presumption of imprisonment
10 pursuant to subsection d. of N.J.S.2C:44-1; or

11 (b) any crime of the third degree if the defendant has previously
12 been convicted of a crime subject to the presumption of
13 imprisonment or that resulted in imposition of a State prison term;
14 and

15 (3) the defendant is eligible to be considered for a sentence to
16 the special probation recovery court program pursuant to the
17 provisions of N.J.S.2C:35-14.

18 b. For the purposes of this section, any of the following
19 circumstances shall provide a reasonable basis to believe that a
20 person may be drug dependent:

21 (1) the present offense involves a controlled dangerous
22 substance;

23 (2) the defendant has previously been convicted of an offense
24 involving a controlled dangerous substance, was admitted to pretrial
25 intervention or supervisory treatment, or received a conditional
26 discharge for a charge involving a controlled dangerous substance;

27 (3) the defendant has any other pending charge in this State, any
28 other state, or a federal court involving a controlled dangerous
29 substance;

30 (4) the defendant has any time previously received any form of
31 drug treatment or counseling;

32 (5) the defendant appears to have been under the influence of a
33 controlled dangerous substance during the commission of the
34 present offense, or it reasonably appears that the present offense
35 may have been committed to acquire property or monies to
36 purchase a controlled dangerous substance for the defendant's
37 personal use;

38 (6) the defendant admits to the unlawful use of a controlled
39 dangerous substance within the year preceding the arrest for the
40 present offense;

41 (7) the defendant has had a positive drug test within the last 12
42 months; or

43 (8) there is information, other than the circumstances
44 enumerated in paragraphs (1) through (7) of this subsection, which
45 indicates that the defendant may be a drug dependent person or
46 would otherwise benefit by undergoing a professional diagnostic
47 assessment within the meaning of paragraph (1) of subsection a. of
48 N.J.S.2C:35-14.

1 c. The court shall not be required to order a diagnostic
2 assessment pursuant to subsection a. of this section if it is clearly
3 convinced that such assessment will not serve any useful purpose.
4 If the court does not order a diagnostic assessment, the court shall
5 place on the record the reasons for its decision.

6 d. Nothing in this section shall be construed to limit or
7 constrain the court's authority and discretion to order drug testing,
8 drug screening, or a professional diagnostic assessment at any time.
9 (cf: P.L.2012, c.23, s.1)

10
11 6. Section 2 of P.L.2012, c.23 (C.2C:35-14.2) is amended to
12 read as follows:

13 2. a. In all cases where a professional diagnostic assessment
14 within the meaning of paragraph (1) of subsection a. of
15 N.J.S.2C:35-14 has been ordered and completed pursuant to section
16 1 of P.L.2012, c.23 (C.2C:35-14.1), the court shall make a
17 determination at sentencing or prior to sentencing whether the
18 defendant may be a drug dependent person as defined in
19 N.J.S.2C:35-2.

20 b. Notwithstanding any law to the contrary, where the court
21 finds that a defendant is a person in need of treatment as defined in
22 subsection f. of this section and that the defendant additionally
23 meets all the requirements of N.J.S.2C:35-14, the court shall
24 sentence a defendant to the special probation recovery court
25 program pursuant to the provisions of N.J.S.2C:35-14 for the
26 purpose of participating in a court-supervised drug treatment
27 program, regardless of whether the defendant has sought or
28 consents to such a sentence, unless:

29 (1) the court finds that a sentence of imprisonment must be
30 imposed consistent with the provisions of chapters 43 and 44 of
31 Title 2C of the New Jersey Statutes, in which case a sentence of
32 imprisonment shall be imposed; or

33 (2) the court is clearly convinced that:

34 (a) the treatment, monitoring, and supervision services that will
35 be provided under N.J.S.2C:45-1 are adequate to address the
36 defendant's clinical needs;

37 (b) the defendant's treatment needs would not be better
38 addressed by sentencing the defendant to the special probation
39 recovery court program pursuant to N.J.S.2C:35-14;

40 (c) no danger to the community would result from placing the
41 person on regular probation pursuant to N.J.S.2C:45-1; and

42 (d) a sentence of probation authorized under N.J.S.2C:45-1
43 would be consistent with the provisions of chapters 43 and 44 of
44 Title 2C of the New Jersey Statutes.

45 c. In making the findings and determinations required by this
46 section, the court shall consider all relevant circumstances, and
47 shall take judicial notice of any evidence, testimony, or information
48 adduced at the trial, plea hearing, or other court proceedings, and

1 also shall also consider the presentence report and the results of any
2 professional diagnostic assessment. The court shall place on the
3 record the reasons for its decision.

4 d. If, pursuant to paragraph (2) of subsection b. of this section,
5 the court imposes a sentence of probation authorized by
6 N.J.S.2C:45-1, such sentence shall not become final for 10 days in
7 order to permit the appeal of the sentence by the prosecution.

8 e. Nothing in this section shall be construed to alter the
9 presumption of imprisonment contained in subsection d. of
10 N.J.S.2C:44-1 or to require or authorize the reduction or waiver of a
11 mandatory period of parole ineligibility required by law, or to
12 modify the exceptions to such requirements provided for by law,
13 including but not limited to those provided in N.J.S.2C:35-12 and
14 N.J.S.2C:35-14.

15 f. For the purposes of this section, the term "person in need of
16 treatment" means a defendant who:

17 (1) the court has determined to be a drug dependent person as
18 defined in N.J.S.2C:35-2;

19 (2) has been convicted of:

20 (a) a crime that is subject to a presumption of imprisonment
21 pursuant to subsection d. of N.J.S.2C:44-1; or

22 (b) any other crime of the third degree if the person has
23 previously been convicted of a crime subject to a presumption of
24 imprisonment or a crime that resulted in the imposition of a State
25 prison term; and

26 (3) is eligible to be considered for a sentence to the special
27 probation recovery court program pursuant to the provisions of
28 N.J.S.2C:35-14.

29 (cf: P.L.2012, c.23, s.2)

30

31 7. Section 3 of P.L.2012, c.23 (2C:35-14.3) is amended to read
32 as follows:

33 3. The Administrative Director of the Courts is authorized to
34 phase-in the implementation of the provisions of P.L.2012, c.23
35 (C.2C:35-14.1 et al.) related to a program of mandatory sentencing
36 and treatment of qualified offenders to the special probation
37 recovery court program based on monies annually appropriated
38 from the General Fund. Within 60 days of the effective date of this
39 act, the program shall be established in no fewer than three court
40 vicinages, and with further implementation occurring in no less than
41 three additional vicinages in each fiscal year thereafter in a manner
42 to be determined by the Administrative Director of the Courts
43 provided that sufficient State funds have been appropriated. The
44 Administrative Director of the Courts shall select appropriate
45 vicinages for the implementation of the program. The program shall
46 be fully implemented in the State no later than the fifth fiscal year

1 following enactment provided that sufficient State funds have been
2 appropriated.

3 (cf: P.L.2012, c.23, s.3)

4
5 8. N.J.S.2C:44-6 is amended to read as follows:

6 2C:44-6 Procedure on Sentence; Presentence Investigation and
7 Report.

8 a. The court shall not impose sentence without first ordering a
9 presentence investigation of the defendant and according due
10 consideration to a written report of such investigation when
11 required by the Rules of Court. The court may order a presentence
12 investigation in any other case.

13 b. The presentence investigation shall include an analysis of
14 the circumstances attending the commission of the offense, the
15 defendant's history of delinquency or criminality, family situation,
16 financial resources, including whether or not the defendant is an
17 enrollee or covered person under a health insurance contract, policy
18 or plan, debts, including any amount owed for a fine, assessment or
19 restitution ordered in accordance with the provisions of Title 2C,
20 any obligation of child support including any child support
21 delinquencies, employment history, personal habits, the disposition
22 of any charge made against any codefendants, the defendant's
23 history of civil commitment, any disposition which arose out of
24 charges suspended pursuant to N.J.S.2C:4-6 including the records
25 of the disposition of those charges and any acquittal by reason of
26 insanity pursuant to N.J.S.2C:4-1, and any other matters that the
27 probation officer deems relevant or the court directs to be included.
28 The defendant shall disclose any information concerning any
29 history of civil commitment. The report shall also include a
30 medical history of the defendant and a complete psychological
31 evaluation of the defendant in any case in which the defendant is
32 being sentenced for a first or second degree crime involving
33 violence and:

34 (1) the defendant has a prior acquittal by reason of insanity
35 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to
36 N.J.S.2C:4-6; or

37 (2) the defendant has a prior conviction for murder pursuant to
38 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant
39 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,
40 endangering the welfare of a child which would constitute a crime
41 of the second degree pursuant to N.J.S.2C:24-4, or stalking which
42 would constitute a crime of the third degree pursuant to section 1 of
43 P.L.1992, c.209 (C.2C:12-10); or

44 (3) the defendant has a prior diagnosis of psychosis.

45 The court, in its discretion and considering all the appropriate
46 circumstances, may waive the medical history and psychological
47 examination in any case in which a term of imprisonment including
48 a period of parole ineligibility is imposed. In any case involving a

1 conviction of N.J.S.2C:24-4, endangering the welfare of a child;
2 N.J.S.2C:18-3, criminal trespass, where the trespass was committed
3 in a school building or on school property; section 1 of P.L.1993,
4 c.291 (C.2C:13-6), attempting to lure or entice a child with purpose
5 to commit a criminal offense; section 1 of P.L.1992, c.209
6 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the
7 victim of the offense is a child under the age of 18, the investigation
8 shall include a report on the defendant's mental condition.

9 The presentence investigation shall also include information
10 regarding the defendant's history of substance abuse and substance
11 abuse treatment, if any, including whether the defendant has sought
12 treatment in the past. If any of the factors listed in subsection b. of
13 section 1 of P.L.2012, c.23 (C.2C:35-14.1) apply, the presentence
14 report shall also include consideration of whether the defendant
15 may be a drug dependent person as defined in N.J.S.2C:35-2.

16 The presentence investigation shall include an analysis of
17 whether the defendant should be required to submit to a
18 professional diagnostic assessment within the meaning of paragraph
19 (1) of subsection a. of N.J.S.2C:35-14 in any case where: the
20 defendant may be a drug dependent person as defined in
21 N.J.S.2C:35-2; the defendant is eligible to be considered for a
22 sentence to the special probation recovery court program pursuant
23 to N.J.S.2C:35-14; and the court has not already ordered the
24 defendant to submit to any such diagnostic assessment in regard to
25 the pending matter.

26 The presentence report shall also include a report on any
27 compensation paid by the Victims of Crime Compensation Agency
28 as a result of the commission of the offense and, in any case where
29 the victim chooses to provide one, a statement by the victim of the
30 offense for which the defendant is being sentenced. The statement
31 may include the nature and extent of any physical harm or
32 psychological or emotional harm or trauma suffered by the victim,
33 the extent of any loss to include loss of earnings or ability to work
34 suffered by the victim and the effect of the crime upon the victim's
35 family. The probation department shall notify the victim or nearest
36 relative of a homicide victim of his right to make a statement for
37 inclusion in the presentence report if the victim or relative so
38 desires. Any such statement shall be made within 20 days of
39 notification by the probation department.

40 The presentence report shall specifically include an assessment
41 of the gravity and seriousness of harm inflicted on the victim,
42 including whether or not the defendant knew or reasonably should
43 have known that the victim of the offense was particularly
44 vulnerable or incapable of resistance due to advanced age,
45 disability, ill-health, or extreme youth, or was for any other reason
46 substantially incapable of exercising normal physical or mental
47 power of resistance.

1 c. If, after the presentence investigation, the court desires
2 additional information concerning an offender convicted of an
3 offense before imposing sentence, it may order any additional
4 psychological or medical testing of the defendant.

5 d. Disclosure of any presentence investigation report or
6 psychiatric examination report shall be in accordance with law and
7 the Rules of Court, except that information concerning the
8 defendant's financial resources shall be made available upon request
9 to the Victims of Crime Compensation Agency or to any officer
10 authorized under the provisions of section 3 of P.L.1979, c.396
11 (C.2C:46-4) to collect payment on an assessment, restitution or fine
12 and that information concerning the defendant's coverage under any
13 health insurance contract, policy or plan shall be made available, as
14 appropriate to the Commissioner of Corrections and to the chief
15 administrative officer of a county jail in accordance with the
16 provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

17 e. The court shall not impose a sentence of imprisonment for
18 an extended term unless the ground therefor has been established at
19 a hearing after the conviction of the defendant and on written notice
20 to him of the ground proposed. The defendant shall have the right
21 to hear and controvert the evidence against him and to offer
22 evidence upon the issue.

23 f. (Deleted by amendment, P.L.1986, c.85).
24 (cf: P.L.2012, c.23, s.6)
25

26 9. Section 159 of P.L.2012, c.16 (C.30:4C-4.5) is amended to
27 read as follows:

28 159. a. Notwithstanding any law, rule, or regulation to the
29 contrary, commencing on or after the effective date of P.L.2012,
30 c.16 (C.52:27D-43.9a et al.) and subject to the provisions of
31 subsection b. of this section, the Division of Children's System of
32 Care in the Department of Children and Families, in lieu of the
33 Division of Mental Health and Addiction Services in the
34 Department of **Human Services** Health, shall provide, manage,
35 and coordinate services for the treatment of alcoholism and
36 substance abuse for persons under 21 years of age, deemed
37 clinically and functionally appropriate by the Department of
38 Children and Families, as limited by service availability and
39 appropriations and other monies available, and to become available,
40 except that, as agreed to by the Department of Children and
41 Families and the Department of **Human Services** Health pursuant
42 to subsection b. of this section, the Division of Mental Health and
43 Addiction Services may continue to exclusively provide, manage,
44 and coordinate programs and services designed primarily for adults
45 18 years of age or older, including, but not limited to, services
46 provided pursuant to R.S.39:4-50 and the **Drug Courts** Special
47 Probation Recovery Court Program of this State.

1 program is not focused on “drugs” as such, but instead consists of a
2 comprehensive program of treatment and rehabilitation services.

3 In the statutes, the program is set out in N.J.S.A.2C:35-14 et al.
4 and is called “special probation.” In accordance with the structure
5 and goals of the program, this bill would change its statutory name
6 to the “special probation recovery court program.”

7 In addition, the bill makes technical changes to the statutes’
8 references to the Division of Mental Health and Addiction Services.
9 The statutes refer to the division as being “in the Department of
10 Human Services.” However, the division was moved to the
11 Department of Health pursuant to Reorganization Plan No. 001-
12 2017. This bill corrects the statutory references accordingly, to refer
13 to the Division of Mental Health and Addiction Services in the
14 Department of Health.