

ASSEMBLY, No. 2195

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Upgrades penalties for certain crimes involving heroin and fentanyl; establishes new crimes concerning heroin mixtures; allows certain defendants to be eligible for drug court.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain controlled dangerous substances,
2 amending various parts of the statutory law and supplementing
3 chapter 35 of Title 2C of the New Jersey Statutes.

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

7
8 1. N.J.S.2C:35-2 is amended to read as follows:

9 2C:35-2. As used in this chapter:

10 "Administer" means the direct application of a controlled
11 dangerous substance or controlled substance analog, whether by
12 injection, inhalation, ingestion, or any other means, to the body of a
13 patient or research subject by: (1) a practitioner (or, in his
14 presence, by his lawfully authorized agent), or (2) the patient or
15 research subject at the lawful direction and in the presence of the
16 practitioner.

17 "Adulterants or dilutants" means substances which are mixed or
18 combined with a controlled dangerous substance and any medium
19 which is used to carry a controlled dangerous substance, if the
20 controlled dangerous substance is not readily removable from the
21 medium. The terms include, but are not limited to, blotter paper,
22 stamps or cigarettes.

23 "Agent" means an authorized person who acts on behalf of or at
24 the direction of a manufacturer, distributor, or dispenser but does
25 not include a common or contract carrier, public warehouseman, or
26 employee thereof.

27 "Controlled dangerous substance" means a drug, substance, or
28 immediate precursor in Schedules I through V, any substance the
29 distribution of which is specifically prohibited in N.J.S.2C:35-3, in
30 section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of
31 P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120
32 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),
33 and any drug or substance which, when ingested, is metabolized or
34 otherwise becomes a controlled dangerous substance in the human
35 body. When any statute refers to controlled dangerous substances,
36 or to a specific controlled dangerous substance, it shall also be
37 deemed to refer to any drug or substance which, when ingested, is
38 metabolized or otherwise becomes a controlled dangerous substance
39 or the specific controlled dangerous substance, and to any substance
40 that is an immediate precursor of a controlled dangerous substance
41 or the specific controlled dangerous substance. The term shall not
42 include distilled spirits, wine, malt beverages, as those terms are
43 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco
44 products. The term, wherever it appears in any law 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 administrative regulation of this State, shall include controlled
2 substance analogs.

3 "Controlled substance analog" means a substance that has a
4 chemical structure substantially similar to that of a controlled
5 dangerous substance and that was specifically designed to produce
6 an effect substantially similar to that of a controlled dangerous
7 substance. The term shall not include a substance manufactured or
8 distributed in conformance with the provisions of an approved new
9 drug application or an exemption for investigational use within the
10 meaning of section 505 of the "Federal Food, Drug and Cosmetic
11 Act," 52 Stat. 1052 (21 U.S.C. s.355).

12 "Counterfeit substance" means a controlled dangerous substance
13 or controlled substance analog which, or the container or labeling of
14 which, without authorization, bears the trademark, trade name, or
15 other identifying mark, imprint, number, or device, or any likeness
16 thereof, of a manufacturer, distributor, or dispenser other than the
17 person or persons who in fact manufactured, distributed, or
18 dispensed the substance and which thereby falsely purports or is
19 represented to be the product of, or to have been distributed by,
20 such other manufacturer, distributor, or dispenser.

21 "Deliver" or "delivery" means the actual, constructive, or
22 attempted transfer from one person to another of a controlled
23 dangerous substance or controlled substance analog, whether or not
24 there is an agency relationship.

25 "Dispense" means to deliver a controlled dangerous substance or
26 controlled substance analog to an ultimate user or research subject
27 by or pursuant to the lawful order of a practitioner, including the
28 prescribing, administering, packaging, labeling, or compounding
29 necessary to prepare the substance for that delivery. "Dispenser"
30 means a practitioner who dispenses.

31 "Distribute" means to deliver other than by administering or
32 dispensing a controlled dangerous substance or controlled substance
33 analog. "Distributor" means a person who distributes.

34 "Drugs" means (a) substances recognized in the official United
35 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
36 United States, or official National Formulary, or any supplement to
37 any of them; and (b) substances intended for use in the diagnosis,
38 cure, mitigation, treatment, or prevention of disease in man or other
39 animals; and (c) substances (other than food) intended to affect the
40 structure or any function of the body of man or other animals; and
41 (d) substances intended for use as a component of any article
42 specified in subsections (a), (b), and (c) of this section; but does not
43 include devices or their components, parts, or accessories.

44 "Drug or alcohol dependent person" means a person who as a
45 result of using a controlled dangerous substance or controlled
46 substance analog or alcohol has been in a state of psychic or
47 physical dependence, or both, arising from the use of that controlled
48 dangerous substance or controlled substance analog or alcohol on a

1 continuous or repetitive basis. Drug or alcohol dependence is
2 characterized by behavioral and other responses, including but not
3 limited to a strong compulsion to take the substance on a recurring
4 basis in order to experience its psychic effects, or to avoid the
5 discomfort of its absence.

6 "Hashish" means the resin extracted from any part of the plant
7 Genus Cannabis L. and any compound, manufacture, salt,
8 derivative, mixture, or preparation of such resin.

9 "Heroin mixture" means a substance containing heroin, or its
10 analog, and at least one other controlled dangerous substance
11 classified as a narcotic drug or its analog that have been combined
12 by any means so that the injection, inhalation, or ingestion of the
13 mixture would result in the consumption of two or more controlled
14 dangerous substances or analogs.

15 "Manufacture" means the production, preparation, propagation,
16 compounding, conversion, or processing of a controlled dangerous
17 substance or controlled substance analog, either directly or by
18 extraction from substances of natural origin, or independently by
19 means of chemical synthesis, or by a combination of extraction and
20 chemical synthesis, and includes any packaging or repackaging of
21 the substance or labeling or relabeling of its container, except that
22 this term does not include the preparation or compounding of a
23 controlled dangerous substance or controlled substance analog by
24 an individual for his own use or the preparation, compounding,
25 packaging, or labeling of a controlled dangerous substance: (1) by
26 a practitioner as an incident to his administering or dispensing of a
27 controlled dangerous substance or controlled substance analog in
28 the course of his professional practice, or (2) by a practitioner (or
29 under his supervision) for the purpose of, or as an incident to,
30 research, teaching, or chemical analysis and not for sale.

31 "Marijuana" means all parts of the plant Genus Cannabis L.,
32 whether growing or not; the seeds thereof, and every compound,
33 manufacture, salt, derivative, mixture, or preparation of the plant or
34 its seeds, except those containing resin extracted from the plant; but
35 shall not include the mature stalks of the plant, fiber produced from
36 the stalks, oil, or cake made from the seeds of the plant, any other
37 compound, manufacture, salt, derivative, mixture, or preparation of
38 mature stalks, fiber, oil, or cake, or the sterilized seed of the plant
39 which is incapable of germination.

40 "Narcotic drug" means any of the following, whether produced
41 directly or indirectly by extraction from substances of vegetable
42 origin, or independently by means of chemical synthesis, or by a
43 combination of extraction and chemical synthesis:

44 (a) Opium, coca leaves, and opiates;

45 (b) A compound, manufacture, salt, derivative, or preparation of
46 opium, coca leaves, or opiates;

47 (c) A substance (and any compound, manufacture, salt,
48 derivative, or preparation thereof) which is chemically identical

1 with any of the substances referred to in subsections (a) and (b),
2 except that the words "narcotic drug" as used in this act shall not
3 include decocainized coca leaves or extracts of coca leaves, which
4 extracts do not contain cocaine or ecogine.

5 "Opiate" means any dangerous substance having an addiction-
6 forming or addiction-sustaining liability similar to morphine or
7 being capable of conversion into a drug having such addiction-
8 forming or addiction-sustaining liability. It does not include, unless
9 specifically designated as controlled pursuant to the provisions of
10 section 3 of P.L.1970, c.226 (C.24:21-3), the dextrorotatory isomer
11 of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
12 It does include its racemic and levorotatory forms.

13 "Opium poppy" means the plant of the species *Papaver*
14 *somniferum* L., except the seeds thereof.

15 "Person" means any corporation, association, partnership, trust,
16 other institution or entity, or one or more individuals.

17 "Plant" means an organism having leaves and a readily
18 observable root formation, including, but not limited to, a cutting
19 having roots, a rootball or root hairs.

20 "Poppy straw" means all parts, except the seeds, of the opium
21 poppy, after mowing.

22 "Practitioner" means a physician, dentist, veterinarian, scientific
23 investigator, laboratory, pharmacy, hospital, or other person
24 licensed, registered, or otherwise permitted to distribute, dispense,
25 conduct research with respect to, or administer a controlled
26 dangerous substance or controlled substance analog in the course of
27 professional practice or research in this State.

28 (a) "Physician" means a physician authorized by law to practice
29 medicine in this or any other state and any other person authorized
30 by law to treat sick and injured human beings in this or any other
31 state.

32 (b) "Veterinarian" means a veterinarian authorized by law to
33 practice veterinary medicine in this State.

34 (c) "Dentist" means a dentist authorized by law to practice
35 dentistry in this State.

36 (d) "Hospital" means any federal institution, or any institution
37 for the care and treatment of the sick and injured, operated or
38 approved by the appropriate State department as proper to be
39 entrusted with the custody and professional use of controlled
40 dangerous substances or controlled substance analogs.

41 (e) "Laboratory" means a laboratory to be entrusted with the
42 custody of narcotic drugs and the use of controlled dangerous
43 substances or controlled substance analogs for scientific,
44 experimental, and medical purposes and for purposes of instruction
45 approved by the Department of Health.

46 "Production" includes the manufacture, planting, cultivation,
47 growing, or harvesting of a controlled dangerous substance or
48 controlled substance analog.

1 "Immediate precursor" means a substance which the Division of
2 Consumer Affairs in the Department of Law and Public Safety has
3 found to be and by regulation designates as being the principal
4 compound commonly used or produced primarily for use, and
5 which is an immediate chemical intermediary used or likely to be
6 used in the manufacture of a controlled dangerous substance or
7 controlled substance analog, the control of which is necessary to
8 prevent, curtail, or limit such manufacture.

9 "Residential treatment facility" means any facility licensed and
10 approved by the Department of Human Services and which is
11 approved by any county probation department for the inpatient
12 treatment and rehabilitation of drug or alcohol dependent persons.

13 "Schedules I, II, III, IV, and V" are the schedules set forth in
14 sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-
15 8) and in section 4 of P.L.1971, c.3 (C.24:21-8.1) and as modified
16 by any regulations issued by the Director of the Division of
17 Consumer Affairs in the Department of Law and Public Safety
18 pursuant to the director's authority as provided in section 3 of
19 P.L.1970, c.226 (C.24:21-3).

20 "State" means the State of New Jersey.

21 "Ultimate user" means a person who lawfully possesses a
22 controlled dangerous substance or controlled substance analog for
23 his own use or for the use of a member of his household or for
24 administration to an animal owned by him or by a member of his
25 household.

26 "Prescription legend drug" means any drug which under federal
27 or State law requires dispensing by prescription or order of a
28 licensed physician, veterinarian, or dentist and is required to bear
29 the statement "Rx only" or similar wording indicating that such
30 drug may be sold or dispensed only upon the prescription of a
31 licensed medical practitioner and is not a controlled dangerous
32 substance or stramonium preparation.

33 "Stramonium preparation" means a substance prepared from any
34 part of the stramonium plant in the form of a powder, pipe mixture,
35 cigarette, or any other form with or without other ingredients.

36 "Stramonium plant" means the plant *Datura Stramonium* Linne,
37 including *Datura Tatula* Linne.

38 (cf: P.L.2013, c.35, s.1)
39

40 2. N.J.S.2C:35-5 is amended to read as follows:

41 2C:35-5. Manufacturing, Distributing or Dispensing.

42 a. Except as authorized by P.L.1970, c.226 (C.24:21-1 et seq.),
43 it shall be unlawful for any person knowingly or purposely:

44 (1) To manufacture, distribute or dispense, or to possess or have
45 under his control with intent to manufacture, distribute or dispense,
46 a controlled dangerous substance or controlled substance analog; or

1 (2) To create, distribute, or possess or have under his control
2 with intent to distribute, a counterfeit controlled dangerous
3 substance.

4 b. Any person who violates subsection a. with respect to:

5 (1) (a) Heroin, or its analog, or **【coca】** a heroin mixture that
6 does not contain fentanyl or its analog, in a quantity of 10 grams or
7 more including any adulterants or dilutants;

8 (b) Fentanyl, or its analog, or a heroin mixture that contains
9 fentanyl or its analog, in a quantity of five grams or more including
10 any adulterants or dilutants; or

11 (c) Coca leaves and any salt, compound, derivative, or
12 preparation of coca leaves, and any salt, compound, derivative, or
13 preparation thereof which is chemically equivalent or identical with
14 any of these substances, or analogs, except that the substances shall
15 not include decocainized coca leaves or extractions which do not
16 contain cocaine or ecogine, or 3,4-
17 methylenedioxymethamphetamine or 3,4-
18 methylenedioxyamphetamine, in a quantity of five ounces or more
19 including any adulterants or dilutants is guilty of a crime of the first
20 degree. **【The】** For any violation of this paragraph, the defendant
21 shall, except as provided in N.J.S.2C:35-12, be sentenced to a term
22 of imprisonment by the court. The term of imprisonment shall
23 include the imposition of a minimum term which shall be fixed at,
24 or between, one-third and one-half of the sentence imposed, during
25 which the defendant shall be ineligible for parole. Notwithstanding
26 the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to
27 \$500,000.00 may be imposed;

28 (2) A substance referred to in subparagraph (a) of paragraph (1)
29 of this subsection, in a quantity of **【one-half ounce】** five grams or
30 more but less than **【five ounces,】** 10 grams including any
31 adulterants or dilutants, and a substance referred to in subparagraph
32 (b) of paragraph (1) of this subsection, in a quantity of two grams or
33 more but less than five grams including any adulterants or dilutants,
34 and a substance referred to in subparagraph (c) of paragraph (1) of
35 this subsection, in a quantity of one-half ounce or more but less
36 than five ounces including any adulterants or dilutants, is guilty of a
37 crime of the second degree;

38 (3) A substance referred to in subparagraph (a) of paragraph (1)
39 of this subsection, in a quantity less than five grams including any
40 adulterants or dilutants, and a substance referred to in subparagraph
41 (b) of paragraph (1) of this subsection, in a quantity of less than two
42 grams including any adulterants or dilutants, and a substance
43 referred to in subparagraph (c) of paragraph (1) of this subsection in
44 a quantity less than one-half ounce including any adulterants or
45 dilutants is guilty of a crime of the third degree except that,
46 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
47 fine of up to \$75,000.00 may be imposed;

1 (4) A substance classified as a narcotic drug in Schedule I or II
2 other than those specifically covered in this section, or the analog of
3 any such substance, in a quantity of one ounce or more including
4 any adulterants or dilutants is guilty of a crime of the second
5 degree;

6 (5) A substance classified as a narcotic drug in Schedule I or II
7 other than those specifically covered in this section, or the analog of
8 any such substance, in a quantity of less than one ounce including
9 any adulterants or dilutants is guilty of a crime of the third degree
10 except that, notwithstanding the provisions of subsection b. of
11 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

12 (6) Lysergic acid diethylamide, or its analog, in a quantity of
13 100 milligrams or more including any adulterants or dilutants, or
14 phencyclidine, or its analog, in a quantity of 10 grams or more
15 including any adulterants or dilutants, is guilty of a crime of the
16 first degree. Except as provided in N.J.S.2C:35-12, the court shall
17 impose a term of imprisonment which shall include the imposition
18 of a minimum term, fixed at, or between, one-third and one-half of
19 the sentence imposed by the court, during which the defendant shall
20 be ineligible for parole. Notwithstanding the provisions of
21 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be
22 imposed;

23 (7) Lysergic acid diethylamide, or its analog, in a quantity of
24 less than 100 milligrams including any adulterants or dilutants, or
25 where the amount is undetermined, or phencyclidine, or its analog,
26 in a quantity of less than 10 grams including any adulterants or
27 dilutants, or where the amount is undetermined, is guilty of a crime
28 of the second degree;

29 (8) Methamphetamine, or its analog, or phenyl-2-propanone
30 (P2P), in a quantity of five ounces or more including any
31 adulterants or dilutants is guilty of a crime of the first degree.
32 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
33 fine of up to \$300,000.00 may be imposed;

34 (9) (a) Methamphetamine, or its analog, or phenyl-2-propanone
35 (P2P), in a quantity of one-half ounce or more but less than five
36 ounces including any adulterants or dilutants is guilty of a crime of
37 the second degree;

38 (b) Methamphetamine, or its analog, or phenyl-2-propanone
39 (P2P), in a quantity of less than one-half ounce including any
40 adulterants or dilutants is guilty of a crime of the third degree
41 except that notwithstanding the provisions of subsection b. of
42 N.J.S.2C:43-3, a fine of up to \$75,000.00 may be imposed;

43 (10) (a) Marijuana in a quantity of 25 pounds or more including
44 any adulterants or dilutants, or 50 or more marijuana plants,
45 regardless of weight, or hashish in a quantity of five pounds or
46 more including any adulterants or dilutants, is guilty of a crime of
47 the first degree. Notwithstanding the provisions of subsection a. of
48 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

1 (b) Marijuana in a quantity of five pounds or more but less than
2 25 pounds including any adulterants or dilutants, or 10 or more but
3 fewer than 50 marijuana plants, regardless of weight, or hashish in a
4 quantity of one pound or more but less than five pounds, including
5 any adulterants **and** or dilutants, is guilty of a crime of the second
6 degree;

7 (11) Marijuana in a quantity of one ounce or more but less than
8 five pounds including any adulterants or dilutants, or hashish in a
9 quantity of five grams or more but less than one pound including
10 any adulterants or dilutants, is guilty of a crime of the third degree
11 except that, notwithstanding the provisions of subsection b. of
12 N.J.S.2C:43-3, a fine of up to \$25,000.00 may be imposed;

13 (12) Marijuana in a quantity of less than one ounce including
14 any adulterants or dilutants, or hashish in a quantity of less than five
15 grams including any adulterants or dilutants, is guilty of a crime of
16 the fourth degree;

17 (13) Any other controlled dangerous substance classified in
18 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
19 third degree, except that, notwithstanding the provisions of
20 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000.00 may be
21 imposed; or

22 (14) Any Schedule V substance, or its analog, is guilty of a
23 crime of the fourth degree except that, notwithstanding the
24 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to
25 \$25,000.00 may be imposed.

26 c. Where the degree of the offense for violation of this section
27 depends on the quantity of the substance or substances, the quantity
28 involved shall be determined by the trier of fact. Where the
29 indictment or accusation so provides, the quantity involved in
30 individual acts of manufacturing, distribution, dispensing or
31 possessing with intent to distribute may be aggregated in
32 determining the grade of the offense, whether distribution or
33 dispensing is to the same person or several persons, provided that
34 each individual act of manufacturing, distribution, dispensing or
35 possession with intent to distribute was committed within the
36 applicable statute of limitations.

37 (cf: P.L.2000, c.136, s.1)

38
39 3. N.J.S.2C:35-14 is amended to read as follows:

40 2C:35-14. Rehabilitation Program for Drug and Alcohol
41 Dependent Persons Subject to a Presumption of Incarceration or a
42 Mandatory Minimum Period of Parole Ineligibility; Criteria for
43 Imposing Special Probation; Ineligible Offenders; Commitment to
44 Residential Treatment Facilities or Participation in a Nonresidential
45 Treatment Program; Presumption of Revocation; Brief Incarceration
46 in Lieu of Permanent Revocation.

47 a. Any person who is ineligible for probation due to a
48 conviction for a crime which is subject to a presumption of

1 incarceration or a mandatory minimum period of parole ineligibility
2 may be sentenced to a term of special probation in accordance with
3 this section, and may not apply for drug and alcohol treatment
4 pursuant to N.J.S.2C:45-1. Nothing in this section shall be
5 construed to prohibit a person who is eligible for probation in
6 accordance with N.J.S.2C:45-1 due to a conviction for an offense
7 which is not subject to a presumption of incarceration or a
8 mandatory minimum period of parole ineligibility from applying for
9 drug or alcohol treatment as a condition of probation pursuant to
10 N.J.S.2C:45-1; provided, however, that a person in need of
11 treatment as defined in subsection f. of section 2 of P.L.2012, c.23
12 (C.2C:35-14.2) shall be sentenced in accordance with that section.
13 Notwithstanding the presumption of incarceration pursuant to the
14 provisions of subsection d. of N.J.S.2C:44-1, whenever a drug or
15 alcohol dependent person who is subject to sentencing under this
16 section is convicted of or adjudicated delinquent for an offense,
17 other than one described in subsection b. of this section, the court,
18 upon notice to the prosecutor, may, on motion of the person, or on
19 the court's own motion, place the person on special probation,
20 which shall be for a term of five years, provided that the court finds
21 on the record that:

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

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

28 (3) the present offense was committed while the person was
29 under the influence of a controlled dangerous substance, controlled
30 substance analog or alcohol or was committed to acquire property
31 or monies in order to support the person's drug or alcohol
32 dependency; and

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

37 (5) the person did not possess a firearm at the time of the
38 present offense and did not possess a firearm at the time of any
39 pending criminal charge; and

40 (6) the person has not been previously convicted on two or more
41 separate occasions of crimes of the first or second degree, other
42 than those listed in paragraph (7); or the person has not been
43 previously convicted on two or more separate occasions, where one
44 of the offenses is a crime of the third degree, other than crimes
45 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the
46 first or second degree; and

47 (7) the person has not been previously convicted or adjudicated
48 delinquent for, and does not have a pending charge of murder,

1 aggravated manslaughter, manslaughter, kidnapping, aggravated
2 assault, aggravated sexual assault or sexual assault, or a similar
3 crime under the laws of any other state or the United States; and

4 (8) a suitable treatment facility licensed and approved by the
5 Division of Mental Health and Addiction Services in the
6 Department of Human Services is able and has agreed to provide
7 appropriate treatment services in accordance with the requirements
8 of this section; and

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

11 In determining whether to sentence the person pursuant to this
12 section, the court shall consider all relevant circumstances, and
13 shall take judicial notice of any evidence, testimony or information
14 adduced at the trial, plea hearing or other court proceedings, and
15 shall also consider the presentence report and the results of the
16 professional diagnostic assessment to determine whether and to
17 what extent the person is drug or alcohol dependent and would
18 benefit from treatment. The court shall give priority to a person
19 who has moved to be sentenced to special probation over a person
20 who is being considered for a sentence to special probation on the
21 court's own motion or in accordance with the provisions of section
22 2 of P.L.2012, c.23 (C.2C:35-14.2).

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

42 b. A person shall not be eligible for special probation pursuant
43 to this section if the person is convicted of or adjudicated
44 delinquent for:

45 (1) a crime of the first degree, except as provided in section 4 of
46 P.L. , c. (C.) (pending before the Legislature as this bill);

47 (2) a crime of the first or second degree enumerated in
48 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), other

1 than a crime of the second degree involving N.J.S.2C:15-1
2 (robbery) or N.J.S.2C:18-2 (burglary);
3 (3) a crime, other than that defined in section 1 of P.L.1987,
4 c.101 (C.2C:35-7), for which a mandatory minimum period of
5 incarceration is prescribed under chapter 35 of this Title or any
6 other law; or
7 (4) an offense that involved the distribution or the conspiracy or
8 attempt to distribute a controlled dangerous substance or controlled
9 substance analog to a juvenile near or on school property.
10 c. (Deleted by amendment, P.L.2012, c.23)
11 d. Except as otherwise provided in subsection j. of this section,
12 a person convicted of or adjudicated delinquent for a crime of the
13 second degree or of a violation of section 1 of P.L.1987, c.101
14 (C.2C:35-7), or who previously has been convicted of or
15 adjudicated delinquent for an offense under subsection a. of
16 N.J.S.2C:35-5 or a similar offense under any other law of this State,
17 any other state or the United States, who is placed on special
18 probation under this section shall be committed to the custody of a
19 residential substance use disorders treatment facility licensed and
20 approved by the Division of Mental Health and Addiction Services
21 in the Department of Human Services. Subject to the authority of
22 the court to temporarily suspend imposition of all or any portion of
23 the term of commitment to a residential treatment facility pursuant
24 to subsection j. of this section, the person shall be committed to the
25 residential treatment facility immediately, unless the facility cannot
26 accommodate the person, in which case the person shall be
27 incarcerated to await commitment to the residential treatment
28 facility. The term of such commitment shall be for a minimum of
29 six months, or until the court, upon recommendation of the
30 treatment provider, determines that the person has successfully
31 completed the residential treatment program, whichever is later,
32 except that no person shall remain in the custody of a residential
33 treatment facility pursuant to this section for a period in excess of
34 five years. Upon successful completion of the required residential
35 treatment program, the person shall complete the period of special
36 probation, as authorized by subsection a. of this section, with credit
37 for time served for any imprisonment served as a condition of
38 probation and credit for each day during which the person
39 satisfactorily complied with the terms and conditions of special
40 probation while committed pursuant to this section to a residential
41 treatment facility. Except as otherwise provided in subsection l. of
42 this section, the person shall not be eligible for early discharge of
43 special probation pursuant to N.J.S.2C:45-2, or any other provision
44 of the law. The court, in determining the number of credits for time
45 spent in residential treatment, shall consider the recommendations
46 of the treatment provider. A person placed into a residential
47 treatment facility pursuant to this section shall be deemed to be

1 subject to official detention for the purposes of N.J.S.2C:29-5
2 (escape).

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

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

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

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

1 probation be permanently revoked, or to the treatment provider's
2 opinion that the person is not amenable to treatment or is not likely
3 to complete the treatment program successfully.

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

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

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

37 (7) An action for a violation under this section may be brought
38 by a probation officer or prosecutor or on the court's own motion.
39 Failure to complete successfully the required treatment program
40 shall constitute a violation of the person's special probation. In the
41 case of the temporary or continued management of a person's drug
42 or alcohol dependency by means of medication-assisted treatment
43 as defined herein, whenever supported by a report from the
44 treatment provider of existing satisfactory progress and reasonably
45 predictable long-term success with or without further medication-
46 assisted treatment, the person's use of the medication-assisted
47 treatment, even if continuing, shall not be the basis to constitute a
48

1 failure to complete successfully the treatment program. A person
2 who fails to comply with the terms of the person's special probation
3 pursuant to this section and is thereafter sentenced to imprisonment
4 in accordance with this subsection shall thereafter be ineligible for
5 entry into the Intensive Supervision Program, provided however
6 that this provision shall not affect the person's eligibility for entry
7 into the Intensive Supervision Program for a subsequent conviction.

8 As used in this section, the term "medication-assisted treatment"
9 means the use of any medications approved by the federal Food and
10 Drug Administration to treat substance use disorders, including
11 extended-release naltrexone, methadone, and buprenorphine, in
12 combination with counseling and behavioral therapies, to provide a
13 whole-patient approach to the treatment of substance use disorders.

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

41 h. The court, as a condition of its order, and after considering
42 the person's financial resources, shall require the person to pay that
43 portion of the costs associated with the person's participation in any
44 residential or nonresidential treatment program imposed pursuant to
45 this section which, in the opinion of the court, is consistent with the
46 person's ability to pay, taking into account the court's authority to
47 order payment or reimbursement to be made over time and in
48 installments.

1 i. The court shall impose, as a condition of the special
2 probation, any fine, penalty, fee or restitution applicable to the
3 offense for which the person was convicted or adjudicated
4 delinquent.

5 j. Where the court finds that a person has satisfied all of the
6 eligibility criteria for special probation and would otherwise be
7 required to be committed to the custody of a residential substance
8 use disorders treatment facility pursuant to the provisions of
9 subsection d. of this section, the court may temporarily suspend
10 imposition of all or any portion of the term of commitment to a
11 residential treatment facility and may instead order the person to
12 enter a nonresidential treatment program, provided that the court
13 finds on the record that:

14 (1) the person conducting the diagnostic assessment required
15 pursuant to paragraph (1) of subsection a. of this section has
16 recommended in writing that the proposed course of nonresidential
17 treatment services is clinically appropriate and adequate to address
18 the person's treatment needs; and

19 (2) no danger to the community would result from the person
20 participating in the proposed course of nonresidential treatment
21 services; and

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

24 If the prosecutor objects to the court's decision to suspend the
25 commitment of the person to a residential treatment facility
26 pursuant to this subsection, the sentence of special probation
27 imposed pursuant to this section shall not become final for ten days
28 in order to permit the appeal by the prosecution of the court's
29 decision.

30 After a period of six months of nonresidential treatment, if the
31 court, considering all available information including but not
32 limited to the recommendation of the treatment provider, finds that
33 the person has made satisfactory progress in treatment and that
34 there is a substantial likelihood that the person will successfully
35 complete the nonresidential treatment program and period of special
36 probation, the court, on notice to the prosecutor, may permanently
37 suspend the commitment of the person to the custody of a
38 residential treatment program, in which event the special
39 monitoring provisions set forth in subsection k. of this section shall
40 no longer apply.

41 Nothing in this subsection shall be construed to limit the
42 authority of the court at any time during the term of special
43 probation to order the person to be committed to a residential or
44 nonresidential treatment facility if the court determines that such
45 treatment is clinically appropriate and necessary to address the
46 person's present treatment needs.

47 k. (1) When the court temporarily suspends the commitment of
48 the person to a residential treatment facility pursuant to subsection

1 j. of this section, the court shall, in addition to ordering
2 participation in a prescribed course of nonresidential treatment and
3 any other appropriate terms or conditions authorized or required by
4 law, order the person to undergo urine testing for drug or alcohol
5 use not less than once per week unless otherwise ordered by the
6 court. The court-ordered testing shall be conducted by the
7 probation department or the treatment provider. The results of all
8 tests shall be reported promptly to the court and to the prosecutor.
9 If the person is involved with a program that is providing the person
10 medication-assisted treatment as defined in paragraph (7) of
11 subsection f. of this section, only a positive urine test for drug or
12 alcohol use unrelated to the medication-assisted treatment shall
13 constitute a violation of the terms and conditions of special
14 probation. In addition, the court shall impose appropriate curfews
15 or other restrictions on the person's movements, and may order the
16 person to wear electronic monitoring devices to enforce such
17 curfews or other restrictions as a condition of special probation.

18 (2) The probation department or other appropriate agency shall
19 immediately notify the court and the prosecutor in the event that the
20 person fails or refuses to submit to a drug or alcohol test, knowingly
21 defrauds the administration of a drug test, terminates the person's
22 participation in the course of treatment, or commits any act that
23 would constitute absconding from parole. If the person at any time
24 while entered in a nonresidential treatment program pursuant to
25 subsection j. of this section knowingly defrauds the administration
26 of a drug test, goes into hiding, or leaves the State with a purpose of
27 avoiding supervision, the court shall permanently revoke the
28 person's special probation.

29 l. If the court finds that the person has made exemplary
30 progress in the course of treatment, the court may, upon
31 recommendation of the person's supervising probation officer or on
32 the court's own motion, and upon notice to the prosecutor, grant
33 early discharge from a term of special probation provided that the
34 person: (1) has satisfactorily completed the treatment program
35 ordered by the court; (2) has served at least two years of special
36 probation; (3) within the preceding 12 months, did not commit a
37 substantial violation of any term or condition of special probation,
38 including but not limited to a positive urine test, which shall only
39 constitute a violation for a person using medication-assisted
40 treatment as defined in paragraph (7) of subsection f. of this section
41 if the positive test is unrelated to the person's medication-assisted
42 treatment; and (4) is not likely to relapse or commit an offense if
43 probation supervision and related services are discontinued.

44 m. (1) The Superior Court may order the expungement of all
45 records and information relating to all prior arrests, detentions,
46 convictions, and proceedings for any offense enumerated in Title
47 2C of the New Jersey Statutes upon successful discharge from a
48 term of special probation as provided in this section, regardless of

1 whether the person was sentenced to special probation under this
2 section, section 2 of P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-
3 1, if the person satisfactorily completed a substance abuse treatment
4 program as ordered by the court and was not convicted of any
5 crime, or adjudged a disorderly person or petty disorderly person,
6 during the term of special probation. The provisions of N.J.S.2C:52-
7 7 through N.J.S.2C:52-14 shall not apply to an expungement
8 pursuant to this paragraph and no fee shall be charged to a person
9 eligible for relief pursuant to this paragraph. The court shall grant
10 the relief requested unless it finds that the need for the availability
11 of the records outweighs the desirability of having the person freed
12 from any disabilities associated with their availability, or it finds
13 that the person is otherwise ineligible for expungement pursuant to
14 paragraph (2) of this subsection. An expungement under this
15 paragraph shall proceed in accordance with rules and procedures
16 developed by the Supreme Court.

17 (2) A person shall not be eligible for expungement under
18 paragraph (1) of this subsection if the records include a conviction
19 for any offense barred from expungement pursuant to subsection b.
20 or c. of N.J.S.2C:52-2. It shall be the obligation of the prosecutor to
21 notify the court of any disqualifying convictions or any other
22 factors related to public safety that should be considered by the
23 court when deciding to grant an expungement under paragraph (1)
24 of this subsection.

25 (3) The Superior Court shall provide a copy of the expungement
26 order granted pursuant to paragraph (1) of this subsection to the
27 prosecutor and to the person and, if the person was represented by
28 the Public Defender, to the Public Defender. The person or, if the
29 person was represented by the Public Defender, the Public Defender
30 on behalf of the person, shall promptly distribute copies of the
31 expungement order to appropriate agencies who have custody and
32 control of the records specified in the order so that the agencies may
33 comply with the requirements of N.J.S.2C:52-15.

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

39 (5) A person who, prior to the effective date of P.L.2015, c.261,
40 was successfully discharged from a term of special probation as
41 provided in this section, regardless of whether the person was
42 sentenced to special probation under this section, section 2 of
43 P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, may seek an
44 expungement of all records and information relating to all arrests,
45 detentions, convictions, and proceedings for any offense
46 enumerated in Title 2C of the New Jersey Statutes that existed at
47 the time of discharge from special probation by presenting an
48 application to the Superior Court in the county in which the person

1 was sentenced to special probation, which contains a duly verified
2 petition as provided in N.J.S.2C:52-7 for each crime or offense
3 sought to be expunged. The petition for expungement shall proceed
4 pursuant to N.J.S.2C:52-1 et seq. except that the requirements
5 related to the expiration of the time periods specified in
6 N.J.S.2C:52-2 through section 1 of P.L.1980, c.163 (C.2C:52-4.1)
7 shall not apply. A person who was convicted of any offense barred
8 from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2,
9 or who has been convicted of any crime or offense since the date of
10 discharge from special probation shall not be eligible to apply for
11 an expungement under this paragraph. In addition, no application
12 for expungement shall be considered until any pending charges are
13 disposed. It shall be the obligation of the prosecutor to notify the
14 court of any disqualifying convictions or any other factors related to
15 public safety that should be considered by the court when deciding
16 to grant an expungement under this paragraph. The Superior Court
17 shall consider the person's verified petition and may order the
18 expungement of all records and information relating to all arrests,
19 detentions, convictions, and proceedings of the person that existed
20 at the time of discharge from special probation as appropriate. The
21 court shall grant the relief requested unless it finds that the need for
22 the availability of the records outweighs the desirability of having
23 the person freed from any disabilities associated with their
24 availability, or it finds that the person is otherwise ineligible for
25 expungement pursuant to this paragraph. No fee shall be charged to
26 a person eligible for relief pursuant to this paragraph.

27 (cf: P.L.2015, c.261, s.1)

28
29 4. (New section) A person convicted of a crime of the first
30 degree in violation of N.J.S.2C:35-5 may be sentenced to special
31 probation pursuant to N.J.S.2C:35-14 provided that the defendant
32 would be eligible for special probation under N.J.S.2C:35-14 but
33 for having been convicted of the crime of the first degree, and
34 further provided that the court is clearly convinced and finds on the
35 record that the defendant has established that he is not a drug
36 profiteer or wholesale drug distributor within the meaning of
37 subsection b. of N.J.S.2C:35A-3.

38
39 5. This act shall take effect immediately and shall be applicable
40 to offenses committed on and after the effective date of this act.

41 42 43 STATEMENT

44
45 This bill would upgrade the penalties for certain crimes
46 involving heroin and fentanyl. The bill also establishes new crimes
47 addressing two types of "heroin mixtures": heroin mixtures with
48 fentanyl, and heroin mixtures without fentanyl. A heroin mixture as

1 defined in the bill is heroin mixed with at least one other controlled
2 dangerous substance.

3 HEROIN; HEROIN MIXTURES CONTAINING CDS OTHER THAN
4 FENTANYL. Currently, it is a crime of the first degree to
5 manufacture, distribute, or dispense heroin or its analog in a
6 quantity of five ounces or more including any adulterants or
7 dilutants. The defendant must also be sentenced to a mandatory
8 minimum term of one-third to one-half of the sentence imposed,
9 during which the defendant is ineligible for parole, and a fine of up
10 to \$500,000. It is a crime of the second degree if the quantity of
11 heroin or its analog is one-half ounce or more but less than five
12 ounces including any adulterants or dilutants. It is a crime of the
13 third degree if the quantity is less than one-half ounce including any
14 adulterants or dilutants. The penalty for the third degree crime
15 includes an increased fine of up to \$75,000.

16 Under the bill, it would be a crime of the first degree to
17 manufacture, distribute, or dispense heroin or its analog, or a heroin
18 mixture that does not contain fentanyl or its analog, in a quantity of
19 10 grams or more including any adulterants or dilutants. It would
20 be a crime of the second degree to manufacture, distribute, or
21 dispense heroin or its analog including adulterants or dilutants in a
22 quantity of five grams or more but less than 10 grams. If the
23 quantity is less than five grams it would be a crime of the third
24 degree, with an increased fine of up to \$75,000.

25 FENTANYL; HEROIN MIXTURES CONTAINING FENTANYL.
26 Currently, it is a crime of the second degree to unlawfully
27 manufacture, distribute, or dispense fentanyl or its analog in a
28 quantity of one ounce or more including any adulterants or
29 dilutants. It is a crime of the third degree if the quantity is less than
30 one ounce, except that an increased fine of up to \$75,000 may be
31 imposed. Under the bill, it would be a crime of the first degree to
32 unlawfully manufacture, distribute, or dispense fentanyl or its
33 analog, or a heroin mixture that contains fentanyl or its analog, in a
34 quantity of five grams or more including any adulterants or
35 dilutants. It would be a crime of the second degree if the quantity
36 of fentanyl or its analog or a heroin mixture that contains fentanyl
37 or its analog is two grams or more but less than five grams
38 including any adulterants or dilutants. It would be a crime of the
39 third degree, with an increased fine of up to \$75,000, if the quantity
40 of fentanyl or its analog or a heroin mixture that contains fentanyl
41 or its analog is less than two grams including any adulterants or
42 dilutants.

43 NEW DEFINITIONS. The bill adds definitions of the terms “heroin
44 mixture” and “adulterants or dilutants.”

45 Under the bill, a “heroin mixture” is a substance containing
46 heroin, or its analog, and at least one other controlled dangerous
47 substance classified as a narcotic drug or its analog that have been
48 combined by any means so that the injection, inhalation, or

1 ingestion of the mixture would result in the consumption of two or
2 more controlled dangerous substances or analogs.

3 “Adulterants or dilutants” are substances which are mixed or
4 combined with a controlled dangerous substance and any medium
5 which is used to carry a controlled dangerous substance, if the
6 controlled dangerous substance is not readily removable from the
7 medium. The terms include, but are not limited to, blotter paper,
8 stamps or cigarettes.

9 DRUG COURT. Under the provisions of N.J.S.2C:35-14, a drug or
10 alcohol dependent person convicted of certain offenses may be
11 placed on a five-year term of special probation (drug court) in lieu
12 of incarceration. As a condition of special probation, the court will
13 order the person to enter a residential treatment program at a
14 licensed facility or a program of nonresidential treatment by a
15 licensed and approved treatment provider. Persons convicted of a
16 crime of the first degree are ineligible to be sentenced to special
17 probation under the current statute. Under the bill, certain
18 categories of such persons would be eligible to be sentenced to
19 special probation.

20 The bill provides that a person convicted of a crime of the first
21 degree in violation of N.J.S.2C:35-5 (manufacturing, distributing or
22 dispensing) may be sentenced to special probation provided that the
23 defendant would be eligible for special probation under
24 N.J.S.2C:35-14 but for having been convicted of the crime of the
25 first degree, and further provided that the court is clearly convinced
26 and finds on the record that the defendant has established that he is
27 not a drug profiteer or wholesale drug distributor within the
28 meaning of subsection b. of N.J.S.2C:35A-3.