

[First Reprint]

ASSEMBLY, No. 4771

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

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District 11 (Monmouth)

Assemblyman JOHN ARMATO

District 2 (Atlantic)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

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Senator TROY SINGLETON

District 7 (Burlington)

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**Assemblyman Scharfenberger, Assemblywomen DiMaso, Sumter,
Assemblymen Wimberly, Mazzeo, Assemblywoman Vainieri Huttle,
Assemblymen Houghtaling, Moen, Senators Diegnan, Cryan, O'Scanlon,
Testa, Rice, Stack, Vitale, Cunningham, Ruiz and Pennacchio**

SYNOPSIS

Expands offenses eligible for expungement upon successful discharge from drug court.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on January 6, 2022, with amendments.



(Sponsorship Updated As Of: 1/10/2022)

1 AN ACT concerning special probation and amending N.J.S.2C:35-
2 14.

3

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

6

7 1. N.J.S.2C:35-14 is amended to read as follows:

8 2C:35-14. Rehabilitation Program for Drug and Alcohol
9 Dependent Persons Subject to a Presumption of Incarceration or a
10 Mandatory Minimum Period of Parole Ineligibility; Criteria for
11 Imposing Special Probation; Ineligible Offenders; Commitment to
12 Residential Treatment Facilities or Participation in a Nonresidential
13 Treatment Program; Presumption of Revocation; Brief Incarceration
14 in Lieu of Permanent Revocation.

15 a. Any person who is ineligible for probation due to a
16 conviction for a crime which is subject to a presumption of
17 incarceration or a mandatory minimum period of parole ineligibility
18 may be sentenced to a term of special probation in accordance with
19 this section, and may not apply for drug and alcohol treatment
20 pursuant to N.J.S.2C:45-1. Nothing in this section shall be
21 construed to prohibit a person who is eligible for probation in
22 accordance with N.J.S.2C:45-1 due to a conviction for an offense
23 which is not subject to a presumption of incarceration or a
24 mandatory minimum period of parole ineligibility from applying for
25 drug or alcohol treatment as a condition of probation pursuant to
26 N.J.S.2C:45-1; provided, however, that a person in need of
27 treatment as defined in subsection f. of section 2 of P.L.2012, c.23
28 (C.2C:35-14.2) shall be sentenced in accordance with that section.
29 Notwithstanding the presumption of incarceration pursuant to the
30 provisions of subsection d. of N.J.S.2C:44-1, whenever a drug or
31 alcohol dependent person who is subject to sentencing under this
32 section is convicted of or adjudicated delinquent for an offense,
33 other than one described in subsection b. of this section, the court,
34 upon notice to the prosecutor, may, on motion of the person, or on
35 the court's own motion, place the person on special probation,
36 which shall be for a term of five years, provided that the court finds
37 on the record that:

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

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

44 (3) the present offense was committed while the person was
45 under the influence of a controlled dangerous substance, controlled

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted January 6, 2022.

1 substance analog or alcohol or was committed to acquire property
2 or monies in order to support the person's drug or alcohol
3 dependency; and

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

8 (5) the person did not possess a firearm at the time of the
9 present offense and did not possess a firearm at the time of any
10 pending criminal charge; and

11 (6) the person has not been previously convicted on two or more
12 separate occasions of crimes of the first or second degree, other
13 than those listed in paragraph (7); or the person has not been
14 previously convicted on two or more separate occasions, where one
15 of the offenses is a crime of the third degree, other than crimes
16 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the
17 first or second degree; and

18 (7) the person has not been previously convicted or adjudicated
19 delinquent for, and does not have a pending charge of murder,
20 aggravated manslaughter, manslaughter, kidnapping, aggravated
21 assault, aggravated sexual assault or sexual assault, or a similar
22 crime under the laws of any other state or the United States; and

23 (8) a suitable treatment facility licensed and approved by the
24 Division of Mental Health and Addiction Services in the
25 Department of Human Services is able and has agreed to provide
26 appropriate treatment services in accordance with the requirements
27 of this section; and

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

30 In determining whether to sentence the person pursuant to this
31 section, the court shall consider all relevant circumstances, and
32 shall take judicial notice of any evidence, testimony or information
33 adduced at the trial, plea hearing or other court proceedings, and
34 shall also consider the presentence report and the results of the
35 professional diagnostic assessment to determine whether and to
36 what extent the person is drug or alcohol dependent and would
37 benefit from treatment. The court shall give priority to a person
38 who has moved to be sentenced to special probation over a person
39 who is being considered for a sentence to special probation on the
40 court's own motion or in accordance with the provisions of section
41 2 of P.L.2012, c.23 (C.2C:35-14.2).

42 As a condition of special probation, the court shall order the
43 person to enter a residential treatment program at a facility licensed
44 and approved by the Division of Mental Health and Addiction
45 Services in the Department of Human Services or a program of
46 nonresidential treatment by a licensed and approved treatment
47 provider, which program may include the use of medication-
48 assisted treatment as defined in paragraph (7) of subsection f. of

1 this section, to comply with program rules and the requirements of
2 the course of treatment, to cooperate fully with the treatment
3 provider, and to comply with such other reasonable terms and
4 conditions as may be required by the court or by law, pursuant to
5 N.J.S.2C:45-1, and which shall include periodic urine testing for
6 drug or alcohol usage throughout the period of special probation. In
7 determining whether to order the person to participate in a
8 nonresidential rather than a residential treatment program, the court
9 shall follow the procedure set forth in subsection j. of this section.
10 Subject to the requirements of subsection d. of this section, the
11 conditions of special probation may include different methods and
12 levels of community-based or residential supervision.

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

16 (1) a crime of the first degree;

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

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

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

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

29 d. Except as otherwise provided in subsection j. of this section,
30 a person convicted of or adjudicated delinquent for a crime of the
31 second degree or of a violation of section 1 of P.L.1987, c.101
32 (C.2C:35-7), or who previously has been convicted of or
33 adjudicated delinquent for an offense under subsection a. of
34 N.J.S.2C:35-5 or a similar offense under any other law of this State,
35 any other state or the United States, who is placed on special
36 probation under this section shall be committed to the custody of a
37 residential substance use disorders treatment facility licensed and
38 approved by the Division of Mental Health and Addiction Services
39 in the Department of Human Services. Subject to the authority of
40 the court to temporarily suspend imposition of all or any portion of
41 the term of commitment to a residential treatment facility pursuant
42 to subsection j. of this section, the person shall be committed to the
43 residential treatment facility immediately, unless the facility cannot
44 accommodate the person, in which case the person shall be
45 incarcerated to await commitment to the residential treatment
46 facility. The term of such commitment shall be for a minimum of
47 six months, or until the court, upon recommendation of the
48 treatment provider, determines that the person has successfully

1 completed the residential treatment program, whichever is later,
2 except that no person shall remain in the custody of a residential
3 treatment facility pursuant to this section for a period in excess of
4 five years. Upon successful completion of the required residential
5 treatment program, the person shall complete the period of special
6 probation, as authorized by subsection a. of this section, with credit
7 for time served for any imprisonment served as a condition of
8 probation and credit for each day during which the person
9 satisfactorily complied with the terms and conditions of special
10 probation while committed pursuant to this section to a residential
11 treatment facility. Except as otherwise provided in subsection l. of
12 this section, the person shall not be eligible for early discharge of
13 special probation pursuant to N.J.S.2C:45-2, or any other provision
14 of the law. The court, in determining the number of credits for time
15 spent in residential treatment, shall consider the recommendations
16 of the treatment provider. A person placed into a residential
17 treatment facility pursuant to this section shall be deemed to be
18 subject to official detention for the purposes of N.J.S.2C:29-5
19 (escape).

20 e. The probation department or other appropriate agency
21 designated by the court to monitor or supervise the person's special
22 probation shall report periodically to the court as to the person's
23 progress in treatment and compliance with court-imposed terms and
24 conditions. The treatment provider shall promptly report to the
25 probation department or other appropriate agency all significant
26 failures by the person to comply with any court imposed term or
27 condition of special probation or any requirements of the course of
28 treatment, including but not limited to a positive drug or alcohol
29 test, which shall only constitute a violation for a person using
30 medication-assisted treatment as defined in paragraph (7) of
31 subsection f. of this section if the positive test is unrelated to the
32 person's medication-assisted treatment, or the unexcused failure to
33 attend any session or activity, and shall immediately report any act
34 that would constitute an escape. The probation department or other
35 appropriate agency shall immediately notify the court and the
36 prosecutor in the event that the person refuses to submit to a
37 periodic drug or alcohol test or for any reason terminates the
38 person's participation in the course of treatment, or commits any act
39 that would constitute an escape.

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

44 (2) Upon a second or subsequent violation of any term or
45 condition of the special probation authorized by this section or of
46 any requirements of the course of treatment, the court shall, subject
47 only to the provisions of subsection g. of this section, permanently
48 revoke the person's special probation unless the court finds on the

1 record that there is a substantial likelihood that the person will
2 successfully complete the treatment program if permitted to
3 continue on special probation, and the court is clearly convinced,
4 considering the nature and seriousness of the violations, that no
5 danger to the community will result from permitting the person to
6 continue on special probation pursuant to this section. The court's
7 determination to permit the person to continue on special probation
8 following a second or subsequent violation pursuant to this
9 paragraph may be appealed by the prosecution.

10 (3) In making its determination whether to revoke special
11 probation, and whether to overcome the presumption of revocation
12 established in paragraph (2) of this subsection, the court shall
13 consider the nature and seriousness of the present infraction and any
14 past infractions in relation to the person's overall progress in the
15 course of treatment, and shall also consider the recommendations of
16 the treatment provider. The court shall give added weight to the
17 treatment provider's recommendation that the person's special
18 probation be permanently revoked, or to the treatment provider's
19 opinion that the person is not amenable to treatment or is not likely
20 to complete the treatment program successfully.

21 (4) If the court permanently revokes the person's special
22 probation pursuant to this subsection, the court shall impose any
23 sentence that might have been imposed, or that would have been
24 required to be imposed, originally for the offense for which the
25 person was convicted or adjudicated delinquent. The court shall
26 conduct a de novo review of any aggravating and mitigating factors
27 present at the time of both original sentencing and resentencing. If
28 the court determines or is required pursuant to any other provision
29 of this chapter or any other law to impose a term of imprisonment,
30 the person shall receive credit for any time served in custody
31 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
32 treatment facility pursuant to this section, and for each day during
33 which the person satisfactorily complied with the terms and
34 conditions of special probation while committed pursuant to this
35 section to a residential treatment facility. The court, in determining
36 the number of credits for time spent in a residential treatment
37 facility, shall consider the recommendations of the treatment
38 provider.

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

45 (6) Notwithstanding any other provision of this subsection, if
46 the person at any time refuses to undergo urine testing for drug or
47 alcohol usage as provided in subsection a. of this section, the court
48 shall, subject only to the provisions of subsection g. of this section,

1 permanently revoke the person's special probation.
2 Notwithstanding any other provision of this section, if the person at
3 any time while committed to the custody of a residential treatment
4 facility pursuant to this section commits an act that would constitute
5 an escape, the court shall forthwith permanently revoke the person's
6 special probation.

7 (7) An action for a violation under this section may be brought
8 by a probation officer or prosecutor or on the court's own motion.
9 Failure to complete successfully the required treatment program
10 shall constitute a violation of the person's special probation. In the
11 case of the temporary or continued management of a person's drug
12 or alcohol dependency by means of medication-assisted treatment
13 as defined herein, whenever supported by a report from the
14 treatment provider of existing satisfactory progress and reasonably
15 predictable long-term success with or without further medication-
16 assisted treatment, the person's use of the medication-assisted
17 treatment, even if continuing, shall not be the basis to constitute a
18 failure to complete successfully the treatment program. A person
19 who fails to comply with the terms of the person's special probation
20 pursuant to this section and is thereafter sentenced to imprisonment
21 in accordance with this subsection shall thereafter be ineligible for
22 entry into the Intensive Supervision Program, provided however
23 that this provision shall not affect the person's eligibility for entry
24 into the Intensive Supervision Program for a subsequent conviction.

25 As used in this section, the term "medication-assisted treatment"
26 means the use of any medications approved by the federal Food and
27 Drug Administration to treat substance use disorders, including
28 extended-release naltrexone, methadone, and buprenorphine, in
29 combination with counseling and behavioral therapies, to provide a
30 whole-patient approach to the treatment of substance use disorders.

31 g. When a person on special probation is subject to a
32 presumption of revocation on a second or subsequent violation
33 pursuant to paragraph (2) of subsection f. of this section, or when
34 the person refuses to undergo drug or alcohol testing pursuant to
35 paragraph (6) of subsection f. of this section, the court may, in lieu
36 of permanently revoking the person's special probation, impose a
37 term of incarceration for a period of not less than 30 days nor more
38 than six months, after which the person's term of special probation
39 pursuant to this section may be reinstated. In determining whether
40 to order a period of incarceration in lieu of permanent revocation
41 pursuant to this subsection, the court shall consider the
42 recommendations of the treatment provider with respect to the
43 likelihood that such confinement would serve to motivate the
44 person to make satisfactory progress in treatment once special
45 probation is reinstated. This disposition may occur only once with
46 respect to any person unless the court is clearly convinced that there
47 are compelling and extraordinary reasons to justify reimposing this
48 disposition with respect to the person. Any such determination by

1 the court to reimpose this disposition may be appealed by the
2 prosecution. Nothing in this subsection shall be construed to limit
3 the authority of the court at any time during the period of special
4 probation to order a person on special probation who is not subject
5 to a presumption of revocation pursuant to paragraph (2) of
6 subsection f. of this section to be incarcerated over the course of a
7 weekend, or for any other reasonable period of time, when the court
8 in its discretion determines that such incarceration would help to
9 motivate the person to make satisfactory progress in treatment.

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

18 i. The court shall impose, as a condition of the special
19 probation, any fine, penalty, fee or restitution applicable to the
20 offense for which the person was convicted or adjudicated
21 delinquent.

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

31 (1) the person conducting the diagnostic assessment required
32 pursuant to paragraph (1) of subsection a. of this section has
33 recommended in writing that the proposed course of nonresidential
34 treatment services is clinically appropriate and adequate to address
35 the person's treatment needs; and

36 (2) no danger to the community would result from the person
37 participating in the proposed course of nonresidential treatment
38 services; and

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

41 If the prosecutor objects to the court's decision to suspend the
42 commitment of the person to a residential treatment facility
43 pursuant to this subsection, the sentence of special probation
44 imposed pursuant to this section shall not become final for ten days
45 in order to permit the appeal by the prosecution of the court's
46 decision.

47 After a period of six months of nonresidential treatment, if the
48 court, considering all available information including but not

1 limited to the recommendation of the treatment provider, finds that
2 the person has made satisfactory progress in treatment and that
3 there is a substantial likelihood that the person will successfully
4 complete the nonresidential treatment program and period of special
5 probation, the court, on notice to the prosecutor, may permanently
6 suspend the commitment of the person to the custody of a
7 residential treatment program, in which event the special
8 monitoring provisions set forth in subsection k. of this section shall
9 no longer apply.

10 Nothing in this subsection shall be construed to limit the
11 authority of the court at any time during the term of special
12 probation to order the person to be committed to a residential or
13 nonresidential treatment facility if the court determines that such
14 treatment is clinically appropriate and necessary to address the
15 person's present treatment needs.

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

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

46 l. If the court finds that the person has made exemplary
47 progress in the course of treatment, the court may, upon
48 recommendation of the person's supervising probation officer or on

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

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

34 (2) A person shall not be eligible for expungement under
35 paragraph (1) of this subsection if the records include a conviction
36 for any offense barred from expungement pursuant to subsection b.
37 or c. of N.J.S.2C:52-2 ¹], except for any offense set forth in
38 paragraph (2) of subsection a. of N.J.S.2C:24-4 if the person was a
39 drug or alcohol dependent person within the meaning of
40 N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the
41 commission of the offense]¹. It shall be the obligation of the
42 prosecutor to notify the court of any disqualifying convictions or
43 any other factors related to public safety that should be considered
44 by the court when deciding to grant an expungement under
45 paragraph (1) of this subsection.

46 (3) The Superior Court shall provide a copy of the expungement
47 order granted pursuant to paragraph (1) of this subsection to the
48 prosecutor and to the person and, if the person was represented by

1 the Public Defender, to the Public Defender. The person or, if the
2 person was represented by the Public Defender, the Public Defender
3 on behalf of the person, shall promptly distribute copies of the
4 expungement order to appropriate agencies who have custody and
5 control of the records specified in the order so that the agencies may
6 comply with the requirements of N.J.S.2C:52-15.

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

12 (5) A person who, prior to the effective date of P.L.2015, c.261,
13 was successfully discharged from a term of special probation as
14 provided in this section, regardless of whether the person was
15 sentenced to special probation under this section, section 2 of
16 P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, may seek an
17 expungement of all records and information relating to all arrests,
18 detentions, convictions, and proceedings for any offense
19 enumerated in Title 2C of the New Jersey Statutes that existed at
20 the time of discharge from special probation by presenting an
21 application to the Superior Court in the county in which the person
22 was sentenced to special probation, which contains a duly verified
23 petition as provided in N.J.S.2C:52-7 for each crime or offense
24 sought to be expunged. The petition for expungement shall proceed
25 pursuant to N.J.S.2C:52-1 et seq. except that the requirements
26 related to the expiration of the time periods specified in
27 N.J.S.2C:52-2 through section 1 of P.L.1980, c.163 (C.2C:52-4.1)
28 shall not apply. A person who was convicted of any offense barred
29 from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2
30 1, except for any offense set forth in paragraph (2) of subsection a.
31 of N.J.S.2C:24-4 if the person was a drug or alcohol dependent
32 person within the meaning of N.J.S.2C:35-2 and was drug or
33 alcohol dependent at the time of the commission of the offenses¹, or
34 who has been convicted of any crime or offense since the date of
35 discharge from special probation shall not be eligible to apply for
36 an expungement under this paragraph. In addition, no application
37 for expungement shall be considered until any pending charges are
38 disposed. It shall be the obligation of the prosecutor to notify the
39 court of any disqualifying convictions or any other factors related to
40 public safety that should be considered by the court when deciding
41 to grant an expungement under this paragraph. The Superior Court
42 shall consider the person's verified petition and may order the
43 expungement of all records and information relating to all arrests,
44 detentions, convictions, and proceedings of the person that existed
45 at the time of discharge from special probation as appropriate. The
46 court shall grant the relief requested unless it finds that the need for
47 the availability of the records outweighs the desirability of having
48 the person freed from any disabilities associated with their

1 availability, or it finds that the person is otherwise ineligible for
2 expungement pursuant to this paragraph. No fee shall be charged to
3 a person eligible for relief pursuant to this paragraph.

4 ¹(6) (a) A person who is not eligible for expungement relief
5 pursuant to paragraph (1) or (5) of this subsection because of a
6 conviction occurring prior to, on, or after the effective date of
7 P.L. , c. (C.) (pending before the Legislature as this bill),
8 for any offense set forth in paragraph (2) of subsection a. of
9 N.J.S.2C:24-4, involving endangering the welfare of a child, which
10 is barred from expungement pursuant to subsection b. of
11 N.J.S.2C:52-2 and therefore renders the person ineligible under
12 those paragraphs, may be eligible to seek expungement relief
13 pursuant to this paragraph. The person shall have been successfully
14 discharged from a term of special probation as provided in this
15 section, regardless of whether the person was sentenced to special
16 probation under this section, section 2 of P.L.2012, c.23 (C.2C:35-
17 14.2), or N.J.S.2C:45-1, for a period of at least 10 years prior to
18 seeking an expungement of all records and information relating to
19 all arrests, detentions, convictions, and proceedings for any offense
20 enumerated in Title 2C of the New Jersey Statutes that existed at
21 the time of discharge from special probation. The person shall
22 present an application to the Superior Court in the county in which
23 the person was sentenced to special probation, which contains a
24 duly verified petition as provided in N.J.S.2C:52-7 for each crime
25 or offense sought to be expunged. The petition for expungement
26 shall proceed pursuant to N.J.S.2C:52-1 et seq. A person shall not
27 be eligible to apply for an expungement under this paragraph if that
28 person was convicted of any offense barred from expungement
29 pursuant to subsection b. or c. of N.J.S.2C:52-2, other than a
30 conviction for endangering the welfare of a child under paragraph
31 (2) of subsection a. of N.J.S.2C:24-4, which crime is also
32 determined by the court, based upon a review by the prosecutor in
33 accordance with subparagraph (b) of this paragraph, to have been
34 nonviolent with respect to the facts and elements of the criminal act,
35 or if that person has been convicted of any crime or offense since
36 the date of discharge from special probation. In addition, no
37 application for expungement shall be considered until any pending
38 charges are disposed. It shall be the obligation of the prosecutor to
39 notify the court of any disqualifying convictions, any conviction for
40 endangering the welfare of a child reviewed by the prosecutor and
41 found to be violent, or any other factors related to public safety that
42 should be considered by the court when deciding to grant an
43 expungement under this paragraph. The Superior Court shall
44 consider the person's verified petition and may order the
45 expungement of all records and information relating to all arrests,
46 detentions, convictions, and proceedings of the person that existed
47 at the time of discharge from special probation as appropriate. The
48 court shall grant the relief requested unless it finds that the need for

1 the availability of the records outweighs the desirability of having
2 the person freed from any disabilities associated with their
3 availability, or it finds that the person is otherwise ineligible for
4 expungement pursuant to this paragraph. No fee shall be charged to
5 a person eligible for relief pursuant to this paragraph.

6 (b) The prosecutor, when reviewing a conviction for
7 endangering the welfare of a child under paragraph (2) of
8 subsection a. of N.J.S.2C:24-4 as to whether the facts and elements
9 of the criminal act were nonviolent and therefore do not prevent, as
10 to this conviction, a person's eligibility for expungement relief
11 under this paragraph, shall consider any act which falls under the
12 following definitions to be violent acts, and render the person
13 ineligible for expungement relief:

14 any act of "abuse," as defined in R.S.9:6-1, that is specifically
15 listed in part (c) of the definition, employing or permitting a child to
16 be employed in any occupation, employment or vocation dangerous
17 to the morals of such child; part (e) of the definition, the performing
18 of any indecent, immoral or unlawful act or deed, in the presence of
19 a child, that may tend to debauch or endanger or degrade the morals
20 of the child; part (f) of the definition, permitting or allowing any
21 other person to perform any indecent, immoral or unlawful act in
22 the presence of the child that may tend to debauch or endanger the
23 morals of such child; or part (g) of the definition, using excessive
24 physical restraint on the child under circumstances which do not
25 indicate that the child's behavior is harmful to himself, others or
26 property;

27 any act of "cruelty," as defined in R.S.9:6-1; and

28 any act resulting in an "abused or neglected child," as defined by
29 subsection c. of section 1 of P.L.1974, c.119 (C.9:6-8.21), that is
30 specifically listed in paragraph (1) of the definition, inflicting or
31 allowing to be inflicted upon such child physical injury by other
32 than accidental means which causes or creates a substantial risk of
33 death, or serious or protracted disfigurement, or protracted
34 impairment of physical or emotional health or protracted loss or
35 impairment of the function of any bodily organ; paragraph (2) of the
36 definition, creating or allowing to be created a substantial or
37 ongoing risk of physical injury to such child by other than
38 accidental means which would be likely to cause death or serious or
39 protracted disfigurement, or protracted loss or impairment of the
40 function of any bodily organ; paragraph (3) of the definition,
41 committing or allowing to be committed an act of sexual abuse
42 against the child; subparagraph (b) of paragraph (4) of the
43 definition, solely as to a child whose physical, mental, or emotional
44 condition has been impaired or is in imminent danger of becoming
45 impaired as the result of the failure of the child's parent or guardian
46 to exercise a minimum degree of care in providing the child with
47 proper supervision or guardianship, by unreasonably inflicting or
48 allowing to be inflicted excessive corporal punishment, or the

1 substantial risk thereof; paragraph (6) of the definition, for a child
2 upon whom excessive physical restraint has been used under
3 circumstances which do not indicate that the child's behavior is
4 harmful to himself, others, or property; or paragraph (7) of the
5 definition, for a child who is in an institution and, pursuant to
6 subparagraph (a) of that paragraph, has been placed there
7 inappropriately for a continued period of time with the knowledge
8 that the placement has resulted or may continue to result in harm to
9 the child's mental or physical well-being or, pursuant to
10 subparagraph (b) of that paragraph, who has been willfully isolated
11 from ordinary social contact under circumstances which indicate
12 emotional or social deprivation.¹

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

14

15 2. This act shall take effect immediately.