

ASSEMBLY, No. 5741

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 17, 2021

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerns eligibility, procedures, and post-program relief for certain drug or alcohol dependent persons sentenced to special probation, or regular probation which as a condition of such requires substance use disorders treatment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2021)

1 **AN ACT** concerning eligibility, procedures, and post-program relief
2 for certain drug or alcohol dependent persons sentenced to
3 special probation under N.J.S.2C:35-14 or section 2 of P.L.2012,
4 c.23 (C.2C:35-14.2), or probation under N.J.S.2C:45-1 which as
5 a condition of probation requires substance use disorders
6 treatment, and amending N.J.S.2C:35-14.

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10
11 1. N.J.S.2C:35-14 is amended to read as follows:

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

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

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

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

4 (3) the present offense was committed while the person was
5 under the influence of a controlled dangerous substance, controlled
6 substance analog or alcohol or was committed to acquire property
7 or monies in order to support the person's drug or alcohol
8 dependency; and

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

13 (5) the person did not possess a firearm at the time of the
14 present offense and did not possess a firearm at the time of any
15 pending criminal charge; and

16 (6) **【**the person has not been previously convicted on two or
17 more separate occasions of crimes of the first or second degree,
18 other than those listed in paragraph (7); or the person has not been
19 previously convicted on two or more separate occasions, where one
20 of the offenses is a crime of the third degree, other than crimes
21 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the
22 first or second degree; and**】** (Deleted by amendment, P.L. , c.)
23 (pending before the Legislature as this bill)

24 (7) the person has not been previously convicted or adjudicated
25 delinquent for, and does not have a pending charge of murder,
26 aggravated manslaughter, manslaughter, kidnapping, **【**aggravated
27 assault,**】** aggravated sexual assault or sexual assault, or a similar
28 crime under the laws of any other state or the United States; and

29 (8) a suitable treatment facility licensed and approved by the
30 Division of Mental Health and Addiction Services in the
31 Department of Human Services is able and has agreed to provide
32 appropriate treatment services in accordance with the requirements
33 of this section; and

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

36 In determining whether to sentence the person pursuant to this
37 section, the court shall consider all relevant circumstances, and
38 shall take judicial notice of any evidence, testimony or information
39 adduced at the trial, plea hearing or other court proceedings, and
40 shall also consider the presentence report and the results of the
41 professional diagnostic assessment to determine whether and to
42 what extent the person is drug or alcohol dependent and would
43 benefit from treatment. The court shall give priority to a person
44 who has moved to be sentenced to special probation over a person
45 who is being considered for a sentence to special probation on the
46 court's own motion or in accordance with the provisions of section
47 2 of P.L.2012, c.23 (C.2C:35-14.2).

1 As a condition of special probation, the court shall order the
2 person to enter a residential treatment program at a facility licensed
3 and approved by the Division of Mental Health and Addiction
4 Services in the Department of Human Services or a program of
5 nonresidential treatment by a licensed and approved treatment
6 provider, which program may include the use of medication-
7 assisted treatment as defined in paragraph (7) of subsection f. of
8 this section, to comply with program rules and the requirements of
9 the course of treatment, to cooperate fully with the treatment
10 provider, and to comply with such other reasonable terms and
11 conditions as may be required by the court or by law, pursuant to
12 N.J.S.2C:45-1, and which shall include periodic urine testing for
13 drug or alcohol usage throughout the period of special probation. In
14 determining whether to order the person to participate in a
15 residential or nonresidential [rather than a residential] treatment
16 program, the court shall [follow the procedure set forth in
17 subsection j. of this section] consider the recommendations from a
18 diagnostic assessment, including the level of care that is clinically
19 appropriate and adequate to address the person's treatment needs.
20 [Subject to the requirements of subsection d. of this section, the]
21 The conditions of special probation may include different methods
22 and levels of community-based or residential supervision.

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

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

31 (3) a crime, other than that defined in section 1 of P.L.1987,
32 c.101 (C.2C:35-7) or section 1 of P.L.2009, c.333 (C.2C:40-26), for
33 which a mandatory minimum period of incarceration is prescribed
34 under chapter 35 of this Title or any other law; or

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

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

39 d. [Except as otherwise provided in subsection j. of this
40 section, a person convicted of or adjudicated delinquent for a crime
41 of the second degree or of a violation of section 1 of P.L.1987,
42 c.101 (C.2C:35-7), or who previously has been convicted of or
43 adjudicated delinquent for an offense under subsection a. of
44 N.J.S.2C:35-5 or a similar offense under any other law of this State,
45 any other state or the United States, who is placed on special
46 probation under this section shall be committed to the custody of a
47 residential substance use disorders treatment facility licensed and

1 approved by the Division of Mental Health and Addiction Services
2 in the Department of Human Services. Subject to the authority of
3 the court to temporarily suspend imposition of all or any portion of
4 the term of commitment to a residential treatment facility pursuant
5 to subsection j. of this section, the person shall be committed to the
6 residential treatment facility immediately, unless the facility cannot
7 accommodate the person, in which case the person shall be
8 incarcerated to await commitment to the residential treatment
9 facility. The term of such commitment shall be for a minimum of
10 six months, or until the court, upon recommendation of the
11 treatment provider, determines that the person has successfully
12 completed the residential treatment program, whichever is later,
13 except that no person shall remain in the custody of a residential
14 treatment facility pursuant to this section for a period in excess of
15 five years. Upon successful completion of the required residential
16 treatment program, the person shall complete the period of special
17 probation, as authorized by subsection a. of this section, with credit
18 for time served for any imprisonment served as a condition of
19 probation and credit for each day during which the person
20 satisfactorily complied with the terms and conditions of special
21 probation while committed pursuant to this section to a residential
22 treatment facility. Except as otherwise provided in subsection l. of
23 this section, the person shall not be eligible for early discharge of
24 special probation pursuant to N.J.S.2C:45-2, or any other provision
25 of the law. The court, in determining the number of credits for time
26 spent in residential treatment, shall consider the recommendations
27 of the treatment provider. A person placed into a residential
28 treatment facility pursuant to this section shall be deemed to be
29 subject to official detention for the purposes of N.J.S.2C:29-5
30 (escape). 】 (Deleted by amendment, P.L. __, c. __) (pending before
31 the Legislature as this bill)

32 e. The probation department or other appropriate agency
33 designated by the court to monitor or supervise the person's special
34 probation shall report periodically to the court as to the person's
35 progress in treatment and compliance with court-imposed terms and
36 conditions. The treatment provider shall promptly report to the
37 probation department or other appropriate agency all significant
38 failures by the person to comply with any court imposed term or
39 condition of special probation or any requirements of the course of
40 treatment, including but not limited to a positive drug or alcohol
41 test, which shall only constitute a violation for a person using
42 medication-assisted treatment as defined in paragraph (7) of
43 subsection f. of this section if the positive test is unrelated to the
44 person's medication-assisted treatment, or the unexcused failure to
45 attend any session or activity, and shall immediately report any act
46 that would constitute an escape. The probation department or other
47 appropriate agency shall immediately notify the court and the
48 prosecutor in the event that the person refuses to submit to a

1 periodic drug or alcohol test or for any reason terminates the
2 person's participation in the course of treatment, or commits any act
3 that would constitute an escape.

4 f. (1) Upon a **first** violation of any term or condition of the
5 special probation authorized by this section or of any requirements
6 of the course of treatment, the court in its discretion may
7 permanently revoke the person's special probation.

8 (2) **Upon a second or subsequent violation of any term or**
9 **condition of the special probation authorized by this section or of**
10 **any requirements of the course of treatment, the court shall, subject**
11 **only to the provisions of subsection g. of this section, permanently**
12 **revoke the person's special probation unless the court finds on the**
13 **record that there is a substantial likelihood that the person will**
14 **successfully complete the treatment program if permitted to**
15 **continue on special probation, and the court is clearly convinced,**
16 **considering the nature and seriousness of the violations, that no**
17 **danger to the community will result from permitting the person to**
18 **continue on special probation pursuant to this section. The court's**
19 **determination to permit the person to continue on special probation**
20 **following a second or subsequent violation pursuant to this**
21 **paragraph may be appealed by the prosecution.] (Deleted by**
22 **amendment, P.L. , c.) (pending before the Legislature as this**
23 **bill)**

24 (3) In making its determination whether to revoke special
25 probation, **and whether to overcome the presumption of revocation**
26 **established in paragraph (2) of this subsection,]** the court shall
27 consider the nature and seriousness of the present infraction and any
28 past infractions in relation to the person's overall progress in the
29 course of treatment, and shall also consider the recommendations of
30 the treatment provider. **The court shall give added weight to the**
31 **treatment provider's recommendation that the person's special**
32 **probation be permanently revoked, or to the treatment provider's**
33 **opinion that the person is not amenable to treatment or is not likely**
34 **to complete the treatment program successfully.]**

35 (4) If the court permanently revokes the person's special
36 probation pursuant to this subsection, the court **shall** may impose
37 any sentence which includes a term of imprisonment of up to five
38 years, notwithstanding any sentence that might have been imposed,
39 or that would have been required to be imposed, originally for the
40 offense for which the person was convicted or adjudicated
41 delinquent. The court shall conduct a **de novo** review of any
42 **aggravating and** mitigating factors present at the time of both
43 original sentencing and resentencing, and determine whether the
44 violation negates any of the mitigating factors originally found,
45 consistent with a hearing pursuant to N.J.S.2C:45-3. If the court
46 determines **or is required pursuant to any other provision of this**
47 **chapter or any other law]** to impose a term of imprisonment, the

1 person shall receive credit for any time served in custody pursuant
2 to N.J.S.2C:45-1 or while awaiting placement in a treatment facility
3 pursuant to this section, and, regardless of whether the person was
4 sentenced to special probation under this section or section 2 of
5 P.L.2012, c.23 (C.2C:35-14.2), or probation under N.J.S.2C:45-1,
6 for each day during which the person satisfactorily complied with
7 the terms and conditions of special probation, or probation, as the
8 case may be, while committed **【pursuant to this section】** to a
9 residential treatment facility or a halfway house, so long as that
10 halfway house meets the statutory criteria of a residential treatment
11 facility as defined in N.J.S.2C:35-2. The court, in determining the
12 number of credits for time spent in a residential treatment facility or
13 a halfway house, shall consider the recommendations of the
14 treatment provider.

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

21 (6) **【Notwithstanding any other provision of this subsection, if**
22 **the person at any time refuses to undergo urine testing for drug or**
23 **alcohol usage as provided in subsection a. of this section, the court**
24 **shall, subject only to the provisions of subsection g. of this section,**
25 **permanently revoke the person's special probation.**
26 **Notwithstanding any other provision of this section, if the person at**
27 **any time while committed to the custody of a residential treatment**
28 **facility pursuant to this section commits an act that would constitute**
29 **an escape, the court shall forthwith permanently revoke the person's**
30 **special probation.】** (Deleted by amendment, P.L. __, c. __) (pending
31 before the Legislature as this bill)

32 (7) An action for a violation under this section may be brought
33 by a probation officer or prosecutor or on the court's own motion.
34 Failure to complete successfully the required treatment program
35 shall constitute a violation of the person's special probation. In the
36 case of the temporary or continued management of a person's drug
37 or alcohol dependency by means of medication-assisted treatment
38 as defined herein, whenever supported by a report from the
39 treatment provider of existing satisfactory progress and reasonably
40 predictable long-term success with or without further medication-
41 assisted treatment, the person's use of the medication-assisted
42 treatment, even if continuing, shall not be the basis to constitute a
43 failure to complete successfully the treatment program. **【A person**
44 **who fails to comply with the terms of the person's special probation**
45 **pursuant to this section and is thereafter sentenced to imprisonment**
46 **in accordance with this subsection shall thereafter be ineligible for**

1 entry into the Intensive Supervision Program, provided however
2 that this provision shall not affect the person's eligibility for entry
3 into the Intensive Supervision Program for a subsequent
4 conviction.】

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

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

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

1 installments.】 (Deleted by amendment, P.L. , c.) (pending
2 before the Legislature as this bill)

3 i. 【The】 As a condition of the special probation, whether
4 sentenced under this section or section 2 of P.L.2012, c.23
5 (C.2C:35-14.2), or probation sentenced under N.J.S.2C:45-1 which
6 as a condition of probation requires substance use disorders
7 treatment, the court shall impose], as a condition of the special
8 probation,】 any fine, penalty, fee or restitution applicable to the
9 offense for which the person was convicted or adjudicated
10 delinquent. However, notwithstanding any other provision of law
11 to the contrary, upon successful discharge from the term of special
12 probation, or probation, as the case may be, the court may waive or
13 reduce the Drug Enforcement and Demand Reduction penalty
14 imposed pursuant to N.J.S.2C:35-15.

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

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

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

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

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

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

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

4 Nothing in this subsection shall be construed to limit the
5 authority of the court at any time during the term of special
6 probation to order the person to be committed to a residential or
7 nonresidential treatment facility if the court determines that such
8 treatment is clinically appropriate and necessary to address the
9 person's present treatment needs. **】** (Deleted by amendment, P.L. __, c. __)
10 (pending before the Legislature as this bill)

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

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

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

1 (1) **【**has satisfactorily completed the treatment program ordered
2 by the court;**】** (Deleted by amendment, P.L. , c.) (pending
3 before the Legislature as this bill)

4 (2) **【**has served at least two years of special probation;**】**
5 (Deleted by amendment, P.L. , c.) (pending before the
6 Legislature as this bill)

7 (3) **【**within the preceding 12 months, did not commit a
8 substantial violation of any term or condition of special probation,
9 including but not limited to a positive urine test, which shall only
10 constitute a violation for a person using medication-assisted
11 treatment as defined in paragraph (7) of subsection f. of this section
12 if the positive test is unrelated to the person's medication-assisted
13 treatment; and**】** (Deleted by amendment, P.L. , c.) (pending
14 before the Legislature as this bill)

15 (4) is not likely to relapse or commit an offense if probation
16 supervision and related services are discontinued.

17 m. (1) The Superior Court may order the expungement of all
18 records and information relating to all prior arrests, detentions,
19 convictions, and proceedings for any offense enumerated in Title
20 2C of the New Jersey Statutes upon successful discharge from a
21 term of special probation as provided in this section **【**, regardless of
22 whether the person was sentenced to special probation under this
23 section,**】** or section 2 of P.L.2012, c.23 (C.2C:35-14.2), or
24 probation under N.J.S.2C:45-1 which as a condition of probation
25 requires substance use disorders treatment, if the person
26 satisfactorily completed a substance abuse treatment program as
27 ordered by the court **【**and was not convicted of any crime, or
28 adjudged a disorderly person or petty disorderly person, during the
29 term of special probation**】**. The provisions of N.J.S.2C:52-7
30 through N.J.S.2C:52-14 shall not apply to an expungement pursuant
31 to this paragraph and no fee shall be charged to a person eligible for
32 relief pursuant to this paragraph. The court may also vacate any
33 fine, fee, penalty, surcharge, or other court-ordered financial
34 assessment imposed by a court as part of the person's sentence,
35 other than restitution to a victim, which, at the time of granting the
36 expungement, remains subject to collection under the
37 comprehensive enforcement program established pursuant to
38 P.L.1995, c.9 (C.2B:19-1 et al.). The court shall grant the relief
39 requested unless it finds that the need for the availability of the
40 records outweighs the desirability of having the person freed from
41 any disabilities associated with their availability, or it finds that the
42 person is otherwise ineligible for expungement pursuant to
43 paragraph (2) of this subsection. An expungement under this
44 paragraph shall proceed in accordance with rules and procedures
45 developed by the Supreme Court.

46 (2) **【**A person shall not be eligible for expungement under
47 paragraph (1) of this subsection if the records include a conviction

1 for any offense barred from expungement pursuant to subsection b.
2 or c. of N.J.S.2C:52-2.】 A person shall not be eligible for
3 expungement under paragraph (1) of this subsection if the records
4 include a conviction for any offense barred from expungement
5 pursuant to subsection b. or c. of N.J.S.2C:52-2. It shall be the
6 obligation of the prosecutor to notify the court of 【any disqualifying
7 convictions or】 any disqualifying convictions or any other factors
8 related to public safety that should be considered by the court when
9 deciding to grant an expungement under paragraph (1) of this
10 subsection.

11 (3) The Superior Court shall provide a copy of the expungement
12 order granted pursuant to paragraph (1) of this subsection to the
13 prosecutor and to the person and, if the person was represented by
14 the Public Defender, to the Public Defender. The person or, if the
15 person was represented by the Public Defender, the Public Defender
16 on behalf of the person, shall promptly distribute copies of the
17 expungement order to appropriate agencies who have custody and
18 control of the records specified in the order, or request that the court
19 electronically transmit the order to the appropriate agencies
20 pursuant to subsection c. of section 11 of P.L.2019, c.269 (C.2C:52-
21 10.1). so that the agencies may comply with the requirements of
22 N.J.S.2C:52-15.

23 (4) If the person whose records are expunged pursuant to
24 paragraph (1) of this subsection is convicted of any crime following
25 discharge from special probation, or probation, as the case may be,
26 the full record of arrests and convictions may be restored to public
27 access and no future expungement pursuant to this section shall be
28 granted to such person.

29 (5) A person who, prior to the effective date of P.L.2015, c.261,
30 was successfully discharged from a term of special probation as
31 provided in this section 【, regardless of whether the person was
32 sentenced to special probation under this section,】 or section 2 of
33 P.L.2012, c.23 (C.2C:35-14.2), or probation under N.J.S.2C:45-1
34 which as a condition of probation requires substance use disorders
35 treatment, may seek an expungement of all records and information
36 relating to all arrests, detentions, convictions, and proceedings for
37 any offense enumerated in Title 2C of the New Jersey Statutes that
38 existed at the time of discharge 【from special probation】 by
39 presenting an application to the Superior Court in the county in
40 which the person was sentenced to special probation, or probation,
41 as the case may be 【, which contains a duly verified petition as
42 provided in N.J.S.2C:52-7 for each crime or offense sought to be
43 expunged. The petition for expungement shall proceed pursuant to
44 N.J.S.2C:52-1 et seq. except that the requirements related to the
45 expiration of the time periods specified in N.J.S.2C:52-2 through
46 section 1 of P.L.1980, c.163 (C.2C:52-4.1) shall not apply】 . The
47 provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply

1 to an expungement pursuant to this paragraph and no fee shall be
2 charged to a person eligible for relief pursuant to this paragraph. A
3 person who was convicted of any offense barred from expungement
4 pursuant to subsection b. or c. of N.J.S.2C:52-2, or who has been
5 convicted of any crime or offense since the date of discharge from
6 special probation or probation, as the case may be, shall not be
7 eligible to apply for an expungement under this paragraph. In
8 addition, no application for expungement shall be considered until
9 any pending charges are disposed. It shall be the obligation of the
10 prosecutor to notify the court of any disqualifying convictions or
11 any other factors related to public safety that should be considered
12 by the court when deciding to grant an expungement under this
13 paragraph. The Superior Court shall consider the person's **【verified**
14 **petition】** application and may order the expungement of all records
15 and information relating to all arrests, detentions, convictions, and
16 proceedings of the person that existed at the time of discharge
17 **【from special probation as appropriate】.** The court may also vacate
18 any fine, fee, penalty, surcharge, or other court-ordered financial
19 assessment imposed by a court as part of the person's sentence,
20 other than restitution to a victim, which, at the time of granting the
21 expungement, remains subject to collection under the
22 comprehensive enforcement program established pursuant to
23 P.L.1995, c.9 (C.2B:19-1 et al.). The court shall grant the relief
24 requested unless it finds that the need for the availability of the
25 records outweighs the desirability of having the person freed from
26 any disabilities associated with their availability, or it finds that the
27 person is otherwise ineligible for expungement pursuant to this
28 paragraph. **【No fee shall be charged to a person eligible for relief**
29 **pursuant to this paragraph.】** The Superior Court shall provide a
30 copy of the expungement order granted pursuant to this paragraph
31 to the prosecutor and to the person. The person shall promptly
32 distribute copies of the expungement order to appropriate agencies
33 who have custody and control of the records specified in the order,
34 or request that the court electronically transmit the order to the
35 appropriate agencies pursuant to subsection c. of section 11 of
36 P.L.2019, c.269 (C.2C:52-10.1), so that the agencies may comply
37 with the requirements of N.J.S.2C:52-15.
38 (cf: P.L.2015, c.261, s.1)

39
40 2. This act shall take effect immediately.

41 42 43 STATEMENT

44
45 This bill would expand eligibility for special probation drug court,
46 alter or eliminate procedures to provide courts with more flexibility in
47 sentencing drug or alcohol dependent persons and determining

1 appropriate treatment options, and provide greater expungement relief
2 for clearing criminal and other records, and other post-program relief,
3 for persons successfully discharged from their probation sentence
4 following treatment.

5 More specifically, the bill would do the following:

6 - provide that a sentence to special probation would be for a term
7 of “up to” five years, as opposed to the current law’s requirement of a
8 five-year term;

9 - eliminate ineligibility for special probation based on having two
10 or more previous convictions involving a combination of crimes of the
11 first, second, or third degrees, so there would be no cap based on past
12 convictions, other than if one of those past convictions was for (or
13 there was a pending charge for): murder, aggravated manslaughter,
14 manslaughter, kidnapping, aggravated sexual assault, or sexual assault
15 – one past conviction for aggravated assault would also be eliminated
16 as a disqualifier for special probation;

17 - indicate that, when determining a special probation sentence
18 involving either residential or nonresidential treatment, the court
19 would consider recommendations from a diagnostic assessment,
20 including the level of care that is clinically appropriate to address a
21 person’s treatment needs, rather than following a statutory list of
22 criteria, which if satisfied, automatically required a commitment to a
23 residential facility, with an exception to temporarily suspend, and
24 possibly later on permanently suspend, such commitment while
25 instead ordering nonresidential treatment (detailed in N.J.S.2C:35-14,
26 subsections d., j., and k., all of which are deleted in their entirety);

27 - provide that a person would be eligible for special probation,
28 notwithstanding that the person was convicted of the crime of
29 operating a motor vehicle during a period of license suspension, which
30 carries a mandatory minimum term of incarceration and currently
31 renders the person ineligible, when: (1) the suspension period was the
32 result of a DUI violation or refusing to take a breath test, R.S.39:4-50
33 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), and the person was
34 previously caught operating a vehicle during the same period of
35 suspension; or (2) the suspension period was the result of a second
36 DUI-related violation, regardless of whether previously caught
37 operating a vehicle during the same period of suspension.

38 - remove the automatic revoking of special probation for escaping
39 from the custody of a residential treatment facility; and remove the
40 statutory presumption, but not automatic, revoking of special probation
41 for a second or subsequent violation of any term or condition of
42 special probation or any requirements of the course of treatment, or for
43 refusing to undergo urine testing for drug or alcohol usage. Instead,
44 any first or subsequent violation, of any kind whatsoever, would allow
45 the court in its discretion to revoke special probation;

46 - allow a court, upon permanently revoking a person’s special
47 probation, to impose any sentence which includes a term of
48 imprisonment of up to five years, notwithstanding any sentence that

1 might have been imposed, or that would have been required to be
2 imposed, originally for the offense for which the person was sentenced
3 to special probation. The current law applies the original sentencing
4 parameters upon the permanent revocation of special probation;
5 - if special probation is permanently revoked and the court imposes
6 a sentence, the sentenced person would receive credit for any time
7 served at a halfway house, similar to how the current law provides
8 credit for time served at a residential treatment facility, so long as the
9 halfway house meets the statutory definition of such a facility,
10 meaning it is licensed and approved by the Department of Human
11 Services and is approved by a county probation department for
12 inpatient treatment services;
13 - make a person eligible for subsequent entry into the State's
14 Intensive Supervision Program, even though the person failed to
15 comply with the terms of special probation and such probation was
16 permanently revoked, resulting in the person being sentenced to a term
17 of imprisonment;
18 - eliminate the provision that a treated person, after consideration
19 of the person's financial resources, pay the portion of the costs
20 associated with the person's special probation residential or
21 nonresidential treatment;
22 - permit a court, following successful discharge from either special
23 probation or regular probation requiring substance use disorders
24 treatment, to waive or reduce the Drug Enforcement and Demand
25 Reduction penalty imposed as part of a sentence pursuant to
26 N.J.S.2C:35-15. This penalty ranges from \$500 in the case of a
27 disorderly or petty disorderly persons offense to \$3,000 in the case of a
28 crime of the first degree;
29 - allow a court, if a person makes "exemplary progress in the
30 course of treatment" while on special probation, and with the
31 recommendation of the person's probation officer or on the court's
32 own motion, to grant early discharge, subject only to a finding, per
33 current law, that the person "is not likely to relapse or commit an
34 offense if probation supervision and related services are discontinued."
35 The other existing statutory factors for consideration for early
36 discharge, including not committing a substantial violation of any term
37 or condition of special probation within the preceding 12 months,
38 would be repealed;
39 - at the time of granting an expungement, allow a court to also
40 vacate any fine, fee, penalty, surcharge, or other court-ordered
41 financial assessment imposed by a court as part of the person's
42 sentence, other than restitution to a victim, which, at the time of
43 granting the expungement, remains subject to collection under the
44 comprehensive enforcement program established pursuant to
45 P.L.1995, c.9 (C.2B:19-1 et al.);
46 - simplify the application process for treated persons requesting an
47 expungement of their entire criminal records and other related
48 information as described above, for offenses committed prior to the

1 effective date of past special probation reforms pursuant to P.L.2015,
2 c.261 that first introduced the special probation expungement process,
3 by no longer requiring these previously discharged persons to file a
4 duly verified petition for each offense for which expungement is
5 sought, and other requirements of a standard expungement application
6 set forth in N.J.S.2C:52-1 et seq.; and
7 - provide for a court to electronically notify all appropriate law
8 enforcement and criminal justice agencies who have custody and
9 control of records specified in an expungement order, upon request of
10 a person granted relief, or the Public Defender if representing that
11 person, once the electronic filing and notification system for
12 expungement applications is operational pursuant to section 11 of
13 P.L.2019, c.269 (C.2C:52-10.1).