

[Second Reprint]

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)

Co-Sponsored by:

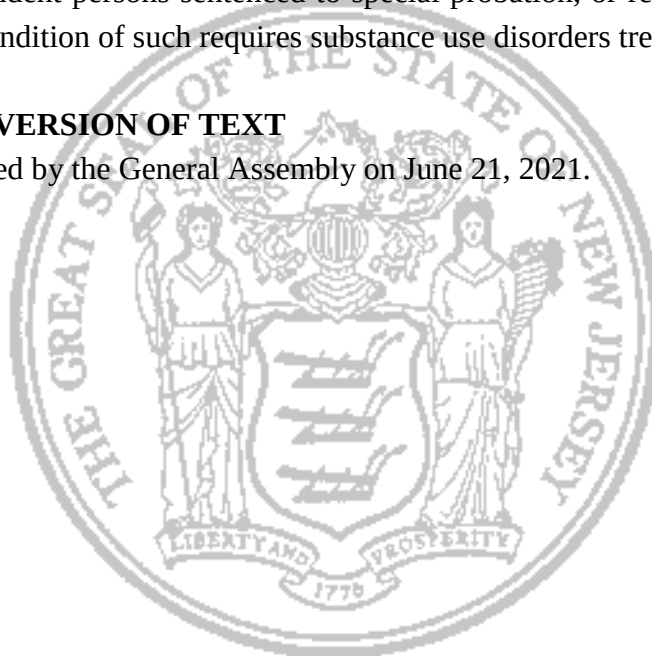
**Assemblyman Houghtaling, Assemblywoman McKnight and
Assemblyman Stanley**

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 amended by the General Assembly on June 21, 2021.



(Sponsorship Updated As Of: 12/9/2021)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted June 9, 2021.

²Assembly floor amendments adopted June 21, 2021.

- 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**
47 **entry into the Intensive Supervision Program, provided however**
48 **that this provision shall not affect the person's eligibility for entry**

1 into the Intensive Supervision Program for a subsequent
2 conviction.】

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

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

36 (Deleted by amendment, P.L. _____, c. _____) (pending before the
37 Legislature as this bill)

38 h. 【The court, as a condition of its order, and after considering
39 the person's financial resources, shall require the person to pay that
40 portion of the costs associated with the person's participation in any
41 residential or nonresidential treatment program imposed pursuant to
42 this section which, in the opinion of the court, is consistent with the
43 person's ability to pay, taking into account the court's authority to
44 order payment or reimbursement to be made over time and in
45 installments.】 (Deleted by amendment, P.L. _____, c. _____) (pending
46 before the Legislature as this bill)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 m. (1) The Superior Court may order the expungement of all
15 records and information relating to all prior arrests, detentions,
16 convictions, and proceedings for any offense enumerated in Title
17 2C of the New Jersey Statutes ¹and for any violation of a municipal
18 ordinance¹ upon successful discharge from a term of special
19 probation as provided in this section **【, regardless of whether the**
20 **person was sentenced to special probation under this section,】** or
21 section 2 of P.L.2012, c.23 (C.2C:35-14.2), or probation under
22 N.J.S.2C:45-1 which as a condition of probation requires substance
23 use disorders treatment, if the person satisfactorily completed a
24 substance abuse treatment program as ordered by the court **【and**
25 **was not convicted of any crime, or adjudged a disorderly person or**
26 **petty disorderly person, during the term of special probation】.** The
27 provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply
28 to an expungement pursuant to this paragraph and no fee shall be
29 charged to a person eligible for relief pursuant to this paragraph.
30 The court may also vacate any fine, fee, penalty, surcharge, or other
31 court-ordered financial assessment imposed by a court as part of the
32 person's sentence, other than restitution to a victim, which, at the
33 time of granting the expungement, remains subject to collection
34 under the comprehensive enforcement program established pursuant
35 to P.L.1995, c.9 (C.2B:19-1 et al.). The court shall grant the relief
36 requested unless it finds that the need for the availability of the
37 records outweighs the desirability of having the person freed from
38 any disabilities associated with their availability, or it finds that the
39 person is otherwise ineligible for expungement pursuant to
40 paragraph (2) of this subsection. An expungement under this
41 paragraph shall proceed in accordance with rules and procedures
42 developed by the Supreme Court.

43 (2) **【A person shall not be eligible for expungement under**
44 **paragraph (1) of this subsection if the records include a conviction**
45 **for any offense barred from expungement pursuant to subsection b.**
46 **or c. of N.J.S.2C:52-2.】** A person shall not be eligible for
47 expungement under paragraph (1) of this subsection if the records

1 include a conviction for any offense barred from expungement
2 pursuant to subsection b. or c. of N.J.S.2C:52-2. It shall be the
3 obligation of the prosecutor to notify the court of **【**any disqualifying
4 convictions or**】** any disqualifying convictions or any other factors
5 related to public safety that should be considered by the court when
6 deciding to grant an expungement under paragraph (1) of this
7 subsection. ¹Any such notification to the court shall take place
8 within the 60-day period set forth in section 11 of P.L.2019, c.269
9 (C.2C:52-10.1).¹

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

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

28 (5) A person who, prior to the effective date of P.L.2015, c.261,
29 was successfully discharged from a term of special probation as
30 provided in this section **【**, regardless of whether the person was
31 sentenced to special probation under this section,**】** or section 2 of
32 P.L.2012, c.23 (C.2C:35-14.2), or probation under N.J.S.2C:45-1
33 which as a condition of probation requires substance use disorders
34 treatment, may seek an expungement of all records and information
35 relating to all arrests, detentions, convictions, and proceedings for
36 any offense enumerated in Title 2C of the New Jersey Statutes ²and
37 for any violation of a municipal ordinance² that existed at the time
38 of discharge **【**from special probation**】** by presenting an application
39 to the Superior Court in the county in which the person was
40 sentenced to special probation, or probation, as the case may be **【**,
41 which contains a duly verified petition as provided in N.J.S.2C:52-7
42 for each crime or offense sought to be expunged. The petition for
43 expungement shall proceed pursuant to N.J.S.2C:52-1 et seq. except
44 that the requirements related to the expiration of the time periods
45 specified in N.J.S.2C:52-2 through section 1 of P.L.1980, c.163
46 (C.2C:52-4.1) shall not apply**】** . The provisions of N.J.S.2C:52-7
47 through N.J.S.2C:52-14 shall not apply to an expungement pursuant

1 to this paragraph and no fee shall be charged to a person eligible for
2 relief pursuant to this paragraph. A person who was convicted of
3 any offense barred from expungement pursuant to subsection b. or
4 c. of N.J.S.2C:52-2, or who has been convicted of any crime or
5 offense since the date of discharge from special probation or
6 probation, as the case may be, shall not be eligible to apply for an
7 expungement under this paragraph. In addition, no application for
8 expungement shall be considered until any pending charges are
9 disposed. It shall be the obligation of the prosecutor to notify the
10 court of any disqualifying convictions or any other factors related to
11 public safety that should be considered by the court when deciding
12 to grant an expungement under this paragraph. ¹Any such
13 notification to the court shall take place within the 60-day period set
14 forth in section 11 of P.L.2019, c.269 (C.2C:52-10.1).¹

15 The Superior Court shall consider the person's **【verified petition】**
16 application and may order the expungement of all records and
17 information relating to all arrests, detentions, convictions, and
18 proceedings of the person that existed at the time of discharge
19 **【from special probation as appropriate】**. The court may also vacate
20 any fine, fee, penalty, surcharge, or other court-ordered financial
21 assessment imposed by a court as part of the person's sentence,
22 other than restitution to a victim, which, at the time of granting the
23 expungement, remains subject to collection under the
24 comprehensive enforcement program established pursuant to
25 P.L.1995, c.9 (C.2B:19-1 et al.). The court shall grant the relief
26 requested unless it finds that the need for the availability of the
27 records outweighs the desirability of having the person freed from
28 any disabilities associated with their availability, or it finds that the
29 person is otherwise ineligible for expungement pursuant to this
30 paragraph. **【No fee shall be charged to a person eligible for relief**
31 **pursuant to this paragraph.】** The Superior Court shall provide a
32 copy of the expungement order granted pursuant to this paragraph
33 to the prosecutor and to the person. The person shall promptly
34 distribute copies of the expungement order to appropriate agencies
35 who have custody and control of the records specified in the order,
36 or request that the court electronically transmit the order to the
37 appropriate agencies pursuant to subsection c. of section 11 of
38 P.L.2019, c.269 (C.2C:52-10.1), so that the agencies may comply
39 with the requirements of N.J.S.2C:52-15.

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

41
42 2. This act shall take effect immediately.