

SENATE, No. 491

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator CHRIS A. BROWN

District 2 (Atlantic)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

Senators Vitale, Gill, O'Scanlon and Cunningham

SYNOPSIS

Concerns participation in special probation drug court.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

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.

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; unless the previous convictions, not
18 including any conviction for a crime listed in paragraph (7) or
19 defined in N.J.S.2C:35-10, are at least five years old, and, as found
20 by the court pursuant to paragraph (4), substance use disorders
21 treatment and monitoring will serve to benefit the person by
22 addressing the person's drug or alcohol dependency and will
23 thereby reduce the likelihood that the person will thereafter commit
24 another offense; and

25 (7) the person has not been previously convicted or adjudicated
26 delinquent for, and does not have a pending charge of murder,
27 aggravated manslaughter, manslaughter, kidnapping, aggravated
28 assault if graded as a crime of the second degree or higher pursuant
29 to subsection b. of N.J.S.2C:12-1, aggravated sexual assault or
30 sexual assault, or a similar crime under the laws of any other state
31 or the United States; and

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

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

39 In determining whether to sentence the person pursuant to this
40 section, the court shall consider all relevant circumstances, and
41 shall take judicial notice of any evidence, testimony or information
42 adduced at the trial, plea hearing or other court proceedings, and
43 shall also consider the presentence report and the results of the
44 professional diagnostic assessment to determine whether and to
45 what extent the person is drug or alcohol dependent and would
46 benefit from treatment. The court shall give priority to a person
47 who has moved to be sentenced to special probation over a person
48 who is being considered for a sentence to special probation on the

1 court's own motion or in accordance with the provisions of section
2 2 of P.L.2012, c.23 (C.2C:35-14.2).

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

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

25 (1) a crime of the first degree;

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

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

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

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

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

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

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

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

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

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

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

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

7 (6) Notwithstanding any other provision of this subsection, if
8 the person at any time refuses to undergo urine testing for drug or
9 alcohol usage as provided in subsection a. of this section, the court
10 shall, subject only to the provisions of subsection g. of this section,
11 permanently revoke the person's special probation.
12 Notwithstanding any other provision of this section, if the person at
13 any time while committed to the custody of a residential treatment
14 facility pursuant to this section commits an act that would constitute
15 an escape, the court shall forthwith permanently revoke the person's
16 special probation.

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

36 As used in this section, the term "medication-assisted treatment"
37 means the use of any medications approved by the federal Food and
38 Drug Administration to treat substance use disorders, including
39 extended-release naltrexone, methadone, and buprenorphine, in
40 combination with counseling and behavioral therapies, to provide a
41 whole-patient approach to the treatment of substance use disorders.

42 g. When a person on special probation is subject to a
43 presumption of revocation on a second or subsequent violation
44 pursuant to paragraph (2) of subsection f. of this section, or when
45 the person refuses to undergo drug or alcohol testing pursuant to
46 paragraph (6) of subsection f. of this section, the court may, in lieu
47 of permanently revoking the person's special probation, impose a
48 term of incarceration for a period of not less than 30 days nor more

1 than six months, after which the person's term of special probation
2 pursuant to this section may be reinstated. In determining whether
3 to order a period of incarceration in lieu of permanent revocation
4 pursuant to this subsection, the court shall consider the
5 recommendations of the treatment provider with respect to the
6 likelihood that such confinement would serve to motivate the
7 person to make satisfactory progress in treatment once special
8 probation is reinstated. This disposition may occur only once with
9 respect to any person unless the court is clearly convinced that there
10 are compelling and extraordinary reasons to justify reimposing this
11 disposition with respect to the person. Any such determination by
12 the court to reimpose this disposition may be appealed by the
13 prosecution. Nothing in this subsection shall be construed to limit
14 the authority of the court at any time during the period of special
15 probation to order a person on special probation who is not subject
16 to a presumption of revocation pursuant to paragraph (2) of
17 subsection f. of this section to be incarcerated over the course of a
18 weekend, or for any other reasonable period of time, when the court
19 in its discretion determines that such incarceration would help to
20 motivate the person to make satisfactory progress in treatment.

21 h. The court, as a condition of its order, and after considering
22 the person's financial resources, shall require the person to pay that
23 portion of the costs associated with the person's participation in any
24 residential or nonresidential treatment program imposed pursuant to
25 this section which, in the opinion of the court, is consistent with the
26 person's ability to pay, taking into account the court's authority to
27 order payment or reimbursement to be made over time and in
28 installments.

29 i. The court shall impose, as a condition of the special
30 probation, any fine, penalty, fee, or restitution applicable to the
31 offense for which the person was convicted or adjudicated
32 delinquent.

33 j. Where the court finds that a person has satisfied all of the
34 eligibility criteria for special probation and would otherwise be
35 required to be committed to the custody of a residential substance
36 use disorders treatment facility pursuant to the provisions of
37 subsection d. of this section, the court may temporarily suspend
38 imposition of all or any portion of the term of commitment to a
39 residential treatment facility and may instead order the person to
40 enter a nonresidential treatment program, provided that the court
41 finds on the record that:

42 (1) the person conducting the diagnostic assessment required
43 pursuant to paragraph (1) of subsection a. of this section has
44 recommended in writing that the proposed course of nonresidential
45 treatment services is clinically appropriate and adequate to address
46 the person's treatment needs; and

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

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

6 If the prosecutor objects to the court's decision to suspend the
7 commitment of the person to a residential treatment facility
8 pursuant to this subsection, the sentence of special probation
9 imposed pursuant to this section shall not become final for ten days
10 in order to permit the appeal by the prosecution of the court's
11 decision.

12 After a period of six months of nonresidential treatment, if the
13 court, considering all available information including but not
14 limited to the recommendation of the treatment provider, finds that
15 the person has made satisfactory progress in treatment and that
16 there is a substantial likelihood that the person will successfully
17 complete the nonresidential treatment program and period of special
18 probation, the court, on notice to the prosecutor, may permanently
19 suspend the commitment of the person to the custody of a
20 residential treatment program, in which event the special
21 monitoring provisions set forth in subsection k. of this section shall
22 no longer apply.

23 Nothing in this subsection shall be construed to limit the
24 authority of the court at any time during the term of special
25 probation to order the person to be committed to a residential or
26 nonresidential treatment facility if the court determines that such
27 treatment is clinically appropriate and necessary to address the
28 person's present treatment needs.

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

1 (2) The probation department or other appropriate agency shall
2 immediately notify the court and the prosecutor in the event that the
3 person fails or refuses to submit to a drug or alcohol test, knowingly
4 defrauds the administration of a drug test, terminates the person's
5 participation in the course of treatment, or commits any act that
6 would constitute absconding from parole. If the person at any time
7 while entered in a nonresidential treatment program pursuant to
8 subsection j. of this section knowingly defrauds the administration
9 of a drug test, goes into hiding, or leaves the State with a purpose of
10 avoiding supervision, the court shall permanently revoke the
11 person's special probation.

12 l. If the court finds that the person has made exemplary
13 progress in the course of treatment, the court may, upon
14 recommendation of the person's supervising probation officer or on
15 the court's own motion, and upon notice to the prosecutor, grant
16 early discharge from a term of special probation provided that the
17 person: (1) has satisfactorily completed the treatment program
18 ordered by the court; (2) has served at least two years of special
19 probation; (3) within the preceding 12 months, did not commit a
20 substantial violation of any term or condition of special probation,
21 including but not limited to a positive urine test, which shall only
22 constitute a violation for a person using medication-assisted
23 treatment as defined in paragraph (7) of subsection f. of this section
24 if the positive test is unrelated to the person's medication-assisted
25 treatment; and (4) is not likely to relapse or commit an offense if
26 probation supervision and related services are discontinued.

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

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

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

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

23 (5) A person who, prior to the effective date of P.L.2015, c.261,
24 **【was successfully discharged】** graduated from a term of special
25 probation as provided in this section, regardless of whether the
26 person was sentenced to special probation under this section,
27 section 2 of P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, may
28 seek an expungement of all records and information relating to all
29 arrests, detentions, convictions, and proceedings for any offense
30 enumerated in Title 2C of the New Jersey Statutes that existed at
31 the time of discharge from special probation by presenting an
32 application to the Superior Court in the county in which the person
33 was sentenced to special probation, which contains a duly verified
34 petition as provided in N.J.S.2C:52-7 for each crime or offense
35 sought to be expunged. The petition for expungement shall proceed
36 pursuant to N.J.S.2C:52-1 et seq. except that the requirements
37 related to the expiration of the time periods specified in
38 N.J.S.2C:52-2 through section 1 of P.L.1980, c.163 (C.2C:52-4.1)
39 shall not apply. A person who was convicted of any offense barred
40 from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2,
41 or who has been convicted of any crime or offense since the date of
42 discharge from special probation shall not be eligible to apply for
43 an expungement under this paragraph. In addition, no application
44 for expungement shall be considered until any pending charges are
45 disposed. It shall be the obligation of the prosecutor to notify the
46 court of any disqualifying convictions or any other factors related to
47 public safety that should be considered by the court when deciding
48 to grant an expungement under this paragraph. The Superior Court

1 shall consider the person's verified petition and may order the
2 expungement of all records and information relating to all arrests,
3 detentions, convictions, and proceedings of the person that existed
4 at the time of discharge from special probation as appropriate. The
5 court shall grant the relief requested unless it finds that the need for
6 the availability of the records outweighs the desirability of having
7 the person freed from any disabilities associated with their
8 availability, or it finds that the person is otherwise ineligible for
9 expungement pursuant to this paragraph. No fee shall be charged to
10 a person eligible for relief pursuant to this paragraph.

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

12

13 2. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill concerns the participation of persons in special probation
19 drug court. Specifically, the bill would impact participation in three
20 ways:

21 (1) It would establish special probation drug court eligibility for
22 two classes of persons with either prior or pending involvement with
23 the criminal justice system. The first new class of persons would be
24 those previously convicted or adjudicated delinquent, or facing a
25 pending charge, for an aggravated assault of the third or fourth degree
26 – currently aggravated assault of any degree renders a person
27 automatically ineligible for drug court participation. The second new
28 class of persons would be those with certain multiple, older criminal
29 convictions that are at least five years old, provided the court found
30 that the program would be beneficial in addressing their drug or
31 alcohol dependency and reduce the likelihood of future criminal
32 behavior.

33 As to the first class of newly eligible drug court participants,
34 aggravated assault of any degree is currently included in a list of
35 violent crimes for which even one previous conviction or adjudication
36 of delinquency, or one pending charge, renders a person ineligible; the
37 other crimes rendering someone automatically ineligible include
38 murder, aggravated manslaughter, manslaughter, kidnapping,
39 aggravated sexual assault, and sexual assault. The bill would create an
40 exception for persons with a lower level aggravated assault graded as a
41 crime of the third or fourth degree, so that such persons could have one
42 or more previous convictions or adjudications of delinquency, or a
43 pending charge, and still be eligible to participate in the drug court
44 program.

45 As to the second class of newly eligible participants based upon
46 previous, older convictions, a person is currently ineligible for the drug
47 court program if: (1) that person has been previously convicted on at
48 least two separate occasions for crimes of the first or second degree,

1 unless any one of those convictions was for a violent crime rendering
2 the person automatically ineligible (see above); or (2) that person has
3 been previously convicted on at least two separate occasions, based on
4 one offense being a crime of the first or second degree not rendering
5 the person automatically ineligible, and the other offense being a crime
6 of the third degree, not counting any crime of the third degree for
7 possessing a controlled dangerous substance pursuant to N.J.S.2C:35-
8 10 (such criminal possession convictions do not count towards the two
9 conviction “cap” on eligibility).

10 This criterion concerning past convictions would remain in place;
11 however, the bill would permit a person with two or more past
12 convictions to be eligible for special probation drug court, so long as
13 none of the convictions rendered the person automatically ineligible
14 and the convictions were at least five years old, not counting any
15 criminal possession convictions (such convictions, even if more recent,
16 would not alter the person’s eligibility). However, such newly eligible
17 person would only be granted entry if the court determined that the
18 program would be beneficial in addressing the person’s drug or
19 alcohol dependency and reduce the likelihood that the person would
20 thereafter commit another offense – this court determination applies to
21 all eligible participants under existing law but is reiterated with respect
22 to potential participants with older convictions to emphasize that
23 enrollment is still discretionary as determined by the court, even if the
24 past convictions no longer bar participation.

25 (2) The bill would permit a person who was removed from the
26 special probation drug court program for violating the terms of special
27 probation, and thus facing imprisonment for the crime for which
28 diversion into the program was originally granted, to be eligible for
29 subsequent entry into the Judiciary’s Intensive Supervision Program (a
30 form of highly supervised parole). Under the current law, the person is
31 ineligible to enter this other supervisory program.

32 (3) Lastly, the bill would clarify that, in order for a person to be
33 eligible to be granted a post-program expungement of their records,
34 the person must have successfully “graduated” from the special
35 probation drug court program, and not been convicted of any offense
36 committed during the course of the program – such a conviction would
37 prevent a person from being granted the post-program expungement.