SENATE, No. 1967

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 2/25/2020)

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

"Drug or alcohol dependent person" means a person who as a result of using a controlled dangerous substance or controlled substance analog or alcohol has been in a state of psychic or physical dependence, or both, arising from the use of that controlled dangerous substance or controlled substance analog or alcohol on a continuous or repetitive basis. Drug or alcohol dependence is characterized by behavioral and other responses, including but not

limited to a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence.

"Hashish" means the resin extracted from any part of the plant Genus Cannabis L. and any compound, manufacture, salt, derivative, mixture, or preparation of such resin. "Hashish" shall not mean hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.).

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

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

"Marijuana" means all parts of the plant Genus Cannabis L., whether growing or not; the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant; but shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Marijuana" shall not mean hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the "New Jersey Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.).

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

(a) Opium, coca leaves, and opiates;

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

(c) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in subsections (a) and (b), except that the words "narcotic drug" as used in this act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecogine.

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

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

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

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

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

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

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

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

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

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

(e) "Laboratory" means a laboratory to be entrusted with the custody of narcotic drugs and the use of controlled dangerous substances or controlled substance analogs for scientific,

experimental, and medical purposes and for purposes of instruction approved by the Department of Health.

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

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

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

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

"State" means the State of New Jersey.

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

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

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

"Stramonium plant" means the plant Datura Stramonium Linne, including Datura Tatula Linne.

(cf: P.L.2019, c.238, s.10)

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

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

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

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

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

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

(1) (a) Heroin, or its analog, or ⟦coca⟧ a heroin mixture that does not contain fentanyl or its analog, in a quantity of 10 grams or more including any adulterants or dilutants;

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

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

(2) A substance referred to in subparagraph (a) of paragraph (1) of this subsection, in a quantity of ⟦one-half ounce⟧ five grams or more but less than ⟦five ounces,⟧ 10 grams including any adulterants or dilutants, and a substance referred to in subparagraph (b) of paragraph (1) of this subsection, in a quantity of two grams or more but less than five grams including any adulterants or dilutants, and a substance referred to in subparagraph (c) of paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces including any adulterants or dilutants, is guilty of a crime of the second degree;

(3) A substance referred to in subparagraph (a) of paragraph (1) of this subsection, in a quantity less than five grams including any adulterants or dilutants, and a substance referred to in subparagraph (b) of paragraph (1) of this subsection, in a quantity of less than two grams including any adulterants or dilutants, and a substance referred to in subparagraph (c) of paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants is guilty of a crime of the third degree except that,

notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to $75,000.00 may be imposed;

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

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

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

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

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

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

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

(10) (a) Marijuana in a quantity of 25 pounds or more including any adulterants or dilutants, or 50 or more marijuana plants, regardless of weight, or hashish in a quantity of five pounds or more including any adulterants or dilutants, is guilty of a crime

of the first degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to $300,000.00 may be imposed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Except as otherwise provided in subsection j. of this section, a person convicted of or adjudicated delinquent for a crime of the second degree or of a violation of section 1 of P.L.1987, c.101 (C.2C:35-7), or who previously has been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, who is placed on special probation under this section shall be committed to the custody of a residential substance use disorders treatment facility licensed and approved by the Division of Mental Health and Addiction Services in the Department of Human Services. Subject to the authority of the court to temporarily suspend imposition of all or any portion of the term of commitment to a residential treatment facility pursuant to subsection j. of this section, the person shall be committed to the residential treatment facility immediately, unless the facility cannot accommodate the person, in which case the person shall be incarcerated to await commitment to the residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the court, upon recommendation of the treatment provider, determines that the person has successfully completed the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility pursuant to this section for a period in excess of five years. Upon successful completion of the required residential treatment program, the person shall complete the period of special probation, as authorized by subsection a. of this section, with credit for time served for any imprisonment served as a condition of probation and credit for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. Except as otherwise provided in subsection l. of this section, the person shall not be eligible for early discharge of special probation pursuant to N.J.S.2C:45-2, or any other provision of the law. The court, in determining the number of credits for time spent in residential treatment, shall consider the recommendations of the treatment provider. A person placed into a residential

treatment facility pursuant to this section shall be deemed to be subject to official detention for the purposes of N.J.S.2C:29-5 (escape).

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

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

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

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

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

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

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

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

(7) An action for a violation under this section may be brought by a probation officer or prosecutor or on the court's own motion. Failure to complete successfully the required treatment program shall constitute a violation of the person's special probation. In the case of the temporary or continued management of a person's drug or alcohol dependency by means of medication-assisted treatment as defined herein, whenever supported by a report from the treatment provider of existing satisfactory progress and reasonably predictable long-term success with or without further medication-assisted treatment, the person's use of the medication-assisted

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

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

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

h. The court, as a condition of its order, and after considering the person's financial resources, shall require the person to pay that portion of the costs associated with the person's participation in any residential or nonresidential treatment program imposed pursuant to this section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to

order payment or reimbursement to be made over time and in installments.

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

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

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

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

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

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

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

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

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

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

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

m. (1) The Superior Court may order the expungement of all records and information relating to all prior arrests, detentions, convictions, and proceedings for any offense enumerated in Title

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

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

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

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

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

the time of discharge from special probation by presenting an application to the Superior Court in the county in which the person was sentenced to special probation, which contains a duly verified petition as provided in N.J.S.2C:52-7 for each crime or offense sought to be expunged. The petition for expungement shall proceed pursuant to N.J.S.2C:52-1 et seq. except that the requirements related to the expiration of the time periods specified in N.J.S.2C:52-2 through section 1 of P.L.1980, c.163 (C.2C:52-4.1) shall not apply. A person who was convicted of any offense barred from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2, or who has been convicted of any crime or offense since the date of discharge from special probation shall not be eligible to apply for an expungement under this paragraph. In addition, no application for expungement shall be considered until any pending charges are disposed. It shall be the obligation of the prosecutor to notify the court of any disqualifying convictions or any other factors related to public safety that should be considered by the court when deciding to grant an expungement under this paragraph. The Superior Court shall consider the person's verified petition and may order the expungement of all records and information relating to all arrests, detentions, convictions, and proceedings of the person that existed at the time of discharge from special probation as appropriate. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability, or it finds that the person is otherwise ineligible for expungement pursuant to this paragraph. No fee shall be charged to a person eligible for relief pursuant to this paragraph.
(cf: P.L.2015, c.261, s.1)

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

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

STATEMENT

This bill would upgrade the penalties for certain crimes involving heroin and fentanyl. The bill also establishes new crimes

addressing two types of "heroin mixtures": heroin mixtures with fentanyl, and heroin mixtures without fentanyl. A heroin mixture as defined in the bill is heroin mixed with at least one other controlled dangerous substance.

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

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

FENTANYL; HEROIN MIXTURES CONTAINING FENTANYL. Currently, it is a crime of the second degree to unlawfully manufacture, distribute, or dispense fentanyl or its analog in a quantity of one ounce or more including any adulterants or dilutants. It is a crime of the third degree if the quantity is less than one ounce, except that an increased fine of up to $75,000 may be imposed. Under the bill, it would be a crime of the first degree to unlawfully manufacture, distribute, or dispense fentanyl or its analog, or a heroin mixture that contains fentanyl or its analog, in a quantity of five grams or more including any adulterants or dilutants. It would be a crime of the second degree if the quantity of fentanyl or its analog or a heroin mixture that contains fentanyl or its analog is two grams or more but less than five grams including any adulterants or dilutants. It would be a crime of the third degree, with an increased fine of up to $75,000, if the quantity of fentanyl or its analog or a heroin mixture that contains fentanyl or its analog is less than two grams including any adulterants or dilutants.

NEW DEFINITIONS. The bill adds definitions of the terms "heroin mixture" and "adulterants or dilutants."

Under the bill, a "heroin mixture" is a substance containing heroin, or its analog, and at least one other controlled dangerous

substance classified as a narcotic drug or its analog that have been combined by any means so that the injection, inhalation, or ingestion of the mixture would result in the consumption of two or more controlled dangerous substances or analogs.

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

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

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