

[Sixth Reprint]

SENATE, No. 881

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman HOLLY SCHEPISI

District 39 (Bergen and Passaic)

Co-Sponsored by:

Senators Bateman, Allen, Cunningham, Norcross and Turner

SYNOPSIS

Eliminates prosecutorial objection to admission to drug court program; expands eligibility and provides for phased-in mandatory drug court program.

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 25, 2012.



(Sponsorship Updated As Of: 6/29/2012)

1 AN ACT concerning treatment for drug and alcohol dependent
2 persons ¹**[and]** ¹amending N.J.S.2C:35-14 ⁴and N.J.S.2C:44-6⁴
3 ¹, and supplementing Title 2C of the New Jersey Statutes¹.

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

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

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

17 a. Any person who is ineligible for probation due to a
18 conviction for a crime which is subject to a presumption of
19 incarceration or a mandatory minimum period of parole ineligibility
20 may be sentenced to a term of special probation in accordance with
21 this section, and may not apply for drug and alcohol treatment
22 pursuant to N.J.S.2C:45-1. Nothing in this section shall be
23 construed to prohibit a person who is eligible for probation in
24 accordance with N.J.S.2C:45-1 due to a conviction for an offense
25 which is not subject to a presumption of incarceration or a
26 mandatory minimum period of parole ineligibility from applying for
27 drug or alcohol treatment as a condition of probation pursuant to
28 N.J.S.2C:45-1. Notwithstanding the presumption of incarceration
29 pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and
30 except as provided in subsection c. of this section, whenever a drug
31 or 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
37 finds on the record that ²**[In determining whether to place the**
38 **person on special probation, the court may consider the following**
39 **factors:**

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted February 16, 2012.

²Senate SBA committee amendments adopted May 3, 2012.

³Senate floor amendments adopted May 24, 2012.

⁴Assembly AAP committee amendments adopted June 18, 2012.

⁵Assembly floor amendments adopted June 21, 2012.

⁶Assembly floor amendments adopted June 25, 2012.

- 1 (1) the **[person has undergone a]** results of any professional
2 diagnostic assessment the person has undergone to determine
3 whether and to what extent the person is drug or alcohol dependent
4 and would benefit from treatment; and
- 5 (2) whether the person is a drug or alcohol dependent person
6 within the meaning of N.J.S.2C:35-2 and whether the person was
7 drug or alcohol dependent at the time of the commission of the
8 present offense; and
- 9 (3) whether the present offense was committed while the person
10 was under the influence of a controlled dangerous substance,
11 controlled substance analog or alcohol or was committed to acquire
12 property or monies in order to support the person's drug or alcohol
13 dependency; and
- 14 (4) whether substance abuse treatment and monitoring will serve
15 to benefit the person by addressing his drug or alcohol dependency
16 and will thereby reduce the likelihood that the person will thereafter
17 commit another offense; and
- 18 (5) whether the person **[did not possess]** possessed a firearm at
19 the time of the present offense **[and did not possess]** or possessed a
20 firearm at the time of any pending criminal charge; and
- 21 (6) whether the person has **[not]** been previously convicted on
22 two or more separate occasions of crimes of the second degree **[,**
23 other than those listed in paragraph (7)]; or the person has **[not]**
24 been previously convicted on two or more separate occasions,
25 where one of the offenses is a crime of the third degree, other than
26 crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime
27 of the first or second degree; and
- 28 (7) **[the person has not been previously convicted or adjudicated**
29 delinquent for, and does not have a pending charge of murder,
30 aggravated manslaughter, manslaughter, robbery, kidnapping,
31 aggravated assault, aggravated sexual assault or sexual assault, or a
32 similar crime under the laws of any other state or the United States;
33 and] (deleted by amendment, P.L. _____, c. _____ pending before the
34 Legislature as this bill).
- 35 (8) whether a suitable treatment facility licensed and approved
36 by the Division of Addiction Services in the Department of Human
37 Services is able and has agreed to provide appropriate treatment
38 services in accordance with the requirements of this section; and
- 39 (9) whether **[no]** danger to the community will result from the
40 person being placed on special probation pursuant to this section.]
- 41 Prior to placing a person on special probation, the court shall
42 find on the record that: the person has undergone a professional
43 diagnostic assessment to determine whether and to what extent the
44 person is drug or alcohol dependent and would benefit from
45 treatment; the person is a drug or alcohol dependent person within
46 the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at

1 the time of the commission of the present offense; substance abuse
2 treatment and monitoring will serve to benefit the person by
3 addressing his drug or alcohol dependency and will thereby reduce
4 the likelihood that the person will thereafter commit another
5 offense; the person has not been previously convicted on two or
6 more separate occasions of crimes of the first degree; a suitable
7 treatment facility licensed and approved by the Division of
8 Addiction Services in the Department of Human Services is able
9 and has agreed to provide appropriate treatment services in
10 accordance with the requirements of this section; the person did not
11 possess a firearm at the time of the present offense and did not
12 possess a firearm at the time of any pending criminal charge; and no
13 danger to the community will result from the person being placed
14 on special probation pursuant to this section.

15 In determining whether to place the person on special probation,
16 the court may additionally consider the following factors:

17 (1) whether the present offense was committed while the person
18 was under the influence of a controlled dangerous substance,
19 controlled substance analog or alcohol, or was committed to acquire
20 property or monies to support the person's drug or alcohol
21 dependency; and

22 (2) whether the person has been previously convicted on two or
23 more occasions of crimes of the second degree; or the person has
24 been previously convicted on two or more separate occasions,
25 where one of the offenses is a crime of the third degree, other than
26 crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime
27 of the first or second degree.²

28 Notwithstanding any provision of this section or any other law to
29 the contrary, the court shall not place on special probation any
30 person who has been previously convicted or adjudicated delinquent
31 for, or has a pending charge of murder, aggravated manslaughter,
32 manslaughter, ²[robbery,]² kidnapping, aggravated assault,
33 aggravated sexual assault or sexual assault, or a similar crime under
34 the laws of any other state or the United States.

35 In determining whether to sentence the person pursuant to this
36 section, the court shall consider all relevant circumstances, and
37 shall take judicial notice of any evidence, testimony or information
38 adduced at the trial, plea hearing or other court proceedings, and
39 shall also consider the presentence report and the results of [the]
40 ²[any] the² professional diagnostic assessment to determine
41 whether and to what extent the person is drug or alcohol dependent
42 and would benefit from treatment. The court shall make all
43 findings relevant to its determination on the record.

44 As a condition of special probation, the court shall order the
45 person to enter a residential treatment program at a facility licensed
46 and approved by the Division of Addiction Services in the
47 Department of Human Services or a program of nonresidential

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

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

17 (1) a crime of the first degree;

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

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

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

29 c. A person who is subject to sentencing under this section in
30 accordance with subsection a. shall not be eligible for a sentence of
31 special probation pursuant to this section if:

32 (1) the person has been:

33 (a) convicted of or adjudicated delinquent for an offense under
34 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1
35 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there
36 exists a presumption of imprisonment pursuant to subsection d. of
37 N.J.S.2C:44-1 or any other statute; or

38 (b) previously convicted of an offense under subsection a. of
39 N.J.S.2C:35-5 or a similar offense under any other law of this State,
40 any other state or the United States; **[or**

41 (c) previously convicted on two or more separate occasions of
42 crimes of the third degree, other than crimes defined in
43 N.J.S.2C:35-10; **]** and

44 (2) the prosecutor objects to the person being placed on special
45 probation. The court shall not place a person on special probation
46 over the prosecutor's objection except upon a finding by the court of
47 a gross and patent abuse of prosecutorial discretion. If the court

1 makes a finding of a gross and patent abuse of prosecutorial
2 discretion and imposes a sentence of special probation
3 notwithstanding the objection of the prosecutor, the sentence of
4 special probation imposed pursuant to this section shall not become
5 final for 10 days in order to permit the appeal of such sentence by
6 the prosecution.

7 d. Except as otherwise provided in subsection j. of this section,
8 a person convicted of or adjudicated delinquent for a crime of the
9 second degree or of a violation of section 1 of P.L.1987, c.101
10 (C.2C:35-7), or who previously has been convicted of or
11 adjudicated delinquent for an offense under subsection a. of
12 N.J.S.2C:35-5 or a similar offense under any other law of this State,
13 any other state or the United States, who is placed on special
14 probation under this section shall be committed to the custody of a
15 residential treatment facility licensed and approved by the Division
16 of Addiction Services in the Department of Human Services.
17 Subject to the authority of the court to temporarily suspend
18 imposition of all or any portion of the term of commitment to a
19 residential treatment facility pursuant to subsection j. of this
20 section, the person shall be committed to the residential treatment
21 facility immediately, unless the facility cannot accommodate the
22 person, in which case the person shall be incarcerated to await
23 commitment to the residential treatment facility. The term of such
24 commitment shall be for a minimum of six months, or until the
25 court, upon recommendation of the treatment provider, determines
26 that the person has successfully completed the residential treatment
27 program, whichever is later, except that no person shall remain in
28 the custody of a residential treatment facility pursuant to this
29 section for a period in excess of five years. Upon successful
30 completion of the required residential treatment program, the person
31 shall complete the period of special probation, as authorized by
32 subsection a. of this section, with credit for time served for any
33 imprisonment served as a condition of probation and credit for each
34 day during which the person satisfactorily complied with the terms
35 and conditions of special probation while committed pursuant to
36 this section to a residential treatment facility. Except as otherwise
37 provided in subsection l. of this section, the person shall not be
38 eligible for early discharge of special probation pursuant to
39 N.J.S.2C:45-2, or any other provision of the law. The court, in
40 determining the number of credits for time spent in residential
41 treatment, shall consider the recommendations of the treatment
42 provider. A person placed into a residential treatment facility
43 pursuant to this section shall be deemed to be subject to official
44 detention for the purposes of N.J.S.2C:29-5 (escape).

45 e. The probation department or other appropriate agency
46 designated by the court to monitor or supervise the person's special
47 probation shall report periodically to the court as to the person's

1 progress in treatment and compliance with court-imposed terms and
2 conditions. The treatment provider shall promptly report to the
3 probation department or other appropriate agency all significant
4 failures by the person to comply with any court imposed term or
5 condition of special probation or any requirements of the course of
6 treatment, including but not limited to a positive drug or alcohol
7 test or the unexcused failure to attend any session or activity, and
8 shall immediately report any act that would constitute an escape.
9 The probation department or other appropriate agency shall
10 immediately notify the court and the prosecutor in the event that the
11 person refuses to submit to a periodic drug or alcohol test or for any
12 reason terminates his participation in the course of treatment, or
13 commits any act that would constitute an escape.

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

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

32 (3) In making its determination whether to revoke special
33 probation, and whether to overcome the presumption of revocation
34 established in paragraph (2) of this subsection, the court shall
35 consider the nature and seriousness of the present infraction and any
36 past infractions in relation to the person's overall progress in the
37 course of treatment, and shall also consider the recommendations of
38 the treatment provider. The court shall give added weight to the
39 treatment provider's recommendation that the person's special
40 probation be permanently revoked, or to the treatment provider's
41 opinion that the person is not amenable to treatment or is not likely
42 to complete the treatment program successfully.

43 (4) If the court permanently revokes the person's special
44 probation pursuant to this subsection, the court shall impose any
45 sentence that might have been imposed, or that would have been
46 required to be imposed, originally for the offense for which the
47 person was convicted or adjudicated delinquent. The court shall

1 conduct a de novo review of any aggravating and mitigating factors
2 present at the time of both original sentencing and resentencing. If
3 the court determines or is required pursuant to any other provision
4 of this chapter or any other law to impose a term of imprisonment,
5 the person shall receive credit for any time served in custody
6 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
7 treatment facility pursuant to this section, and for each day during
8 which the person satisfactorily complied with the terms and
9 conditions of special probation while committed pursuant to this
10 section to a residential treatment facility. The court, in determining
11 the number of credits for time spent in a residential treatment
12 facility, shall consider the recommendations of the treatment
13 provider.

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

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

30 (7) An action for a violation under this section may be brought
31 by a probation officer or prosecutor or on the court's own motion.
32 Failure to complete successfully the required treatment program
33 shall constitute a violation of the person's special probation. A
34 person who fails to comply with the terms of his special probation
35 pursuant to this section and is thereafter sentenced to imprisonment
36 in accordance with this subsection shall thereafter be ineligible for
37 entry into the Intensive Supervision Program, provided however
38 that this provision shall not affect the person's eligibility for entry
39 into the Intensive Supervision Program for a subsequent conviction.

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

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

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

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

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

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

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

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

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

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

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

26 k. (1) When the court temporarily suspends the commitment of
27 the person to a residential treatment facility pursuant to subsection
28 j. of this section, the court shall, in addition to ordering
29 participation in a prescribed course of nonresidential treatment and
30 any other appropriate terms or conditions authorized or required by
31 law, order the person to undergo urine testing for drug or alcohol
32 use not less than once per week unless otherwise ordered by the
33 court. The court-ordered testing shall be conducted by the
34 probation department or the treatment provider. The results of all
35 tests shall be reported promptly to the court and to the prosecutor.
36 In addition, the court shall impose appropriate curfews or other
37 restrictions on the person's movements, and may order the person to
38 wear electronic monitoring devices to enforce such curfews or other
39 restrictions as a condition of special probation.

40 (2) The probation department or other appropriate agency shall
41 immediately notify the court and the prosecutor in the event that the
42 person fails or refuses to submit to a drug or alcohol test, knowingly
43 defrauds the administration of a drug test, terminates his
44 participation in the course of treatment, or commits any act that
45 would constitute absconding from parole. If the person at any time
46 while entered in a nonresidential treatment program pursuant to
47 subsection j. of this section knowingly defrauds the administration

1 of a drug test, goes into hiding or leaves the State with a purpose of
2 avoiding supervision, the court shall permanently revoke the
3 person's special probation.

4 1. If the court finds that the person has made exemplary
5 progress in the course of treatment, the court may, upon
6 recommendation of the person's supervising probation officer or on
7 the court's own motion, and upon notice to the prosecutor, grant
8 early discharge from a term of special probation provided that the
9 person: (1) has satisfactorily completed the treatment program
10 ordered by the court; (2) has served at least two years of special
11 probation; (3) did not commit a substantial violation of any term or
12 condition of special probation, including but not limited to a
13 positive urine test, within the preceding 12 months; and (4) is not
14 likely to relapse or commit an offense if probation supervision and
15 related services are discontinued.

16 (cf: P.L.2008, c.15, s.1)]⁴

17
18 ⁴[¹2. (New section) a. ²[The Supreme Court shall develop and
19 establish a] A² two-year pilot program ²is established in two
20 vicinages² to determine the effectiveness of mandatory sentencing
21 of qualified offenders to special probation under N.J.S.2C:35-14
22 ²[.] as well as to assess the feasibility of expanding this program
23 Statewide. The Administrative Office of the Courts shall select the
24 pilot vicinages and shall administer and evaluate the pilot programs
25 in accordance with this section.²

26 b. ²[The Supreme Court shall select one vicinage from the
27 northern region of the State and one vicinage from the southern
28 region of the State to participate in the program. In selecting the
29 pilot program vicinages, the Supreme Court may consider whether a
30 vicinage has requested to participate in the pilot program. For the
31 purposes of this section, "northern" means vicinages 2 (Bergen), 5
32 (Essex), 6 (Hudson), 8 (Middlesex), 10 (Morris/Sussex), 11
33 (Passaic), 12 (Union) and 13 (Somerset/Hunterdon/Warren); and
34 "southern" means vicinages 1 (Atlantic/Cape May), 3 (Burlington),
35 4 (Camden), 7 (Mercer), 9 (Monmouth), 14 (Ocean) and 15
36 (Gloucester/Cumberland/Salem).] During the period that the pilot
37 program is in effect, any defendant who is: (1) reasonably suspected
38 to be drug dependent as defined in N.J.S.2C:35-2; (2) is ineligible
39 for probation due to a conviction for a crime which is subject to a
40 presumption of incarceration or a mandatory minimum period of
41 parole ineligibility; and (3) meets the legal criteria for eligibility for
42 special probation under the provisions of subsections a. and b. of
43 N.J.S.2C:35-14 shall be ordered to undergo a professional
44 diagnostic assessment as provided in subsection a. of N.J.S.2C:35-
45 14 to determine if the defendant is drug dependent.²

1 c. ²[A court located in a vicinage participating in the pilot
2 program established under this section shall sentence any person
3 who is eligible for special probation under the provisions of
4 subsections a. and b. of N.J.S.2C:35-14 to special probation.] If,
5 based on the results of a professional diagnostic assessment, the
6 court determines that the defendant is drug dependent and is
7 otherwise eligible for special probation pursuant to the provisions
8 of subsections a. and b. of N.J.S.2C:35-14, the court shall,
9 notwithstanding any other provision of N.J.S.2C:35-14, sentence
10 the defendant to special probation, unless the court finds that a
11 sentence of imprisonment must be imposed pursuant to chapters 43
12 and 44 of Title 2C of the New Jersey Statutes, in which case the
13 court shall impose a sentence of imprisonment.² Subsection c. of
14 N.J.S.2C:35-14 shall not apply in sentencing a person under this
15 subsection.

16 d. Not later than one year following the effective date of this
17 act, and ²[thereafter]² annually ²thereafter for five years² , the
18 Administrative Director of the Courts shall submit to the Governor,
19 and to the Legislature pursuant to section 2 of P.L.1991, c.164
20 (C.52:14-19.1), a report containing an evaluation of the pilot
21 program. The report shall include the rates of completion and
22 revocation for people admitted to mandatory special probation, the
23 recidivism rates for graduates of mandatory special probation, the
24 costs associated with implementing mandatory special probation,
25 and any other information that may indicate the effectiveness of
26 mandatory special probation ²[, and shall]. The evaluation shall
27 include comparative retention and recidivism data for non-
28 mandatory special probation participants. The Administrative
29 Director of the Courts may² make recommendations concerning the
30 practicability and feasibility of expanding the pilot program
31 Statewide ²[. The Administrative Director of the Courts may
32 accompany this report with] and may provide² recommendations
33 for legislation or other action appropriate for adoption or
34 consideration by the Legislature.

35 e. The Supreme Court may establish such rules and procedures
36 as may be necessary to effectuate the purpose of this act.¹⁴

37
38 ⁴³3. (New section) a. Notwithstanding any court rule limiting
39 the time period within which a motion to reduce or change a
40 sentence may be filed, any person described in subsection b. who,
41 on the effective date of this act, is serving a sentence of
42 imprisonment and who has not had his sentence suspended or been
43 paroled or discharged may move to have his sentence reviewed by
44 the court. If the court finds the person would, on the effective date
45 of this act, be eligible for a sentence to special probation pursuant to
46 N.J.S.2C:35-14 and that such sentence would serve the interests of

1 justice, the judge may re-sentence the defendant to special
2 probation pursuant to N.J.S.2C:35-14.

3 b. A person may move the court to have his sentence reviewed
4 under this section if:

5 (1) The person was not eligible for a sentence to special
6 probation under N.J.S.2C:35-14 at the time of sentencing; and

7 (2) The person would be eligible for a sentence to special
8 probation if sentenced on or after the effective date of
9 P.L. .c. (pending before the Legislature as this bill).³⁴

10
11 ⁴[³4. Any person who has been convicted but not sentenced as
12 of the effective date of P.L. , c. (pending before the
13 Legislature as this bill) may move to be sentenced to special
14 probation pursuant to N.J.S.2C:35-14. If the court finds the person
15 is, on the effective date of P.L. , c. (C.) (pending before
16 the Legislature as this bill), eligible for a sentence to special
17 probation pursuant to N.J.S.2C:35-14, the judge may place the
18 person on special probation.³⁴

19
20 ⁴1. (New section) a. Except as provided in subsection c., the
21 court shall require a defendant to submit to a professional
22 diagnostic assessment if:

23 (1) there is a reasonable basis to believe that the defendant may
24 be a drug dependent person as defined in N.J.S.2C:35-2;

25 (2) the defendant is charged with:

26 (a) a crime that is subject to a presumption of imprisonment
27 pursuant to subsection d. of N.J.S.2C:44-1; or

28 (b) any crime of the third degree if the defendant has previously
29 been convicted of a crime subject to the presumption of
30 imprisonment or that resulted in imposition of a State prison term;
31 and

32 (3) the defendant is eligible to be considered for a sentence to
33 special probation pursuant to the provisions of N.J.S.2C:35-14.

34 b. For the purposes of this section, any of the following
35 circumstances shall provide a reasonable basis to believe that a
36 person may be drug dependent:

37 (1) the present offense involves a controlled dangerous
38 substance;

39 (2) the defendant has previously been convicted of an offense
40 involving a controlled dangerous substance, was admitted to pretrial
41 intervention or supervisory treatment, or received a conditional
42 discharge for a charge involving a controlled dangerous substance;

43 (3) the defendant has any other pending charge in this State, any
44 other state, or a federal court involving a controlled dangerous
45 substance;

46 (4) the defendant has any time previously received any form of
47 drug treatment or counseling;

1 (5) the defendant appears to have been under the influence of a
2 controlled dangerous substance during the commission of the
3 present offense, or it reasonably appears that the present offense
4 may have been committed to acquire property or monies to
5 purchase a controlled dangerous substance for the defendant's
6 personal use;

7 (6) the defendant admits to the unlawful use of a controlled
8 dangerous substance within the year preceding the arrest for the
9 present offense;

10 (7) the defendant has had a positive drug test within the last 12
11 months; or

12 (8) there is information, other than the circumstances
13 enumerated in paragraphs (1) through (7) of this subsection, which
14 indicates that the defendant may be a drug dependent person or
15 would otherwise benefit by undergoing a professional diagnostic
16 assessment within the meaning of paragraph (1) of subsection a. of
17 N.J.S.2C:35-14.

18 c. The court shall not be required to order a diagnostic
19 assessment pursuant to subsection a. of this section if it is clearly
20 convinced that such assessment will not serve any useful purpose.
21 If the court does not order a diagnostic assessment, the court shall
22 place on the record the reasons for its decision.

23 d. Nothing in this section shall be construed to limit or
24 constrain the court's authority and discretion to order drug testing,
25 drug screening, or a professional diagnostic assessment at any
26 time.⁴

27
28 ⁴2. (New section) a. In all cases where a professional
29 diagnostic assessment within the meaning of paragraph (1) of
30 subsection a. of N.J.S.2C:35-14 has been ordered and completed
31 pursuant to section 1 of P.L. _____, c. _____ (C. _____) (pending before
32 the Legislature as this bill), the court shall make a determination at
33 sentencing or prior to sentencing whether the defendant may be a
34 drug dependent person as defined in N.J.S.2C:35-2.

35 b. Notwithstanding any law to the contrary, where the court
36 finds that a defendant is a person in need of treatment as defined in
37 subsection f. of this section and that the defendant additionally
38 meets all the requirements of N.J.S.2C:35-14, the court shall
39 sentence a defendant to special probation pursuant to the provisions
40 of N.J.S.2C:35-14 for the purpose of participating in a court-
41 supervised drug treatment program, regardless of whether the
42 defendant has sought or consents to such a sentence, unless:

43 (1) the court finds that a sentence of imprisonment must be
44 imposed consistent with the provisions of chapters 43 and 44 of
45 Title 2C of the New Jersey Statutes, in which case a sentence of
46 imprisonment shall be imposed; or

47 (2) the court is clearly convinced that:

1 (a) the treatment, monitoring, and supervision services that will
2 be provided under N.J.S.2C:45-1 are adequate to address the
3 defendant's clinical needs;

4 (b) the defendant's treatment needs would not be better
5 addressed by sentencing the defendant to special probation pursuant
6 to N.J.S.2C:35-14;

7 (c) no danger to the community would result from placing the
8 person on regular probation pursuant to N.J.S.2C:45-1; and

9 (d) a sentence of probation authorized under N.J.S.2C:45-1
10 would be consistent with the provisions of chapters 43 and 44 of
11 Title 2C of the New Jersey Statutes.

12 c. In making the findings and determinations required by this
13 section, the court shall consider all relevant circumstances, and
14 shall take judicial notice of any evidence, testimony, or information
15 adduced at the trial, plea hearing, or other court proceedings, and
16 also shall also consider the presentence report and the results of any
17 professional diagnostic assessment. The court shall place on the
18 record the reasons for its decision.

19 d. If, pursuant to paragraph (2) of subsection b. of this section,
20 the court imposes a sentence of probation authorized by
21 N.J.S.2C:45-1, such sentence shall not become final for 10 days in
22 order to permit the appeal of the sentence by the prosecution.

23 e. Nothing in this section shall be construed to alter the
24 presumption of imprisonment contained in subsection d. of
25 N.J.S.2C:44-1 or to require or authorize the reduction or waiver of a
26 mandatory period of parole ineligibility required by law, or to
27 modify the exceptions to such requirements provided for by law,
28 including but not limited to those provided in N.J.S.2C:35-12 and
29 N.J.S.2C:35-14.

30 f. For the purposes of this section, the term "person in need of
31 treatment" means a defendant who:

32 (1) the court has determined to be a drug dependent person as
33 defined in N.J.S.2C:35-2;

34 (2) has been convicted of:

35 (a) a crime that is subject to a presumption of imprisonment
36 pursuant to subsection d. of N.J.S.2C:44-1; or

37 (b) any other crime of the third degree if the person has
38 previously been convicted of a crime subject to a presumption of
39 imprisonment or a crime that resulted in the imposition of a State
40 prison term; and

41 (3) is eligible to be considered for a sentence to special
42 probation pursuant to the provisions of N.J.S.2C:35-14.⁴

43
44 ⁴3. (New section) The Administrative Director of the Courts is
45 authorized to phase-in the implementation of the provisions of
46 P.L. , c. (C.) (pending before the Legislature as this bill)
47 related to a program of mandatory sentencing and treatment of

1 qualified offenders to special probation based on monies annually
2 appropriated from the General Fund. Within 60 days of the effective
3 date of this act, the program shall be established in no fewer than
4 three court vicinages, and with further implementation occurring in
5 no less than three additional vicinages in each fiscal year thereafter
6 in a manner to be determined by the Administrative Director of the
7 Courts provided that sufficient State funds have been appropriated.
8 The Administrative Director of the Courts shall select appropriate
9 vicinages for the implementation of the program. The program shall
10 be fully implemented in the State no later than the fifth fiscal year
11 following enactment provided that sufficient State funds have been
12 appropriated.⁴

13
14 ⁴4. (New section) Not later than one year following the
15 effective date of this act, and annually thereafter for five years, the
16 Administrative Director of the Courts shall submit to the Governor,
17 and to the Legislature pursuant to section 2 of P.L.1991, c.164
18 (C.52:14-19.1), a report containing an evaluation of mandatory
19 ⁵[sentencing to]⁵ special probation. The report shall include the
20 rates of completion and revocation for people admitted to
21 mandatory special probation, the recidivism rates for graduates of
22 mandatory special probation, the costs associated with
23 implementing mandatory special probation, and any other
24 information that may indicate the effectiveness of mandatory
25 special probation. Additionally, the evaluation shall include a
26 comparison of data from vicinages that have phased in mandatory
27 ⁵[sentencing to]⁵ special probation with those that have not,
28 including comparative retention and recidivism data for non-
29 mandatory special probation participants. ⁵[The evaluation shall
30 also include the number of cases denying admission to special
31 probation based on a prosecutorial objection under subsection c. of
32 N.J.S.2C:35-14 and the grounds cited for those objections.]⁵ The
33 Administrative Director of the Courts may make recommendations
34 for legislation or other action appropriate for adoption or
35 consideration by the Legislature.⁴

36
37 ⁴5. N.J.S.2C:35-14 is amended to read as follows:

38 2C:35-14. Rehabilitation Program for Drug and Alcohol
39 Dependent Persons Subject to a Presumption of Incarceration or a
40 Mandatory Minimum Period of Parole Ineligibility; Criteria for
41 Imposing Special Probation; Ineligible Offenders; Prosecutorial
42 Objections; Commitment to Residential Treatment Facilities or
43 Participation in a Nonresidential Treatment Program; Presumption
44 of Revocation; Brief Incarceration in Lieu of Permanent
45 Revocation.

46 a. Any person who is ineligible for probation due to a
47 conviction for a crime which is subject to a presumption of

1 incarceration or a mandatory minimum period of parole ineligibility
2 may be sentenced to a term of special probation in accordance with
3 this section, and may not apply for drug and alcohol treatment
4 pursuant to N.J.S.2C:45-1. Nothing in this section shall be
5 construed to prohibit a person who is eligible for probation in
6 accordance with N.J.S.2C:45-1 due to a conviction for an offense
7 which is not subject to a presumption of incarceration or a
8 mandatory minimum period of parole ineligibility from applying for
9 drug or alcohol treatment as a condition of probation pursuant to
10 N.J.S.2C:45-1; provided, however, that a person in need of
11 treatment as defined in subsection f. of section 2 of
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 shall be sentenced in accordance with that section. Notwithstanding
14 the presumption of incarceration pursuant to the provisions of
15 subsection d. of N.J.S.2C:44-1, and except as provided in
16 subsection c. of this section, whenever a drug or alcohol dependent
17 person who is subject to sentencing under this section is convicted
18 of or adjudicated delinquent for an offense, other than one
19 described in subsection b. of this section, the court, upon notice to
20 the prosecutor, may, on motion of the person, or on the court's own
21 motion, place the person on special probation, which shall be for a
22 term of five years, provided that the court finds on the record that:

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

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

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

34 (4) substance abuse treatment and monitoring will serve to
35 benefit the person by addressing his drug or alcohol dependency
36 and will thereby reduce the likelihood that the person will thereafter
37 commit another offense; and

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

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

1 (7) the person has not been previously convicted or adjudicated
2 delinquent for, and does not have a pending charge of murder,
3 aggravated manslaughter, manslaughter, ⁵[robbery,]⁵ kidnapping,
4 aggravated assault, aggravated sexual assault or sexual assault, or a
5 similar crime under the laws of any other state or the United States;
6 and

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

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

13 In determining whether to sentence the person pursuant to this
14 section, the court shall consider all relevant circumstances, and
15 shall take judicial notice of any evidence, testimony or information
16 adduced at the trial, plea hearing or other court proceedings, and
17 shall also consider the presentence report and the results of the
18 professional diagnostic assessment to determine whether and to
19 what extent the person is drug or alcohol dependent and would
20 benefit from treatment. ⁵The court shall give priority to a person
21 who has moved to be sentenced to special probation over a person
22 who is being considered for a sentence to special probation on the
23 court's own motion or in accordance with the provisions of section
24 2 of P.L. , c. (C.) (pending before the Legislature as this
25 bill).⁵

26 As a condition of special probation, the court shall order the
27 person to enter a residential treatment program at a facility licensed
28 and approved by the Division of Addiction Services in the
29 Department of Human Services or a program of nonresidential
30 treatment by a licensed and approved treatment provider, to comply
31 with program rules and the requirements of the course of treatment,
32 to cooperate fully with the treatment provider, and to comply with
33 such other reasonable terms and conditions as may be required by
34 the court or by law, pursuant to N.J.S.2C:45-1, and which shall
35 include periodic urine testing for drug or alcohol usage throughout
36 the period of special probation. In determining whether to order the
37 person to participate in a nonresidential rather than a residential
38 treatment program, the court shall follow the procedure set forth in
39 subsection j. of this section. Subject to the requirements of
40 subsection d. of this section, the conditions of special probation
41 may include different methods and levels of community-based or
42 residential supervision.

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

46 (1) a crime of the first degree;

1 (2) a crime of the first or second degree enumerated in
2 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) ⁵, other
3 than a crime of the second degree involving N.J.S.2C:15-1
4 (robbery) or N.J.S.2C:18-2 (burglary)⁵;

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

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

12 c. ⁵[A person who is subject to sentencing under this section in
13 accordance with subsection a. shall not be eligible for a sentence of
14 special probation pursuant to this section if:

15 (1) the person has been:

16 (a) convicted of or adjudicated delinquent for an offense under
17 section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1
18 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there
19 exists a presumption of imprisonment pursuant to subsection d. of
20 N.J.S.2C:44-1 or any other statute;

21 (b) previously convicted of an offense under subsection a. of
22 N.J.S.2C:35-5 or a similar offense under any other law of this State,
23 any other state or the United States; or

24 (c) previously convicted on two or more separate occasions of
25 crimes of the third degree, other than crimes defined in
26 N.J.S.2C:35-10; and

27 (2) the prosecutor objects to the person being placed on special
28 probation. The court shall not place a person on special probation
29 over the prosecutor's objection except upon a finding by the court of
30 a gross and patent abuse of prosecutorial discretion. If the court
31 makes a finding of a gross and patent abuse of prosecutorial
32 discretion and imposes a sentence of special probation
33 notwithstanding the objection of the prosecutor, the sentence of
34 special probation imposed pursuant to this section shall not become
35 final for 10 days in order to permit the appeal of such sentence by
36 the prosecution.

37 The prosecutor's objection and the reasons therefore shall be
38 reduced to writing and disclosed to the applicant.] (Deleted by
39 amendment, P.L. , c. (C.) (pending before the Legislature
40 as this bill)⁵

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

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

32 e. The probation department or other appropriate agency
33 designated by the court to monitor or supervise the person's special
34 probation shall report periodically to the court as to the person's
35 progress in treatment and compliance with court-imposed terms and
36 conditions. The treatment provider shall promptly report to the
37 probation department or other appropriate agency all significant
38 failures by the person to comply with any court imposed term or
39 condition of special probation or any requirements of the course of
40 treatment, including but not limited to a positive drug or alcohol
41 test or the unexcused failure to attend any session or activity, and
42 shall immediately report any act that would constitute an escape.
43 The probation department or other appropriate agency shall
44 immediately notify the court and the prosecutor in the event that the
45 person refuses to submit to a periodic drug or alcohol test or for any
46 reason terminates his participation in the course of treatment, or
47 commits any act 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. A
21 person who fails to comply with the terms of his special probation
22 pursuant to this section and is thereafter sentenced to imprisonment
23 in accordance with this subsection shall thereafter be ineligible for
24 entry into the Intensive Supervision Program, provided however
25 that this provision shall not affect the person's eligibility for entry
26 into the Intensive Supervision Program for a subsequent conviction.

27 g. When a person on special probation is subject to a
28 presumption of revocation on a second or subsequent violation
29 pursuant to paragraph (2) of subsection f. of this section, or when
30 the person refuses to undergo drug or alcohol testing pursuant to
31 paragraph (6) of subsection f. of this section, the court may, in lieu
32 of permanently revoking the person's special probation, impose a
33 term of incarceration for a period of not less than 30 days nor more
34 than six months, after which the person's term of special probation
35 pursuant to this section may be reinstated. In determining whether
36 to order a period of incarceration in lieu of permanent revocation
37 pursuant to this subsection, the court shall consider the
38 recommendations of the treatment provider with respect to the
39 likelihood that such confinement would serve to motivate the
40 person to make satisfactory progress in treatment once special
41 probation is reinstated. This disposition may occur only once with
42 respect to any person unless the court is clearly convinced that there
43 are compelling and extraordinary reasons to justify reimposing this
44 disposition with respect to the person. Any such determination by
45 the court to reimpose this disposition may be appealed by the
46 prosecution. Nothing in this subsection shall be construed to limit
47 the authority of the court at any time during the period of special

1 probation to order a person on special probation who is not subject
2 to a presumption of revocation pursuant to paragraph (2) of
3 subsection f. of this section to be incarcerated over the course of a
4 weekend, or for any other reasonable period of time, when the court
5 in its discretion determines that such incarceration would help to
6 motivate the person to make satisfactory progress in treatment.

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

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

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

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

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

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

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

43 After a period of six months of nonresidential treatment, if the
44 court, considering all available information including but not
45 limited to the recommendation of the treatment provider, finds that
46 the person has made satisfactory progress in treatment and that
47 there is a substantial likelihood that the person will successfully

1 complete the nonresidential treatment program and period of special
2 probation, the court, on notice to the prosecutor, may permanently
3 suspend the commitment of the person to the custody of a
4 residential treatment program, in which event the special
5 monitoring provisions set forth in subsection k. of this section shall
6 no longer apply.

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

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

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

38 l. If the court finds that the person has made exemplary
39 progress in the course of treatment, the court may, upon
40 recommendation of the person's supervising probation officer or on
41 the court's own motion, and upon notice to the prosecutor, grant
42 early discharge from a term of special probation provided that the
43 person: (1) has satisfactorily completed the treatment program
44 ordered by the court; (2) has served at least two years of special
45 probation; (3) did not commit a substantial violation of any term or
46 condition of special probation, including but not limited to a
47 positive urine test, within the preceding 12 months; and (4) is not

1 likely to relapse or commit an offense if probation supervision and
2 related services are discontinued.⁴

3 (cf: P.L.2008, c.15, s.1)

4

5 ⁴6. N.J.S.2C:44-6 is amended to read as follows:

6 2C:44-6 Procedure on sentence; presentence investigation and
7 report.

8 a. The court shall not impose sentence without first ordering a
9 presentence investigation of the defendant and according due
10 consideration to a written report of such investigation when
11 required by the Rules of Court. The court may order a presentence
12 investigation in any other case.

13 b. The presentence investigation shall include an analysis of
14 the circumstances attending the commission of the offense, the
15 defendant's history of delinquency or criminality, family situation,
16 financial resources, including whether or not the defendant is an
17 enrollee or covered person under a health insurance contract, policy
18 or plan, debts, including any amount owed for a fine, assessment or
19 restitution ordered in accordance with the provisions of Title 2C,
20 any obligation of child support including any child support
21 delinquencies, employment history, personal habits, the disposition
22 of any charge made against any codefendants, the defendant's
23 history of civil commitment, any disposition which arose out of
24 charges suspended pursuant to N.J.S.2C:4-6 including the records
25 of the disposition of those charges and any acquittal by reason of
26 insanity pursuant to N.J.S.2C:4-1, and any other matters that the
27 probation officer deems relevant or the court directs to be included.
28 The defendant shall disclose any information concerning any
29 history of civil commitment. The report shall also include a
30 medical history of the defendant and a complete psychological
31 evaluation of the defendant in any case in which the defendant is
32 being sentenced for a first or second degree crime involving
33 violence and:

34 (1) the defendant has a prior acquittal by reason of insanity
35 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to
36 N.J.S.2C:4-6; or

37 (2) the defendant has a prior conviction for murder pursuant to
38 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant
39 to N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1,
40 endangering the welfare of a child which would constitute a crime
41 of the second degree pursuant to N.J.S.2C:24-4, or stalking which
42 would constitute a crime of the third degree pursuant to section 1 of
43 P.L.1992, c.209 (C.2C:12-10); or

44 (3) the defendant has a prior diagnosis of psychosis.

45 The court, in its discretion and considering all the appropriate
46 circumstances, may waive the medical history and psychological
47 examination in any case in which a term of imprisonment including

1 a period of parole ineligibility is imposed. In any case involving a
2 conviction of N.J.S.2C:24-4, endangering the welfare of a child;
3 N.J.S.2C:18-3, criminal trespass, where the trespass was committed
4 in a school building or on school property; section 1 of P.L.1993,
5 c.291 (C.2C:13-6), attempting to lure or entice a child with purpose
6 to commit a criminal offense; section 1 of P.L.1992, c.209
7 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the
8 victim of the offense is a child under the age of 18, the investigation
9 shall include a report on the defendant's mental condition.

10 The presentence investigation shall also include information
11 regarding the defendant's history of substance abuse and substance
12 abuse treatment, if any, including whether the defendant has sought
13 treatment in the past. If any of the factors listed in subsection b. of
14 section 1 of P.L. , c. (C.) (pending before the Legislature
15 as this bill) apply, the presentence report shall also include
16 consideration of whether the defendant may be a drug dependent
17 person as defined in N.J.S.2C:35-2.

18 The presentence investigation shall include an analysis of
19 whether the defendant should be required to submit to a
20 professional diagnostic assessment within the meaning of paragraph
21 (1) of subsection a. of N.J.S.2C:35-14 in any case where: the
22 defendant may be a drug dependent person as defined in
23 N.J.S.2C:35-2; the defendant is eligible to be considered for a
24 sentence to special probation pursuant to N.J.S.2C:35-14; and the
25 court has not already ordered the defendant to submit to any such
26 diagnostic assessment in regard to the pending matter.

27 The presentence report shall also include a report on any
28 compensation paid by the Victims of Crime Compensation Agency
29 as a result of the commission of the offense and, in any case where
30 the victim chooses to provide one, a statement by the victim of the
31 offense for which the defendant is being sentenced. The statement
32 may include the nature and extent of any physical harm or
33 psychological or emotional harm or trauma suffered by the victim,
34 the extent of any loss to include loss of earnings or ability to work
35 suffered by the victim and the effect of the crime upon the victim's
36 family. The probation department shall notify the victim or nearest
37 relative of a homicide victim of his right to make a statement for
38 inclusion in the presentence report if the victim or relative so
39 desires. Any such statement shall be made within 20 days of
40 notification by the probation department.

41 The presentence report shall specifically include an assessment
42 of the gravity and seriousness of harm inflicted on the victim,
43 including whether or not the defendant knew or reasonably should
44 have known that the victim of the offense was particularly
45 vulnerable or incapable of resistance due to advanced age,
46 disability, ill-health, or extreme youth, or was for any other reason

1 substantially incapable of exercising normal physical or mental
2 power of resistance.

3 c. If, after the presentence investigation, the court desires
4 additional information concerning an offender convicted of an
5 offense before imposing sentence, it may order any additional
6 psychological or medical testing of the defendant.

7 d. Disclosure of any presentence investigation report or
8 psychiatric examination report shall be in accordance with law and
9 the Rules of Court, except that information concerning the
10 defendant's financial resources shall be made available upon request
11 to the Victims of Crime Compensation Agency or to any officer
12 authorized under the provisions of section 3 of P.L.1979, c.396
13 (C.2C:46-4) to collect payment on an assessment, restitution or fine
14 and that information concerning the defendant's coverage under any
15 health insurance contract, policy or plan shall be made available, as
16 appropriate to the Commissioner of Corrections and to the chief
17 administrative officer of a county jail in accordance with the
18 provisions of P.L.1995, c.254 (C.30:7E-1 et al.).

19 e. The court shall not impose a sentence of imprisonment for
20 an extended term unless the ground therefor has been established at
21 a hearing after the conviction of the defendant and on written notice
22 to him of the ground proposed. The defendant shall have the right
23 to hear and controvert the evidence against him and to offer
24 evidence upon the issue.

25 f. (Deleted by amendment, P.L.1986, c.85).⁴
26 (cf: P.L.2009, c.328, s.2)

27
28 ¹[2.] ³[3.1] ⁴[5.3] ⁷.⁴ ⁵[This act shall take effect]⁵
29 ⁴[immediately] ⁵Section 5 of this act shall take effect
30 ⁶[immediately] six months following enactment⁶ and sections 1, 2,
31 3, 4, and 6 shall take effect⁵ on the first day of the 12th month
32 following enactment, except that the Administrative Office of the
33 Courts, the Office of the Attorney General, the Office of the Public
34 Defender, and the Department of Human Services may take such
35 anticipatory administrative action in advance thereof as shall be
36 necessary for the implementation of this act⁴ .