

# ASSEMBLY, No. 5264

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED DECEMBER 4, 2017

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**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: 12/21/2017)**

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

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

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

9 2C:35-2. As used in this chapter:

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

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

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

27 "Controlled dangerous substance" means a drug, substance, or  
28 immediate precursor in Schedules I through V, any substance the  
29 distribution of which is specifically prohibited in N.J.S.2C:35-3, in  
30 section 3 of P.L.1997, c.194 (C.2C:35-5.2), in section 5 of  
31 P.L.1997, c.194 (C.2C:35-5.3), in section 2 of P.L.2011, c.120  
32 (C.2C:35-5.3a), or in section 2 of P.L.2013, c.35 (C.2C:35-5.3b),  
33 and any drug or substance which, when ingested, is metabolized or  
34 otherwise becomes a controlled dangerous substance in the human  
35 body. When any statute refers to controlled dangerous substances,  
36 or to a specific controlled dangerous substance, it shall also be  
37 deemed to refer to any drug or substance which, when ingested, is  
38 metabolized or otherwise becomes a controlled dangerous substance  
39 or the specific controlled dangerous substance, and to any substance  
40 that is an immediate precursor of a controlled dangerous substance  
41 or the specific controlled dangerous substance. The term shall not  
42 include distilled spirits, wine, malt beverages, as those terms are  
43 defined or used in R.S.33:1-1 et seq., or tobacco and tobacco  
44 products. The term, wherever it appears in any law or  
45 administrative regulation of this State, shall include controlled  
46 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.

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

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

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

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

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

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

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

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

4 "Hashish" means the resin extracted from any part of the plant  
5 Genus Cannabis L. and any compound, manufacture, salt,  
6 derivative, mixture, or preparation of such resin.

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

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

29 "Marijuana" means all parts of the plant Genus Cannabis L.,  
30 whether growing or not; the seeds thereof, and every compound,  
31 manufacture, salt, derivative, mixture, or preparation of the plant or  
32 its seeds, except those containing resin extracted from the plant; but  
33 shall not include the mature stalks of the plant, fiber produced from  
34 the stalks, oil, or cake made from the seeds of the plant, any other  
35 compound, manufacture, salt, derivative, mixture, or preparation of  
36 mature stalks, fiber, oil, or cake, or the sterilized seed of the plant  
37 which is incapable of germination.

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

42 (a) Opium, coca leaves, and opiates;

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

45 (c) A substance (and any compound, manufacture, salt,  
46 derivative, or preparation thereof) which is chemically identical  
47 with any of the substances referred to in subsections (a) and (b),  
48 except that the words "narcotic drug" as used in this act shall not

1 include decocainized coca leaves or extracts of coca leaves, which  
2 extracts do not contain cocaine or ecogine.

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

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

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

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

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

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

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

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

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

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

39 (e) "Laboratory" means a laboratory to be entrusted with the  
40 custody of narcotic drugs and the use of controlled dangerous  
41 substances or controlled substance analogs for scientific,  
42 experimental, and medical purposes and for purposes of instruction  
43 approved by the Department of Health.

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

47 "Immediate precursor" means a substance which the Division of  
48 Consumer Affairs in the Department of Law and Public Safety has

1 found to be and by regulation designates as being the principal  
2 compound commonly used or produced primarily for use, and  
3 which is an immediate chemical intermediary used or likely to be  
4 used in the manufacture of a controlled dangerous substance or  
5 controlled substance analog, the control of which is necessary to  
6 prevent, curtail, or limit such manufacture.

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

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

18 "State" means the State of New Jersey.

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

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

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

34 "Stramonium plant" means the plant *Datura Stramonium* Linne,  
35 including *Datura Tatula* Linne.

36 (cf: P.L.2013, c.35, s.1)

37

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

39 2C:35-5. Manufacturing, Distributing or Dispensing.

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

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

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

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

- 1       (1) (a) Heroin, or its analog, or **【coca】** a heroin mixture that  
2 does not contain fentanyl or its analog, in a quantity of 10 grams or  
3 more including any adulterants or dilutants;  
4       (b) Fentanyl, or its analog, or a heroin mixture that contains  
5 fentanyl or its analog, in a quantity of five grams or more including  
6 any adulterants or dilutants; or  
7       (c) Coca leaves and any salt, compound, derivative, or  
8 preparation of coca leaves, and any salt, compound, derivative, or  
9 preparation thereof which is chemically equivalent or identical with  
10 any of these substances, or analogs, except that the substances shall  
11 not include decocainized coca leaves or extractions which do not  
12 contain cocaine or ecogine, or 3,4-  
13 methylenedioxymethamphetamine or 3,4-  
14 methylenedioxyamphetamine, in a quantity of five ounces or more  
15 including any adulterants or dilutants is guilty of a crime of the first  
16 degree. **【The】** For any violation of this paragraph, the defendant  
17 shall, except as provided in N.J.S.2C:35-12, be sentenced to a term  
18 of imprisonment by the court. The term of imprisonment shall  
19 include the imposition of a minimum term which shall be fixed at,  
20 or between, one-third and one-half of the sentence imposed, during  
21 which the defendant shall be ineligible for parole. Notwithstanding  
22 the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to  
23 \$500,000.00 may be imposed;  
24       (2) A substance referred to in subparagraph (a) of paragraph (1)  
25 of this subsection, in a quantity of **【one-half ounce】** five grams or  
26 more but less than **【five ounces,】** 10 grams including any  
27 adulterants or dilutants, and a substance referred to in subparagraph  
28 (b) of paragraph (1) of this subsection, in a quantity of two grams or  
29 more but less than five grams including any adulterants or dilutants,  
30 and a substance referred to in subparagraph (c) of paragraph (1) of  
31 this subsection, in a quantity of one-half ounce or more but less  
32 than five ounces including any adulterants or dilutants, is guilty of a  
33 crime of the second degree;  
34       (3) A substance referred to in subparagraph (a) of paragraph (1)  
35 of this subsection, in a quantity less than five grams including any  
36 adulterants or dilutants, and a substance referred to in subparagraph  
37 (b) of paragraph (1) of this subsection, in a quantity of less than two  
38 grams including any adulterants or dilutants, and a substance  
39 referred to in subparagraph (c) of paragraph (1) of this subsection in  
40 a quantity less than one-half ounce including any adulterants or  
41 dilutants is guilty of a crime of the third degree except that,  
42 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a  
43 fine of up to \$75,000.00 may be imposed;  
44       (4) A substance classified as a narcotic drug in Schedule I or II  
45 other than those specifically covered in this section, or the analog of  
46 any such substance, in a quantity of one ounce or more including  
47 any adulterants or dilutants is guilty of a crime of the second  
48 degree;

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

7 (6) Lysergic acid diethylamide, or its analog, in a quantity of  
8 100 milligrams or more including any adulterants or dilutants, or  
9 phencyclidine, or its analog, in a quantity of 10 grams or more  
10 including any adulterants or dilutants, is guilty of a crime of the  
11 first degree. Except as provided in N.J.S.2C:35-12, the court shall  
12 impose a term of imprisonment which shall include the imposition  
13 of a minimum term, fixed at, or between, one-third and one-half of  
14 the sentence imposed by the court, during which the defendant shall  
15 be ineligible for parole. Notwithstanding the provisions of  
16 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000.00 may be  
17 imposed;

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

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

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

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

38 (10) (a) Marijuana in a quantity of 25 pounds or more including  
39 any adulterants or dilutants, or 50 or more marijuana plants,  
40 regardless of weight, or hashish in a quantity of five pounds or  
41 more including any adulterants or dilutants, is guilty of a crime of  
42 the first degree. Notwithstanding the provisions of subsection a. of  
43 N.J.S.2C:43-3, a fine of up to \$300,000.00 may be imposed;

44 (b) Marijuana in a quantity of five pounds or more but less than  
45 25 pounds including any adulterants or dilutants, or 10 or more but  
46 fewer than 50 marijuana plants, regardless of weight, or hashish in a  
47 quantity of one pound or more but less than five pounds, including



1 any adulterants **[and]** or dilutants, is guilty of a crime of the second  
2 degree;

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

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

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

18 (14) Any Schedule V substance, or its analog, is guilty of a  
19 crime of the fourth degree except that, notwithstanding the  
20 provisions of subsection b. of N.J.S.2C:43-3, a fine of up to  
21 \$25,000.00 may be imposed.

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

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

34

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

36 2C:35-14. Rehabilitation Program for Drug and Alcohol  
37 Dependent Persons Subject to a Presumption of Incarceration or a  
38 Mandatory Minimum Period of Parole Ineligibility; Criteria for  
39 Imposing Special Probation; Ineligible Offenders; Commitment to  
40 Residential Treatment Facilities or Participation in a Nonresidential  
41 Treatment Program; Presumption of Revocation; Brief Incarceration  
42 in Lieu of Permanent Revocation.

43 a. Any person who is ineligible for probation due to a  
44 conviction for a crime which is subject to a presumption of  
45 incarceration or a mandatory minimum period of parole ineligibility  
46 may be sentenced to a term of special probation in accordance with  
47 this section, and may not apply for drug and alcohol treatment  
48 pursuant to N.J.S.2C:45-1. Nothing in this section shall be

1 construed to prohibit a person who is eligible for probation in  
2 accordance with N.J.S.2C:45-1 due to a conviction for an offense  
3 which is not subject to a presumption of incarceration or a  
4 mandatory minimum period of parole ineligibility from applying for  
5 drug or alcohol treatment as a condition of probation pursuant to  
6 N.J.S.2C:45-1; provided, however, that a person in need of  
7 treatment as defined in subsection f. of section 2 of P.L.2012, c.23  
8 (C.2C:35-14.2) shall be sentenced in accordance with that section.  
9 Notwithstanding the presumption of incarceration pursuant to the  
10 provisions of subsection d. of N.J.S.2C:44-1, whenever a drug or  
11 alcohol dependent person who is subject to sentencing under this  
12 section is convicted of or adjudicated delinquent for an offense,  
13 other than one described in subsection b. of this section, the court,  
14 upon notice to the prosecutor, may, on motion of the person, or on  
15 the court's own motion, place the person on special probation,  
16 which shall be for a term of five years, provided that the court finds  
17 on the record that:

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

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

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

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

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

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

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

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

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

8 In determining whether to sentence the person pursuant to this  
9 section, the court shall consider all relevant circumstances, and  
10 shall take judicial notice of any evidence, testimony or information  
11 adduced at the trial, plea hearing or other court proceedings, and  
12 shall also consider the presentence report and the results of the  
13 professional diagnostic assessment to determine whether and to  
14 what extent the person is drug or alcohol dependent and would  
15 benefit from treatment. The court shall give priority to a person  
16 who has moved to be sentenced to special probation over a person  
17 who is being considered for a sentence to special probation on the  
18 court's own motion or in accordance with the provisions of section  
19 2 of P.L.2012, c.23 (C.2C:35-14.2).

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

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

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

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

1 (3) a crime, other than that defined in section 1 of P.L.1987,  
2 c.101 (C.2C:35-7), for which a mandatory minimum period of  
3 incarceration is prescribed under chapter 35 of this Title or any  
4 other law; or  
5 (4) an offense that involved the distribution or the conspiracy or  
6 attempt to distribute a controlled dangerous substance or controlled  
7 substance analog to a juvenile near or on school property.  
8 c. (Deleted by amendment, P.L.2012, c.23)  
9 d. Except as otherwise provided in subsection j. of this section,  
10 a person convicted of or adjudicated delinquent for a crime of the  
11 second degree or of a violation of section 1 of P.L.1987, c.101  
12 (C.2C:35-7), or who previously has been convicted of or  
13 adjudicated delinquent for an offense under subsection a. of  
14 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
15 any other state or the United States, who is placed on special  
16 probation under this section shall be committed to the custody of a  
17 residential substance use disorders treatment facility licensed and  
18 approved by the Division of Mental Health and Addiction Services  
19 in the Department of Human Services. Subject to the authority of  
20 the court to temporarily suspend imposition of all or any portion of  
21 the term of commitment to a residential treatment facility pursuant  
22 to subsection j. of this section, the person shall be committed to the  
23 residential treatment facility immediately, unless the facility cannot  
24 accommodate the person, in which case the person shall be  
25 incarcerated to await commitment to the residential treatment  
26 facility. The term of such commitment shall be for a minimum of  
27 six months, or until the court, upon recommendation of the  
28 treatment provider, determines that the person has successfully  
29 completed the residential treatment program, whichever is later,  
30 except that no person shall remain in the custody of a residential  
31 treatment facility pursuant to this section for a period in excess of  
32 five years. Upon successful completion of the required residential  
33 treatment program, the person shall complete the period of special  
34 probation, as authorized by subsection a. of this section, with credit  
35 for time served for any imprisonment served as a condition of  
36 probation and credit for each day during which the person  
37 satisfactorily complied with the terms and conditions of special  
38 probation while committed pursuant to this section to a residential  
39 treatment facility. Except as otherwise provided in subsection l. of  
40 this section, the person shall not be eligible for early discharge of  
41 special probation pursuant to N.J.S.2C:45-2, or any other provision  
42 of the law. The court, in determining the number of credits for time  
43 spent in residential treatment, shall consider the recommendations  
44 of the treatment provider. A person placed into a residential  
45 treatment facility pursuant to this section shall be deemed to be  
46 subject to official detention for the purposes of N.J.S.2C:29-5  
47 (escape).

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

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

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

39 (3) In making its determination whether to revoke special  
40 probation, and whether to overcome the presumption of revocation  
41 established in paragraph (2) of this subsection, the court shall  
42 consider the nature and seriousness of the present infraction and any  
43 past infractions in relation to the person's overall progress in the  
44 course of treatment, and shall also consider the recommendations of  
45 the treatment provider. The court shall give added weight to the  
46 treatment provider's recommendation that the person's special  
47 probation be permanently revoked, or to the treatment provider's

1 opinion that the person is not amenable to treatment or is not likely  
2 to complete the treatment program successfully.

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

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

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

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

1 who fails to comply with the terms of the person's special probation  
2 pursuant to this section and is thereafter sentenced to imprisonment  
3 in accordance with this subsection shall thereafter be ineligible for  
4 entry into the Intensive Supervision Program, provided however  
5 that this provision shall not affect the person's eligibility for entry  
6 into the Intensive Supervision Program for a subsequent conviction.

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

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

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

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

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

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

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

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

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

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

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

47 k. (1) When the court temporarily suspends the commitment of  
48 the person to a residential treatment facility pursuant to subsection



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

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

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

44 m. (1) The Superior Court may order the expungement of all  
45 records and information relating to all prior arrests, detentions,  
46 convictions, and proceedings for any offense enumerated in Title  
47 2C of the New Jersey Statutes upon successful discharge from a  
48 term of special probation as provided in this section, regardless of

1 whether the person was sentenced to special probation under this  
2 section, section 2 of P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-  
3 1, if the person satisfactorily completed a substance abuse treatment  
4 program as ordered by the court and was not convicted of any  
5 crime, or adjudged a disorderly person or petty disorderly person,  
6 during the term of special probation. The provisions of N.J.S.2C:52-  
7 7 through N.J.S.2C:52-14 shall not apply to an expungement  
8 pursuant to this paragraph and no fee shall be charged to a person  
9 eligible for relief pursuant to this paragraph. The court shall grant  
10 the relief requested unless it finds that the need for the availability  
11 of the records outweighs the desirability of having the person freed  
12 from any disabilities associated with their availability, or it finds  
13 that the person is otherwise ineligible for expungement pursuant to  
14 paragraph (2) of this subsection. An expungement under this  
15 paragraph shall proceed in accordance with rules and procedures  
16 developed by the Supreme Court.

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

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

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

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

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

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

28  
29 4. (New section) A person convicted of a crime of the first  
30 degree in violation of N.J.S.2C:35-5 may be sentenced to special  
31 probation pursuant to N.J.S.2C:35-14 provided that the defendant  
32 would be eligible for special probation under N.J.S.2C:35-14 but  
33 for having been convicted of the crime of the first degree, and  
34 further provided that the court is clearly convinced and finds on the  
35 record that the defendant has established that he is not a drug  
36 profiteer or wholesale drug distributor within the meaning of  
37 subsection b. of N.J.S.2C:35A-3.

38  
39 5. This act shall take effect immediately and shall be applicable  
40 to offenses committed on and after the effective date of this act.

41  
42  
43 STATEMENT

44  
45 This bill would upgrade the penalties for certain crimes  
46 involving heroin and fentanyl. The bill also establishes new crimes  
47 addressing two types of "heroin mixtures": heroin mixtures with  
48 fentanyl, and heroin mixtures without fentanyl. A heroin mixture as

1 defined in the bill is heroin mixed with at least one other controlled  
2 dangerous substance.

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

16 Under the bill, it would be a crime of the first degree to  
17 manufacture, distribute, or dispense heroin or its analog, or a heroin  
18 mixture that does not contain fentanyl or its analog, in a quantity of  
19 10 grams or more including any adulterants or dilutants. It would  
20 be a crime of the second degree to manufacture, distribute, or  
21 dispense heroin or its analog including adulterants or dilutants in a  
22 quantity of five grams or more but less than 10 grams. If the  
23 quantity is less than five grams it would be a crime of the third  
24 degree, with an increased fine of up to \$75,000.

25 FENTANYL; HEROIN MIXTURES CONTAINING FENTANYL.  
26 Currently, it is a crime of the second degree to unlawfully  
27 manufacture, distribute, or dispense fentanyl or its analog in a  
28 quantity of one ounce or more including any adulterants or  
29 dilutants. It is a crime of the third degree if the quantity is less than  
30 one ounce, except that an increased fine of up to \$75,000 may be  
31 imposed. Under the bill, it would be a crime of the first degree to  
32 unlawfully manufacture, distribute, or dispense fentanyl or its  
33 analog, or a heroin mixture that contains fentanyl or its analog, in a  
34 quantity of five grams or more including any adulterants or  
35 dilutants. It would be a crime of the second degree if the quantity  
36 of fentanyl or its analog or a heroin mixture that contains fentanyl  
37 or its analog is two grams or more but less than five grams  
38 including any adulterants or dilutants. It would be a crime of the  
39 third degree, with an increased fine of up to \$75,000, if the quantity  
40 of fentanyl or its analog or a heroin mixture that contains fentanyl  
41 or its analog is less than two grams including any adulterants or  
42 dilutants.

43 NEW DEFINITIONS. The bill adds definitions of the terms “heroin  
44 mixture” and “adulterants or dilutants.”

45 Under the bill, a “heroin mixture” is a substance containing  
46 heroin, or its analog, and at least one other controlled dangerous  
47 substance classified as a narcotic drug or its analog that have been  
48 combined by any means so that the injection, inhalation, or

1 ingestion of the mixture would result in the consumption of two or  
2 more controlled dangerous substances or analogs.

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

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

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