

ASSEMBLY, No. 2690

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblyman JOHN ARMATO

District 2 (Atlantic)

Assemblyman VINCENT MAZZEO

District 2 (Atlantic)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

SYNOPSIS

Establishes special probation drug court eligibility for persons with certain previous criminal convictions.

CURRENT VERSION OF TEXT

As introduced.



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

1 AN ACT concerning special probation eligibility for persons with
2 certain previous criminal convictions, and amending
3 N.J.S.2C:35-14.

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:35-14 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; Commitment to
13 Residential Treatment Facilities or Participation in a Nonresidential
14 Treatment Program; Presumption of Revocation; Brief Incarceration
15 in Lieu of Permanent Revocation.

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

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

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

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

Matter underlined thus is new matter.

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

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

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

13 (6) the person has not been previously convicted on two or more
14 separate occasions of crimes of the first or second degree, other
15 than those listed in paragraph (7) **【;】**, or the person has not been
16 previously convicted on two or more separate occasions, where one
17 of the offenses is a crime of the third degree, other than crimes
18 defined in N.J.S.2C:35-10, and one of the offenses is a crime of the
19 first or second degree; unless any previous conviction of a crime of
20 the first or second degree, not including any conviction for a crime
21 listed in paragraph (7), is at least five years old, and at least five
22 years have expired from the date of the person's satisfactory
23 completion of probation or parole, or release from incarceration,
24 whichever is later; and

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

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

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

37 In determining whether to sentence the person pursuant to this
38 section, the court shall consider all relevant circumstances, and
39 shall take judicial notice of any evidence, testimony or information
40 adduced at the trial, plea hearing or other court proceedings, and
41 shall also consider the presentence report and the results of the
42 professional diagnostic assessment to determine whether and to
43 what extent the person is drug or alcohol dependent and would
44 benefit from treatment. The court shall give priority to a person
45 who has moved to be sentenced to special probation over a person
46 who is being considered for a sentence to special probation on the
47 court's own motion or in accordance with the provisions of section
48 2 of P.L.2012, c.23 (C.2C:35-14.2).

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

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

23 (1) a crime of the first degree;

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

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

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

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

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

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

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

47 f. (1) Upon a first violation of any term or condition of the
48 special probation authorized by this section or of any requirements

1 of the course of treatment, the court in its discretion may
2 permanently revoke the person's special probation.

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

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

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

46 (5) Following a violation, if the court permits the person to
47 continue on special probation pursuant to this section, the court
48 shall order the person to comply with such additional terms and

1 conditions, including but not limited to more frequent drug or
2 alcohol testing, as are necessary to deter and promptly detect any
3 further violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (2) The probation department or other appropriate agency shall
44 immediately notify the court and the prosecutor in the event that the
45 person fails or refuses to submit to a drug or alcohol test, knowingly
46 defrauds the administration of a drug test, terminates the person's
47 participation in the course of treatment, or commits any act that
48 would constitute absconding from parole. If the person at any time

1 while entered in a nonresidential treatment program pursuant to
2 subsection j. of this section knowingly defrauds the administration
3 of a drug test, goes into hiding, or leaves the State with a purpose of
4 avoiding supervision, the court shall permanently revoke the
5 person's special probation.

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

21 m. (1) The Superior Court may order the expungement of all
22 records and information relating to all prior arrests, detentions,
23 convictions, and proceedings for any offense enumerated in Title
24 2C of the New Jersey Statutes upon successful discharge from a
25 term of special probation as provided in this section, regardless of
26 whether the person was sentenced to special probation under this
27 section, section 2 of P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-
28 1, if the person satisfactorily completed a substance abuse treatment
29 program as ordered by the court and was not convicted of any
30 crime, or adjudged a disorderly person or petty disorderly person,
31 during the term of special probation. The provisions of N.J.S.2C:52-
32 7 through N.J.S.2C:52-14 shall not apply to an expungement
33 pursuant to this paragraph and no fee shall be charged to a person
34 eligible for relief pursuant to this paragraph. The court shall grant
35 the relief requested unless it finds that the need for the availability
36 of the records outweighs the desirability of having the person freed
37 from any disabilities associated with their availability, or it finds
38 that the person is otherwise ineligible for expungement pursuant to
39 paragraph (2) of this subsection. An expungement under this
40 paragraph shall proceed in accordance with rules and procedures
41 developed by the Supreme Court.

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

1 court when deciding to grant an expungement under paragraph (1)
2 of this subsection.

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

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

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

1 the person freed from any disabilities associated with their
2 availability, or it finds that the person is otherwise ineligible for
3 expungement pursuant to this paragraph. No fee shall be charged to
4 a person eligible for relief pursuant to this paragraph.

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

6
7 2. This act shall take effect immediately.

8
9
10 STATEMENT

11
12 This bill would permit persons with certain older, multiple criminal
13 convictions to be eligible for placement in the special probation drug
14 court program.

15 Under current law, a person is ineligible for the drug court
16 program if: (1) the person has been previously convicted on at least
17 two separate occasions for crimes of the first or second degree,
18 unless any one of those convictions was for a violent crime
19 rendering the person automatically ineligible (crimes such as
20 murder, kidnapping, and sexual assault); or (2) the person has been
21 previously convicted on at least two separate occasions, based on
22 one offense being a crime of the first or second degree and the other
23 offense being a crime of the third degree, but not counting any
24 crime of the third degree for possessing a controlled dangerous
25 substance pursuant to N.J.S.2C:35-10 (such possession convictions
26 do not count towards the two conviction “cap” on eligibility), and
27 neither conviction was for a violent crime rendering the person
28 automatically ineligible.

29 This ineligibility criterion concerning past convictions would
30 remain in place; however, the bill would permit a person with two
31 or more past convictions to be eligible for special probation drug
32 court, so long as none of the convictions rendered the person
33 automatically ineligible and any conviction for a crime of the first
34 or second degree was at least five years old, measured from the date
35 of the person’s satisfactory completion of probation or parole, or
36 release from incarceration, whichever date is later.