

# SENATE, No. 241

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# STATE OF NEW JERSEY

## 219th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**SYNOPSIS**

Makes certain changes to drug court.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



S241 SINGLETON, CUNNINGHAM

2

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

3

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

6

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

8 2C:35-14. Rehabilitation Program for Drug and Alcohol  
9 Dependent Persons Subject to a Presumption of Incarceration or a  
10 Mandatory Minimum Period of Parole Ineligibility; Criteria for  
11 Imposing Special Probation; Ineligible Offenders; Commitment to  
12 Residential Treatment Facilities or Participation in a Nonresidential  
13 Treatment Program; Presumption of Revocation; Brief Incarceration  
14 in Lieu of Permanent Revocation.

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

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

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

44 (3) the present offense was committed while the person was  
45 under the influence of a controlled dangerous substance, controlled

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

**Matter underlined thus is new matter.**

1 substance analog or alcohol or was committed to acquire property  
2 or monies in order to support the person's drug or alcohol  
3 dependency; and

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

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

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

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

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

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

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

42 As a condition of special probation, the court shall order the  
43 person to enter a residential treatment program at a facility licensed  
44 and approved by the Division of Mental Health and Addiction  
45 Services in the Department of Human Services or a program of  
46 nonresidential treatment by a licensed and approved treatment  
47 provider, which program may include the use of medication-  
48 assisted treatment as defined in paragraph **[(7)] (5)** of subsection f.

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

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

16 (1) a crime of the first degree;

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

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

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

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

29 d. Except as otherwise provided in subsection j. of this section,  
30 a person convicted of or adjudicated delinquent for a crime of the  
31 second degree or of a violation of section 1 of P.L.1987, c.101  
32 (C.2C:35-7), or who previously has been convicted of or  
33 adjudicated delinquent for an offense under subsection a. of  
34 N.J.S.2C:35-5 or a similar offense under any other law of this State,  
35 any other state or the United States, who is placed on special  
36 probation under this section shall be committed to the custody of a  
37 residential substance use disorders treatment facility licensed and  
38 approved by the Division of Mental Health and Addiction Services  
39 in the Department of Human Services. Subject to the authority of  
40 the court to temporarily suspend imposition of all or any portion of  
41 the term of commitment to a residential treatment facility pursuant  
42 to subsection j. of this section, the person shall be committed to the  
43 residential treatment facility immediately, unless the facility cannot  
44 accommodate the person, in which case the person shall be  
45 incarcerated to await commitment to the residential treatment  
46 facility. The term of such commitment shall be for a minimum of  
47 six months, or until the court, upon recommendation of the  
48 treatment provider, determines that the person has successfully

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

20 e. The probation department or other appropriate agency  
21 designated by the court to monitor or supervise the person's special  
22 probation shall report periodically to the court as to the person's  
23 progress in treatment and compliance with court-imposed terms and  
24 conditions. The treatment provider shall promptly report to the  
25 probation department or other appropriate agency all significant  
26 failures by the person to comply with any court imposed term or  
27 condition of special probation or any requirements of the course of  
28 treatment, including but not limited to a positive drug or alcohol  
29 test, which shall only constitute a violation for a person using  
30 medication-assisted treatment as defined in paragraph ~~[(7)]~~ (5) of  
31 subsection f. of this section if the positive test is unrelated to the  
32 person's medication-assisted treatment, or the unexcused failure to  
33 attend any session or activity, and shall immediately report any act  
34 that would constitute an escape. The probation department or other  
35 appropriate agency shall immediately notify the court and the  
36 prosecutor in the event that the person refuses to submit to a  
37 periodic drug or alcohol test or for any reason terminates the  
38 person's participation in the course of treatment, or commits any act  
39 that would constitute an escape.

40 f. (1) Upon a ~~[(first)]~~ violation of any term or condition of the  
41 special probation authorized by this section or of any requirements  
42 of the course of treatment, including, but not limited to, refusal to  
43 undergo urine testing for drug or alcohol usage, or committing any  
44 act that would constitute an escape from a residential treatment  
45 facility, the court in its discretion may permanently revoke the  
46 person's special probation.

47 ~~[(2)]~~ (2) Upon a second or subsequent violation of any term or  
48 condition of the special probation authorized by this section or of

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

13 【(3)】 (2) In making its determination whether to revoke special  
14 probation, 【and whether to overcome the presumption of revocation  
15 established in paragraph (2) of this subsection,】 the court shall  
16 consider the nature and seriousness of the present infraction and any  
17 past infractions in relation to the person's overall progress in the  
18 course of treatment, and shall also consider the recommendations of  
19 the treatment provider. The court shall give added weight to the  
20 treatment provider's recommendation that the person's special  
21 probation be permanently revoked, or to the treatment provider's  
22 opinion that the person is not amenable to treatment or is not likely  
23 to complete the treatment program successfully.

24 【(4)】 (3) If the court permanently revokes the person's special  
25 probation pursuant to this subsection, the court 【shall】 may impose  
26 any sentence 【that might have been imposed, or that would have  
27 been required to be imposed, originally for the offense for which  
28 the person was convicted or adjudicated delinquent】 not exceeding  
29 a maximum prison term of five years. The court shall conduct a 【de  
30 novo】 review of any 【aggravating and】 mitigating factors present at  
31 the time of both original sentencing and resentencing, and  
32 determine whether the violation negates any of the mitigating  
33 factors originally found, consistent with a hearing pursuant to  
34 N.J.S.2C:45-3. If the court determines 【or is required pursuant to  
35 any other provision of this chapter or any other law】 to impose a  
36 term of imprisonment, the person shall receive credit for any time  
37 served in custody pursuant to N.J.S.2C:45-1 or while awaiting  
38 placement in a treatment facility pursuant to this section, and for  
39 each day during which the person satisfactorily complied with the  
40 terms and conditions of special probation while committed pursuant  
41 to this section to a residential treatment facility. The court, in  
42 determining the number of credits for time spent in a residential  
43 treatment facility, shall consider the recommendations of the  
44 treatment provider.

45 【(5)】 (4) Following a violation, if the court permits the person  
46 to continue on special probation pursuant to this section, the court  
47 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)]** (5) An action for a violation under this section may be  
15 brought by a probation officer or prosecutor or on the court's own  
16 motion. Failure to complete successfully the required treatment  
17 program shall constitute a violation of the person's special  
18 probation. In the case of the temporary or continued management of  
19 a person's drug or alcohol dependency by means of medication-  
20 assisted treatment as defined herein, whenever supported by a  
21 report from the treatment provider of existing satisfactory progress  
22 and reasonably predictable long-term success with or without  
23 further medication-assisted treatment, the person's use of the  
24 medication-assisted treatment, even if continuing, shall not be the  
25 basis to constitute a failure to complete successfully the treatment  
26 program. **[**A person who fails to comply with the terms of the  
27 person's special probation pursuant to this section and is thereafter  
28 sentenced to imprisonment in accordance with this subsection shall  
29 thereafter be ineligible for entry into the Intensive Supervision  
30 Program, provided however that this provision shall not affect the  
31 person's eligibility for entry into the Intensive Supervision Program  
32 for a subsequent conviction**]**.

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

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

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

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

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

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

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

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

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

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

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

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

29 k. (1) When the court temporarily suspends the commitment of  
30 the person to a residential treatment facility pursuant to subsection  
31 j. of this section, the court shall, in addition to ordering  
32 participation in a prescribed course of nonresidential treatment and  
33 any other appropriate terms or conditions authorized or required by  
34 law, order the person to undergo urine testing for drug or alcohol  
35 use not less than once per week unless otherwise ordered by the  
36 court. The court-ordered testing shall be conducted by the  
37 probation department or the treatment provider. The results of all  
38 tests shall be reported promptly to the court and to the prosecutor.  
39 If the person is involved with a program that is providing the person  
40 medication-assisted treatment as defined in paragraph **[(7)] (5)** of  
41 subsection f. of this section, only a positive urine test for drug or  
42 alcohol use unrelated to the medication-assisted treatment shall  
43 constitute a violation of the terms and conditions of special  
44 probation. In addition, the court shall impose appropriate curfews  
45 or other restrictions on the person's movements, and may order the  
46 person to wear electronic monitoring devices to enforce such  
47 curfews or other restrictions as a condition of special probation.

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

12 1. If the court finds that the person has made exemplary  
13 progress in the course of treatment, the court may, upon  
14 recommendation of the person's supervising probation officer or on  
15 the court's own motion, and upon notice to the prosecutor, grant  
16 early discharge from a term of special probation provided that the  
17 person: (1) has satisfactorily completed the treatment program  
18 ordered by the court; (2) has served at least two years of special  
19 probation; (3) within the preceding 12 months, did not commit a  
20 substantial violation of any term or condition of special probation,  
21 including but not limited to a positive urine test, which shall only  
22 constitute a violation for a person using medication-assisted  
23 treatment as defined in paragraph ~~[(7)]~~ (5) of subsection f. of this  
24 section if the positive test is unrelated to the person's medication-  
25 assisted treatment; and (4) is not likely to relapse or commit an  
26 offense if probation supervision and related services are  
27 discontinued.

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

1 this subsection. An expungement under this paragraph shall  
2 proceed in accordance with rules and procedures developed by the  
3 Supreme Court.

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

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

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

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

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

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

15

16 2. This act shall take effect immediately.

17

18

19

STATEMENT

20

21 This bill amends the current statute regarding special probation  
22 (drug court).

23 Under current law, the court, upon a person's first violation of  
24 any term or condition of the special probation or of any  
25 requirements of the course of treatment, may in its discretion  
26 permanently revoke the person's special probation. Upon a  
27 person's second violation, the court will permanently revoke a  
28 person's special probation, unless the court finds that there is a  
29 substantial likelihood that the person will successfully complete the  
30 treatment program if they were permitted to remain on special  
31 probation, and the court is clearly convinced that no danger to the  
32 community will result from permitting the person to continue on  
33 special probation. In addition, the court will permanently revoke a  
34 person's special probation if the person refuses to undergo urine  
35 testing for drug or alcohol usage or if the person escapes from a  
36 residential treatment facility.

37 In this bill, the court, upon a person's violation of any term or  
38 condition of the special probation or of any requirements of the  
39 course of treatment, including, but not limited to, refusal to undergo  
40 urine testing for drug or alcohol usage, or committing any act that  
41 would constitute an escape from a residential treatment facility,  
42 may in its discretion permanently revoke the person's special  
43 probation. If the court permanently revokes the person's special  
44 probation, then the court may impose any sentence not exceeding a  
45 maximum prison term of five years (instead of imposing any  
46 sentence that might have been imposed, or that would have been  
47 required to be imposed, originally for the offense for which the  
48 person was convicted or adjudicated delinquent, as in current law).

1 The court would conduct a review of any mitigating factors present  
2 at the time of both original sentencing and resentencing, and  
3 determine whether the violation negates any of the mitigating  
4 factors originally found, consistent with a hearing pursuant to  
5 N.J.S.2C:45-3.

6 The bill would remove the provision in current law that a person  
7 who fails to comply with the terms of the person's special probation  
8 and is therefore sentenced to imprisonment would be ineligible for  
9 entry into the Intensive Supervision Program.

10 The bill would also delete subsection g. of N.J.S.2C:35-14 that  
11 provides the court with the option to impose a term of incarceration  
12 for a period of 30 days to six months in lieu of permanently  
13 revoking the person's special probation.

14 The bill would also expand the records and information that the  
15 Superior Court may expunge upon the person's successful discharge  
16 from special probation to also include any municipal ordinance of  
17 any governmental entity of this State. In addition, the court may  
18 also vacate the remaining balance of any fines, penalties, or fees.

19 The bill would also eliminate the provision that a person would  
20 not be eligible for expungement if the records include a conviction  
21 for any offense barred from expungement pursuant to subsection b.  
22 or c. of N.J.S.2C:52-2.