

SENATE, No. 3096

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED SEPTEMBER 29, 2022

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

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.



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 presence,
14 by his lawfully authorized agent, or (2) the patient or research
15 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, marijuana and
29 hashish as defined in this section, any substance the distribution of
30 which is specifically prohibited in N.J.S.2C:35-3, in section 3 of
31 P.L.1997, c.194 (C.2C:35-5.2), in section 5 of P.L.1997, c.194
32 (C.2C:35-5.3), in section 2 of P.L.2011, c.120 (C.2C:35-5.3a), or in
33 section 2 of P.L.2013, c.35 (C.2C:35-5.3b), and any drug or
34 substance which, when ingested, is metabolized or otherwise
35 becomes a controlled dangerous substance in the human body.
36 When any statute refers to controlled dangerous substances, or to a
37 specific controlled dangerous substance, it shall also be deemed to
38 refer to any drug or substance which, when ingested, is metabolized
39 or otherwise becomes a controlled dangerous substance or the
40 specific controlled dangerous substance, and to any substance that
41 is an immediate precursor of a controlled dangerous substance or
42 the specific controlled dangerous substance. The term shall not
43 include distilled spirits, wine, malt beverages, as those terms are
44 defined or used in R.S.33:1-1 et seq., tobacco and tobacco products,
45 or cannabis and cannabis as defined in section 3 of P.L.2021, c.16

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 (C.24:6I-33). The term, wherever it appears in any law or
2 administrative regulation of this State, shall include controlled
3 substance analogs.

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

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

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

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

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

35 "Drugs" means (1) substances recognized in the official United
36 States Pharmacopoeia, official Homeopathic Pharmacopoeia of the
37 United States, or official National Formulary, or any supplement to
38 any of them; and (2) substances intended for use in the diagnosis,
39 cure, mitigation, treatment, or prevention of disease in man or other
40 animals; and (3) substances, other than food, intended to affect the
41 structure or any function of the body of man or other animals; and
42 (4) substances intended for use as a component of any substance
43 specified in (1), (2), and (3) of this definition; but does not include
44 devices or their components, parts, or accessories. The term "drug"
45 also does not include: hemp and hemp products cultivated, handled,
46 processed, transported, or sold pursuant to the "New Jersey Hemp
47 Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); cannabis as defined
48 in section 3 of P.L.2021, c.16 (C.24:6I-31 et al.) which is cultivated

1 and produced for use in a cannabis item, as defined in that section,
2 in accordance with the "New Jersey Cannabis Regulatory,
3 Enforcement Assistance, and Marketplace Modernization Act,"
4 P.L.2021, c.16 (C.24:6I-31 et al.); and cannabis resin as defined in
5 that section 3 (C.24:6I-33) which is extracted for use in a cannabis
6 item, as defined in that section, in accordance with that act.

7 "Drug or alcohol dependent person" means a person who as a
8 result of using a controlled dangerous substance or controlled
9 substance analog or alcohol has been in a state of psychic or
10 physical dependence, or both, arising from the use of that controlled
11 dangerous substance or controlled substance analog or alcohol on a
12 continuous or repetitive basis. Drug or alcohol dependence is
13 characterized by behavioral and other responses, including but not
14 limited to a strong compulsion to take the substance on a recurring
15 basis in order to experience its psychic effects, or to avoid the
16 discomfort of its absence.

17 "Hashish" means the resin extracted from any part of the plant
18 Cannabis sativa L. and any compound, manufacture, salt,
19 derivative, mixture, or preparation of such resin. "Hashish" shall
20 not mean: hemp and hemp products cultivated, handled, processed,
21 transported, or sold pursuant to the "New Jersey Hemp Farming
22 Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis resin as defined
23 in section 3 of P.L.2021, c.16 (C.24:6I-33) which is extracted for
24 use in a cannabis item, as defined in that section, in accordance with
25 the "New Jersey Cannabis Regulatory, Enforcement Assistance, and
26 Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

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

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

1 "Marijuana" means all parts of the plant *Cannabis sativa* L.,
2 whether growing or not; the seeds thereof, and every compound,
3 manufacture, salt, derivative, mixture, or preparation of the plant or
4 its seeds, except those containing resin extracted from the plant.
5 "Marijuana" shall not mean: hemp and hemp products cultivated,
6 handled, processed, transported, or sold pursuant to the "New Jersey
7 Hemp Farming Act," P.L.2019, c.238 (C.4:28-6 et al.); or cannabis
8 as defined in section 3 of P.L.2021, c.16 (C.24:6I-33) which is
9 cultivated and produced for use in a cannabis item, as defined in
10 that section, in accordance with the "New Jersey Cannabis
11 Regulatory, Enforcement Assistance, and Marketplace
12 Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.).

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

17 (1) Opium, coca leaves, and opiates;

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

20 (3) A substance, and any compound, manufacture, salt,
21 derivative, or preparation thereof, which is chemically identical
22 with any of the substances referred to in (1) and (3) of this
23 definition, except that the words "narcotic drug" as used in this act
24 shall not include decocainized coca leaves or extracts of coca
25 leaves, which extracts do not contain cocaine or ecogine.

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

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

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

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

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

43 "Practitioner" means a physician, dentist, veterinarian, scientific
44 investigator, laboratory, pharmacy, hospital, or other person
45 licensed, registered, or otherwise permitted to distribute, dispense,
46 conduct research with respect to, or administer a controlled
47 dangerous substance or controlled substance analog in the course of

1 professional practice or research in this State. As used in this
2 definition:

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

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

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

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

16 (5) "Laboratory" means a laboratory to be entrusted with the
17 custody of narcotic drugs and the use of controlled dangerous
18 substances or controlled substance analogs for scientific,
19 experimental, and medical purposes and for purposes of instruction
20 approved by the Department of Health.

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

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

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

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

43 "State" means the State of New Jersey.

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

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

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

11 "Stramonium plant" means the plant *Datura Stramonium* Linne,
12 including *Datura Tatula* Linne.

13 (cf: P.L.2021, c.16, s.54)

14
15 2. N.J.S.2C:35-5 is amended to read as follows:

16 2C:35-5. Manufacturing, Distributing or Dispensing. a. Except
17 as authorized by P.L.1970, c.226 (C.24:21-1 et seq.), it shall be
18 unlawful for any person knowingly or purposely:

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

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

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

26 (1) (a) Heroin, or its analog, or **【coca】** a heroin mixture that
27 does not contain fentanyl or its analog, in a quantity of 10 grams or
28 more including any adulterants or dilutants;

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

32 (c) Coca leaves and any salt, compound, derivative, or
33 preparation of coca leaves, and any salt, compound, derivative, or
34 preparation thereof which is chemically equivalent or identical with
35 any of these substances, or analogs, except that the substances shall
36 not include decocainized coca leaves or extractions which do not
37 contain cocaine or ecogine, or 3,4-
38 methylenedioxyamphetamine or 3,4-
39 methylenedioxyamphetamine, in a quantity of five ounces or more
40 including any adulterants or dilutants is guilty of a crime of the first
41 degree. **【The】** For any violation of this paragraph, the defendant
42 shall, except as provided in N.J.S.2C:35-12, be sentenced to a term
43 of imprisonment by the court. The term of imprisonment shall
44 include the imposition of a minimum term which shall be fixed at,
45 or between, one-third and one-half of the sentence imposed, during
46 which the defendant shall be ineligible for parole. Notwithstanding
47 the provisions of subsection a. of N.J.S.2C:43-3, a fine of up to
48 \$500,000 may be imposed;

1 (2) A substance referred to in subparagraph (a) of paragraph (1)
2 of this subsection, in a quantity of **【one-half ounce】** five grams or
3 more but less than **【five ounces,】** 10 grams including any
4 adulterants or dilutants, and a substance referred to in subparagraph
5 (b) of paragraph (1) of this subsection, in a quantity of two grams or
6 more but less than five grams including any adulterants or dilutants,
7 and a substance referred to in subparagraph (c) of paragraph (1) of
8 this subsection, in a quantity of one-half ounce or more but less
9 than five ounces including any adulterants or dilutants, is guilty of a
10 crime of the second degree;

11 (3) A substance referred to in subparagraph (a) of paragraph (1)
12 of this subsection, in a quantity less than five grams including any
13 adulterants or dilutants, and a substance referred to in subparagraph
14 (b) of paragraph (1) of this subsection, in a quantity of less than two
15 grams including any adulterants or dilutants, and a substance
16 referred to in subparagraph (c) of paragraph (1) of this subsection in
17 a quantity less than one-half ounce including any adulterants or
18 dilutants is guilty of a crime of the third degree except that,
19 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a
20 fine of up to \$75,000 may be imposed;

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

26 (5) A substance classified as a narcotic drug in Schedule I or II
27 other than those specifically covered in this section, or the analog of
28 any such substance, in a quantity of less than one ounce including
29 any adulterants or dilutants is guilty of a crime of the third degree
30 except that, notwithstanding the provisions of subsection b. of
31 N.J.S.2C:43-3, a fine of up to \$75,000 may be imposed;

32 (6) Lysergic acid diethylamide, or its analog, in a quantity of
33 100 milligrams or more including any adulterants or dilutants, or
34 phencyclidine, or its analog, in a quantity of 10 grams or more
35 including any adulterants or dilutants, is guilty of a crime of the
36 first degree. Except as provided in N.J.S.2C:35-12, the court shall
37 impose a term of imprisonment which shall include the imposition
38 of a minimum term, fixed at, or between, one-third and one-half of
39 the sentence imposed by the court, during which the defendant shall
40 be ineligible for parole. Notwithstanding the provisions of
41 subsection a. of N.J.S.2C:43-3, a fine of up to \$500,000 may be
42 imposed;

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

1 (8) Methamphetamine, or its analog, or phenyl-2-propanone
2 (P2P), in a quantity of five ounces or more including any
3 adulterants or dilutants is guilty of a crime of the first degree.
4 Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, a
5 fine of up to \$300,000 may be imposed;

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

10 (b) Methamphetamine, or its analog, or phenyl-2-propanone
11 (P2P), in a quantity of less than one-half ounce including any
12 adulterants or dilutants is guilty of a crime of the third degree
13 except that notwithstanding the provisions of subsection b. of
14 N.J.S.2C:43-3, a fine of up to \$75,000 may be imposed;

15 (10) (a) Marijuana in a quantity of 25 pounds or more including
16 any adulterants or dilutants, or 50 or more marijuana plants,
17 regardless of weight, or hashish in a quantity of five pounds or
18 more including any adulterants or dilutants, is guilty of a crime of
19 the first degree. Notwithstanding the provisions of subsection a. of
20 N.J.S.2C:43-3, a fine of up to \$300,000 may be imposed;

21 (b) Marijuana in a quantity of five pounds or more but less than
22 25 pounds including any adulterants or dilutants, or 10 or more but
23 fewer than 50 marijuana plants, regardless of weight, or hashish in a
24 quantity of one pound or more but less than five pounds, including
25 any adulterants and dilutants, is guilty of a crime of the second
26 degree;

27 (11) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
28 23.1 et al.), marijuana in a quantity of one ounce or more but less
29 than five pounds including any adulterants or dilutants, or hashish
30 in a quantity of five grams or more but less than one pound
31 including any adulterants or dilutants, is guilty of a crime of the
32 third degree except that, notwithstanding the provisions of
33 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
34 imposed;

35 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
36 23.1 et al.), marijuana in a quantity of more than one ounce but less
37 than five pounds including any adulterants or dilutants, or hashish
38 in a quantity of more than five grams but less than one pound
39 including any adulterants or dilutants, is guilty of a crime of the
40 third degree except that, notwithstanding the provisions of
41 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
42 imposed;

43 (12) (a) Prior to the effective date of P.L.2021, c.19 (C.2C:35-
44 23.1 et al.), marijuana in a quantity of less than one ounce including
45 any adulterants or dilutants, or hashish in a quantity of less than five
46 grams including any adulterants or dilutants, is guilty of a crime of
47 the fourth degree;

1 (b) On and after the effective date of P.L.2021, c.19 (C.2C:35-
2 23.1 et al.), marijuana in a quantity of one ounce or less including
3 any adulterants or dilutants, or hashish in a quantity of five grams
4 or less including any adulterants or dilutants, is, for a first offense,
5 subject to a written warning, which also indicates that any
6 subsequent violation is a crime punishable by a term of
7 imprisonment, a fine, or both, and for a second or subsequent
8 offense, is guilty of a crime of the fourth degree;

9 (i) The odor of marijuana or hashish, or burnt marijuana or
10 hashish, shall not constitute reasonable articulable suspicion to
11 initiate a search of a person to determine a violation of
12 subparagraph (b) of paragraph (12) of this subsection. A person
13 who violates this subparagraph shall not be subject to arrest,
14 detention, or otherwise be taken into custody, unless the person is
15 being arrested, detained, or otherwise taken into custody for also
16 committing another violation of law for which that action is legally
17 permitted or required;

18 (ii) A person shall not be deprived of any legal or civil right,
19 privilege, benefit, or opportunity provided pursuant to any law
20 solely by reason of committing a violation of subparagraph (b) of
21 paragraph (12) of this subsection, nor shall committing one or more
22 violations modify any legal or civil right, privilege, benefit, or
23 opportunity provided pursuant to any law, including, but not limited
24 to, the granting, renewal, forfeiture, or denial of a license, permit,
25 or certification, qualification for and the receipt, alteration,
26 continuation, or denial of any form of financial assistance, housing
27 assistance, or other social services, rights of or custody by a
28 biological parent, or adoptive or foster parent, or other legal
29 guardian of a child or newborn infant, or pregnant woman, in any
30 action or proceeding by the Division of Child Protection and
31 Permanency in the Department of Children and Families, or
32 qualification, approval, or disapproval to serve as a foster parent or
33 other legal guardian;

34 (iii) All local and county law enforcement authorities shall,
35 following the submission process used for the uniform crime
36 reporting system established by P.L.1966, c.37 (C.52:17B-5.1 et
37 seq.), submit a quarterly report to the Uniform Crime Reporting
38 Unit, within the Division of State Police in the Department of Law
39 and Public Safety, or to another designated recipient determined by
40 the Attorney General, containing the number of violations of
41 subparagraph (b) of paragraph (12) of this subsection committed
42 within their respective jurisdictions, plus the race, ethnicity, gender,
43 and age of each person committing a violation, and the disposition
44 of each person's violation. These violations and associated
45 information, along with a quarterly summary of violations
46 investigated, and associated information collected, by the Division
47 of State Police for the same period shall be summarized by county
48 and municipality in an annual report, and both quarterly summaries

1 and annual reports shall be made available at no cost to the public
2 on the Division of State Police's Internet website;

3 (13) Any other controlled dangerous substance classified in
4 Schedule I, II, III or IV, or its analog, is guilty of a crime of the
5 third degree, except that, notwithstanding the provisions of
6 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
7 imposed; or

8 (14) Any Schedule V substance, or its analog, is guilty of a crime
9 of the fourth degree except that, notwithstanding the provisions of
10 subsection b. of N.J.S.2C:43-3, a fine of up to \$25,000 may be
11 imposed.

12 c. Where the degree of the offense for violation of this section
13 depends on the quantity of the substance or substances., the quantity
14 involved shall be determined by the trier of fact, other than with
15 respect to a first violation of subparagraph (b) of paragraph (12) of
16 subsection b. of this section which is subject to a written warning as
17 set forth in that subparagraph. Where the indictment or accusation
18 so provides, the quantity involved in individual acts of
19 manufacturing, distribution, dispensing or possessing with intent to
20 distribute may be aggregated in determining the grade of the
21 offense, whether distribution or dispensing is to the same person or
22 several persons, provided that each individual act of manufacturing,
23 distribution, dispensing or possession with intent to distribute was
24 committed within the applicable statute of limitations.

25 (cf: P.L.2021, c.19, s.1)

26

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

28 2C:35-14. Rehabilitation Program for Drug- and Alcohol-
29 Dependent Persons Subject to a Presumption of Incarceration or a
30 Mandatory Minimum Period of Parole Ineligibility; Criteria for
31 Imposing Special Probation; Ineligible Offenders; Commitment to
32 Residential Treatment Facilities or Participation in a Nonresidential
33 Treatment Program; Presumption of Revocation; Brief Incarceration
34 in Lieu of Permanent Revocation.

35 a. Any person who is ineligible for probation due to a
36 conviction for a crime which is subject to a presumption of
37 incarceration or a mandatory minimum period of parole ineligibility
38 may be sentenced to a term of special probation in accordance with
39 this section, and may not apply for drug and alcohol treatment
40 pursuant to N.J.S.2C:45-1. Nothing in this section shall be
41 construed to prohibit a person who is eligible for probation in
42 accordance with N.J.S.2C:45-1 due to a conviction for an offense
43 which is not subject to a presumption of incarceration or a
44 mandatory minimum period of parole ineligibility from applying for
45 drug or alcohol treatment as a condition of probation pursuant to
46 N.J.S.2C:45-1; provided, however, that a person in need of
47 treatment as defined in subsection f. of section 2 of P.L.2012, c.23
48 (C.2C:35-14.2) shall be sentenced in accordance with that section.

1 Notwithstanding the presumption of incarceration pursuant to the
2 provisions of subsection d. of N.J.S.2C:44-1, whenever a drug- or
3 alcohol-dependent person who is subject to sentencing under this
4 section is convicted of or adjudicated delinquent for an offense,
5 other than one described in subsection b. of this section, the court,
6 upon notice to the prosecutor, may, on motion of the person, or on
7 the court's own motion, place the person on special probation,
8 which shall be for a term of five years, provided that the court finds
9 on the record that:

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

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

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

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

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

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

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

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

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

47 In determining whether to sentence the person pursuant to this
48 section, the court shall consider all relevant circumstances, and

1 shall take judicial notice of any evidence, testimony or information
2 adduced at the trial, plea hearing or other court proceedings, and
3 shall also consider the presentence report and the results of the
4 professional diagnostic assessment to determine whether and to
5 what extent the person is drug- or alcohol-dependent and would
6 benefit from treatment. The court shall give priority to a person
7 who has moved to be sentenced to special probation over a person
8 who is being considered for a sentence to special probation on the
9 court's own motion or in accordance with the provisions of section
10 2 of P.L.2012, c.23 (C.2C:35-14.2).

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

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

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

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

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

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

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

47 d. Except as otherwise provided in subsection j. of this section,
48 a person convicted of or adjudicated delinquent for a crime of the

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

38 e. The probation department or other appropriate agency
39 designated by the court to monitor or supervise the person's special
40 probation shall report periodically to the court as to the person's
41 progress in treatment and compliance with court-imposed terms and
42 conditions. The treatment provider shall promptly report to the
43 probation department or other appropriate agency all significant
44 failures by the person to comply with any court-imposed term or
45 condition of special probation or any requirements of the course of
46 treatment, including but not limited to a positive drug or alcohol
47 test, which shall only constitute a violation for a person using
48 medication-assisted treatment as defined in paragraph (7) of

1 subsection f. of this section if the positive test is unrelated to the
2 person's medication-assisted treatment, or the unexcused failure to
3 attend any session or activity, and shall immediately report any act
4 that would constitute an escape. The probation department or other
5 appropriate agency shall immediately notify the court and the
6 prosecutor in the event that the person refuses to submit to a
7 periodic drug or alcohol test or for any reason terminates the
8 person's participation in the course of treatment, or commits any act
9 that would constitute an escape.

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

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

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

39 (4) If the court permanently revokes the person's special
40 probation pursuant to this subsection, the court shall impose any
41 sentence that might have been imposed, or that would have been
42 required to be imposed, originally for the offense for which the
43 person was convicted or adjudicated delinquent. The court shall
44 conduct a de novo review of any aggravating and mitigating factors
45 present at the time of both original sentencing and resentencing. If
46 the court determines or is required pursuant to any other provision
47 of this chapter or any other law to impose a term of imprisonment,
48 the person shall receive credit for any time served in custody

1 pursuant to N.J.S.2C:45-1 or while awaiting placement in a
2 treatment facility pursuant to this section, and for each day during
3 which the person satisfactorily complied with the terms and
4 conditions of special probation while committed pursuant to this
5 section to a residential treatment facility. The court, in determining
6 the number of credits for time spent in a residential treatment
7 facility, shall consider the recommendations of the treatment
8 provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 probation. In addition, the court shall impose appropriate curfews
2 or other restrictions on the person's movements, and may order the
3 person to wear electronic monitoring devices to enforce such
4 curfews or other restrictions as a condition of special probation.

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

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

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

1 paragraph (2) of this subsection. An expungement under this
2 paragraph shall proceed in accordance with rules and procedures
3 developed by the 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 to
8 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 (6) (a) A person who is not eligible for expungement relief
15 pursuant to paragraph (1) or (5) of this subsection because of a
16 conviction occurring prior to, on, or after the effective date of
17 P.L.2021, c.460, for any offense set forth in paragraph (2) of
18 subsection a. of N.J.S.2C:24-4, involving endangering the welfare
19 of a child, which is barred from expungement pursuant to
20 subsection b. of N.J.S.2C:52-2 and therefore renders the person
21 ineligible under those paragraphs, may be eligible to seek
22 expungement relief pursuant to this paragraph. The person shall
23 have been successfully discharged from a term of special probation
24 as provided in this section, regardless of whether the person was
25 sentenced to special probation under this section, section 2 of
26 P.L.2012, c.23 (C.2C:35-14.2), or N.J.S.2C:45-1, for a period of at
27 least 10 years prior to seeking an expungement of all records and
28 information relating to all arrests, detentions, convictions, and
29 proceedings for any offense enumerated in Title 2C of the New
30 Jersey Statutes that existed at the time of discharge from special
31 probation. The person shall present an application to the Superior
32 Court in the county in which the person was sentenced to special
33 probation, which contains a duly verified petition as provided in
34 N.J.S.2C:52-7 for each crime or offense sought to be expunged.
35 The petition for expungement shall proceed pursuant to
36 N.J.S.2C:52-1 et seq. A person shall not be eligible to apply for an
37 expungement under this paragraph if that person was convicted of
38 any offense barred from expungement pursuant to subsection b. or
39 c. of N.J.S.2C:52-2, other than a conviction for endangering the
40 welfare of a child under paragraph (2) of subsection a. of
41 N.J.S.2C:24-4, which crime is also determined by the court, based
42 upon a review by the prosecutor in accordance with subparagraph
43 (b) of this paragraph, to have been nonviolent with respect to the
44 facts and elements of the criminal act, or if that person has been
45 convicted of any crime or offense since the date of discharge from
46 special probation. In addition, no application for expungement
47 shall be considered until any pending charges are disposed. It shall
48 be the obligation of the prosecutor to notify the court of any

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

16 (b) The prosecutor, when reviewing a conviction for
17 endangering the welfare of a child under paragraph (2) of
18 subsection a. of N.J.S.2C:24-4 as to whether the facts and elements
19 of the criminal act were nonviolent and therefore do not prevent, as
20 to this conviction, a person's eligibility for expungement relief
21 under this paragraph, shall consider any act which falls under the
22 following definitions to be violent acts, and render the person
23 ineligible for expungement relief:

24 any act of "abuse," as defined in R.S.9:6-1, that is specifically
25 listed in part (c) of the definition, employing or permitting a child to
26 be employed in any occupation, employment or vocation dangerous
27 to the morals of such child; part (e) of the definition, the performing
28 of any indecent, immoral or unlawful act or deed, in the presence of
29 a child, that may tend to debauch or endanger or degrade the morals
30 of the child; part (f) of the definition, permitting or allowing any
31 other person to perform any indecent, immoral or unlawful act in
32 the presence of the child that may tend to debauch or endanger the
33 morals of such child; or part (g) of the definition, using excessive
34 physical restraint on the child under circumstances which do not
35 indicate that the child's behavior is harmful to himself, others or
36 property;

37 any act of "cruelty," as defined in R.S.9:6-1; and

38 any act resulting in an "abused or neglected child," as defined by
39 subsection c. of section 1 of P.L.1974, c.119 (C.9:6-8.21), that is
40 specifically listed in paragraph (1) of the definition, inflicting or
41 allowing to be inflicted upon such child physical injury by other
42 than accidental means which causes or creates a substantial risk of
43 death, or serious or protracted disfigurement, or protracted
44 impairment of physical or emotional health or protracted loss or
45 impairment of the function of any bodily organ; paragraph (2) of the
46 definition, creating or allowing to be created a substantial or
47 ongoing risk of physical injury to such child by other than
48 accidental means which would be likely to cause death or serious or

1 protracted disfigurement, or protracted loss or impairment of the
2 function of any bodily organ; paragraph (3) of the definition,
3 committing or allowing to be committed an act of sexual abuse
4 against the child; subparagraph (b) of paragraph (4) of the
5 definition, solely as to a child whose physical, mental, or emotional
6 condition has been impaired or is in imminent danger of becoming
7 impaired as the result of the failure of the child's parent or guardian
8 to exercise a minimum degree of care in providing the child with
9 proper supervision or guardianship, by unreasonably inflicting or
10 allowing to be inflicted excessive corporal punishment, or the
11 substantial risk thereof; paragraph (6) of the definition, for a child
12 upon whom excessive physical restraint has been used under
13 circumstances which do not indicate that the child's behavior is
14 harmful to himself, others, or property; or paragraph (7) of the
15 definition, for a child who is in an institution and, pursuant to
16 subparagraph (a) of that paragraph, has been placed there
17 inappropriately for a continued period of time with the knowledge
18 that the placement has resulted or may continue to result in harm to
19 the child's mental or physical well-being or, pursuant to
20 subparagraph (b) of that paragraph, who has been willfully isolated
21 from ordinary social contact under circumstances which indicate
22 emotional or social deprivation.

23 (cf: P.L.2021, c.460)

24

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

34

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

37

38

39

STATEMENT

40

41 This bill would upgrade the penalties for certain crimes
42 involving heroin and fentanyl. The bill also establishes new crimes
43 addressing two types of "heroin mixtures": heroin mixtures with
44 fentanyl, and heroin mixtures without fentanyl. A heroin mixture as
45 defined in the bill is heroin mixed with at least one other controlled
46 dangerous substance.

47 HEROIN; HEROIN MIXTURES CONTAINING CDS OTHER THAN
48 FENTANYL. Currently, it is a crime of the first degree to

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

12 Under the bill, it would be a crime of the first degree to
13 manufacture, distribute, or dispense heroin or its analog, or a heroin
14 mixture that does not contain fentanyl or its analog, in a quantity of
15 10 grams or more including any adulterants or dilutants. It would
16 be a crime of the second degree to manufacture, distribute, or
17 dispense heroin or its analog including adulterants or dilutants in a
18 quantity of five grams or more but less than 10 grams. If the
19 quantity is less than five grams it would be a crime of the third
20 degree, with an increased fine of up to \$75,000.

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

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

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

47 “Adulterants or dilutants” are substances which are mixed or
48 combined with a controlled dangerous substance and any medium

1 which is used to carry a controlled dangerous substance, if the
2 controlled dangerous substance is not readily removable from the
3 medium. The terms include, but are not limited to, blotter paper,
4 stamps or cigarettes.

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

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