

SENATE, No. 3966

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 15, 2023

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Requires notification to appropriate departments if drug court participant tests positive for marijuana or cannabis.

CURRENT VERSION OF TEXT

As introduced.



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

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) of subsection f. of

1 this section, to comply with program rules and the requirements of
2 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) 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. In notifying the probation
35 department or other appropriate agency of a positive drug test, the
36 treatment provider shall specify if the person tests positive for
37 marijuana or cannabis. The probation department or other
38 appropriate agency shall promptly notify the appropriate division
39 within the Department of Law and Public Safety if a person tests
40 positive for marijuana or cannabis. The probation department or
41 other appropriate agency shall immediately notify the court and the
42 prosecutor in the event that the person refuses to submit to a
43 periodic drug or alcohol test or for any reason terminates the
44 person's participation in the course of treatment, or commits any act
45 that would constitute an escape.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 grant the relief requested unless it finds that the need for the
2 availability of the records outweighs the desirability of having the
3 person freed from any disabilities associated with their availability,
4 or it finds that the person is otherwise ineligible for expungement
5 pursuant to this paragraph. No fee shall be charged to a person
6 eligible for relief pursuant to this paragraph.

7 (b) The prosecutor, when reviewing a conviction for
8 endangering the welfare of a child under paragraph (2) of
9 subsection a. of N.J.S.2C:24-4 as to whether the facts and elements
10 of the criminal act were nonviolent and therefore do not prevent, as
11 to this conviction, a person's eligibility for expungement relief
12 under this paragraph, shall consider any act which falls under the
13 following definitions to be violent acts, and render the person
14 ineligible for expungement relief:

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

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

29 any act resulting in an "abused or neglected child," as defined by
30 subsection c. of section 1 of P.L.1974, c.119 (C.9:6-8.21), that is
31 specifically listed in paragraph (1) of the definition, inflicting or
32 allowing to be inflicted upon such child physical injury by other
33 than accidental means which causes or creates a substantial risk of
34 death, or serious or protracted disfigurement, or protracted
35 impairment of physical or emotional health or protracted loss or
36 impairment of the function of any bodily organ; paragraph (2) of the
37 definition, creating or allowing to be created a substantial or
38 ongoing risk of physical injury to such child by other than
39 accidental means which would be likely to cause death or serious or
40 protracted disfigurement, or protracted loss or impairment of the
41 function of any bodily organ; paragraph (3) of the definition,
42 committing or allowing to be committed an act of sexual abuse
43 against the child; subparagraph (b) of paragraph (4) of the
44 definition, solely as to a child whose physical, mental, or emotional
45 condition has been impaired or is in imminent danger of becoming
46 impaired as the result of the failure of the child's parent or guardian
47 to exercise a minimum degree of care in providing the child with
48 proper supervision or guardianship, by unreasonably inflicting or

1 allowing to be inflicted excessive corporal punishment, or the
2 substantial risk thereof; paragraph (6) of the definition, for a child
3 upon whom excessive physical restraint has been used under
4 circumstances which do not indicate that the child's behavior is
5 harmful to himself, others, or property; or paragraph (7) of the
6 definition, for a child who is in an institution and, pursuant to
7 subparagraph (a) of that paragraph, has been placed there
8 inappropriately for a continued period of time with the knowledge
9 that the placement has resulted or may continue to result in harm to
10 the child's mental or physical well-being or, pursuant to
11 subparagraph (b) of that paragraph, who has been willfully isolated
12 from ordinary social contact under circumstances which indicate
13 emotional or social deprivation.

14 (cf: P.L.2021, c.460, s.1)

15

16 2. This act shall take effect on the first day of seventh month
17 next following the date of enactment, except the Attorney General
18 may take any anticipatory action in advance as shall be necessary
19 for the implementation of this act.

20

21

22

STATEMENT

23

24 This bill requires notification to appropriate departments if a
25 drug court participant tests positive for marijuana or cannabis.

26 Under current law a drug or alcohol-dependent person may be
27 admitted into drug court if the person was convicted of a crime that
28 has a presumption of incarceration or a minimum period of parole
29 ineligibility, and also meets certain eligibility criteria. The probation
30 department or other appropriate agency designated by the court to
31 monitor or supervise the person's special probation is required to
32 periodically report to the court the person's progress in treatment
33 and compliance with court-imposed terms and conditions. The
34 treatment provider is required to promptly report to the probation
35 department or other appropriate agency if a person fails to comply
36 with any court-imposed term or condition of special probation or
37 required treatment, including but not limited to, a positive drug or
38 alcohol test, the unexcused failure to attend any session or activity,
39 or any act that would constitute an escape.

40 Under the bill, in notifying the probation department or other
41 appropriate agency of a person's positive drug test, the treatment
42 provider is required to specify if the person tests positive for
43 marijuana or cannabis. Under the bill, if a person tests positive for
44 marijuana or cannabis, the probation department or other
45 appropriate agency is also required to promptly notify the
46 appropriate division within the Department of Law and Public
47 Safety.