

(CORRECTED COPY)

P.L.2013, CHAPTER 158, *approved September 6, 2013*  
Assembly, No. 3598

1 AN ACT concerning municipal court diversion programs, amending  
2 various parts of the statutory law and supplementing Title 2C of  
3 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. (New section) a. Eligibility and Application. Whenever any  
9 defendant who has not been previously convicted of any petty  
10 disorderly persons offense, disorderly persons offense or crime  
11 under any law of the United States, this State or any other state, and  
12 who has not previously participated in conditional discharge under  
13 N.J.S.2C:36A-1, supervisory treatment under N.J.S.2C:43-12, or  
14 conditional dismissal under P.L. , c. (C. ) (pending before the  
15 Legislature as this bill), is charged with a petty disorderly offense  
16 or disorderly persons offense except as provided in subsection b. of  
17 this section, the defendant may, after a plea of guilty or a finding of  
18 guilt, but prior to the entry of a judgment of conviction and with  
19 appropriate notice to the prosecutor, apply to the court for entry into  
20 the conditional dismissal program pursuant to the requirements of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill). As  
22 a condition of such application, the defendant shall submit to the  
23 fingerprint identification procedures as provided in R.S.53:1-15  
24 before making such application to the court to allow sufficient time  
25 for verification of the defendant's criminal history by the  
26 prosecutor.

27 b. (1) A defendant shall not be eligible for participation in the  
28 conditional dismissal program if the offense for which the person is  
29 charged involved: (a) organized criminal or gang activity; (b) a  
30 continuing criminal business or enterprise; (c) a breach of the public  
31 trust by a public officer or employee; (d) domestic violence as  
32 defined by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-  
33 19); (e) an offense against an elderly, disabled or minor person; (f)  
34 an offense involving driving or operating a motor vehicle while  
35 under the influence of alcohol, intoxicating liquor, narcotic,  
36 hallucinogenic or habit-producing drug; (g) a violation of animal

**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 cruelty laws; or (h) any disorderly persons offense or petty  
2 disorderly persons offense under chapter 35 or 36 of Title 2C.

3 (2) Nothing in this act shall preclude a defendant charged with  
4 any disorderly persons offense or petty disorderly persons offense  
5 under chapter 35 or 36 of Title 2C from applying to the court for  
6 admission into the conditional discharge program in accordance  
7 with N.J.S.2C:36A-1.

8 c. In addition to the eligibility criteria enumerated in this  
9 section, the court shall consider the following factors:

10 (1) The nature and circumstances of the offense;

11 (2) The facts surrounding the commission of the offense;

12 (3) The motivation, age, character and attitude of the defendant;

13 (4) The desire of the complainant or victim to forego  
14 prosecution;

15 (5) The needs and interests of the victim and the community;

16 (6) The extent to which the defendant's offense constitutes part  
17 of a continuing pattern of anti-social behavior;

18 (7) Whether the offense is of an assaultive or violent nature,  
19 whether in the act itself or in the possible injurious consequences of  
20 such behavior;

21 (8) Whether the applicant's participation will adversely affect  
22 the prosecution of codefendants;

23 (9) Whether diversion of the defendant from prosecution is  
24 consistent with the public interest; and

25 (10) Any other factors deemed relevant by the court.  
26

27 2. (New section) Court Approval of Defendant's Participation  
28 in Conditional Dismissal Program. After considering the eligibility  
29 criteria set forth in section 1 of P.L. , c. (C. ) (pending before  
30 the Legislature as this bill), the defendant's criminal history and the  
31 municipal prosecutor's recommendation, the court may, without  
32 entering a judgment of conviction, and after proper reference to the  
33 State Bureau of Identification criminal history record information  
34 files, approve the defendant's participation in the conditional  
35 dismissal program established pursuant to P.L. , c. (C. )  
36 (pending before the Legislature as this bill) and place the defendant  
37 under a probation monitoring status for a period of one year. The  
38 court may also impose financial obligations and other terms and  
39 conditions in accordance with P.L. , c. (C. ) (pending before  
40 the Legislature as this bill). Where the court approves a defendant's  
41 participation in the conditional dismissal program over the  
42 municipal prosecutor's objection, the order approving the  
43 defendant's participation in the program shall be a final order but  
44 upon request of the municipal prosecutor shall be stayed for a  
45 period of 10 days in order to permit the prosecutor to appeal such  
46 order to the Superior Court.

1       3. (New section) Extension of Conditional Dismissal Term. A  
2 defendant may apply to the court for an extension of a term of  
3 conditional dismissal pursuant to the provisions of P.L.       ,  
4 c. (C.       ) (pending before the Legislature as this bill) to allow  
5 sufficient time to pay financial obligations imposed by the court. A  
6 judge may also extend a defendant's conditional dismissal term for  
7 good cause.

8  
9       4. (New section) Violation of Terms Prior To Dismissal. If a  
10 defendant who is participating in the conditional dismissal program  
11 established pursuant to P.L.       , c. (C.       ) (pending before the  
12 Legislature as this bill) is convicted of any petty disorderly persons  
13 offense, disorderly persons offense or crime under any law of the  
14 United States, this State or any other state, or otherwise fails to  
15 comply with the terms and conditions imposed by the court, the  
16 court may enter a judgment of conviction and impose a fine,  
17 penalty, or other assessment which may be imposed by the court in  
18 accordance with the defendant's prior plea of guilty or finding of  
19 guilt.

20  
21       5. (New section) Dismissal. If, at the end of the term of the  
22 conditional dismissal, the defendant has not been convicted of any  
23 subsequent petty disorderly persons offense, disorderly persons  
24 offense or crime under any law of the United States, this State or  
25 any other state, and has complied with any other terms and  
26 conditions imposed by the court, the court may terminate the  
27 probation monitoring and dismiss the proceedings against the  
28 defendant.

29  
30       6. (New section) Effect of Dismissal. The conditional  
31 dismissal of petty disorderly persons or disorderly persons offenses  
32 granted pursuant P.L.       , c. (C.       ) (pending before the  
33 Legislature as this bill) shall not be deemed a conviction for  
34 purposes of disqualifications or disabilities, if any, imposed by law  
35 upon conviction of a petty disorderly persons or disorderly persons  
36 offense but shall be reported to the State Bureau of Identification  
37 criminal history record information files for purposes of  
38 determining future eligibility or exclusion from court diversion  
39 programs. A conditional dismissal granted pursuant to P.L.       , c.  
40 (C.       ) (pending before the Legislature as this bill) shall not be  
41 deemed a conviction for the purposes of determining whether a  
42 second or subsequent offense has occurred under any law of this  
43 State.

44  
45       7. (New section) Limitation. A conditional dismissal pursuant  
46 to P.L.       , c. (C.       ) (pending before the Legislature as this bill)  
47 shall be granted only once with respect to any defendant.

1 8. (New section) Conditional Dismissal Assessment,  
2 Restitution and Other Assessments. A defendant applying for  
3 admission to the conditional dismissal program pursuant to P.L. ,  
4 c. (C. ) (pending before the Legislature as this bill) shall pay to  
5 the court an application fee of \$75 which, upon collection, shall be  
6 deposited into the "Municipal Court Diversion Fund" established  
7 pursuant to section 9 of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill). Monies in the fund shall be used to defray  
9 the cost of intake and monitoring services related to the defendant's  
10 participation in the conditional dismissal program as provided by  
11 the Probation Division of the Superior Court. If admitted into the  
12 program, the defendant shall be required to pay any restitution,  
13 costs, and other mandatory assessments that would have been  
14 imposed by law for a conviction of the offense charged.

15 A municipal court judge may impose an assessment, based on the  
16 nature of the offense and the character of the defendant, that shall  
17 not exceed the amount of a fine that would have been imposed for  
18 conviction of the offense charged. Such assessment shall be  
19 distributed in the same manner as a fine for the offense charged. A  
20 defendant shall be advised of these financial conditions prior to  
21 seeking entry into the program.

22 A defendant may apply for a waiver of the fee, by reason of  
23 poverty, pursuant to the Rules Governing the Courts of the State of  
24 New Jersey, or the court may permit the defendant to pay the  
25 conditional dismissal fee and other assessments in installments or  
26 may order other alternatives pursuant to section 1 of P.L.2009,  
27 c.317 (C.2B:12-23.1).

28  
29 9. (New section) a. There is established within the General  
30 Fund a dedicated, non-lapsing fund to be known as the "Municipal  
31 Court Diversion Fund," which shall be administered by the  
32 Administrative Office of the Courts.

33 b. The fund shall be the depository of \$75 application fee  
34 collected pursuant to section 8 of P.L. , c. (C. ) (pending  
35 before the Legislature as this bill) for admission to the conditional  
36 dismissal program established pursuant to P.L. , c. (C. )  
37 (pending before the Legislature as this bill).

38 c. Monies in the fund shall be used to offset the cost of the  
39 intake and monitoring services for defendants diverted from  
40 municipal court prosecution for petty disorderly persons and  
41 disorderly persons offenses under conditional dismissal pursuant to  
42 P.L. , c. (C. ) (pending before the Legislature as this bill).

43  
44 10. N.J.S.2C:36A-1 is amended to read as follows:

45 2C:36A-1. Conditional discharge for certain first offenses **【**;  
46 expunging of records**】**. a. Whenever any person who has not  
47 previously been convicted of any offense under section 20 of  
48 P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty

1 disorderly persons offense defined in chapter 35 or 36 of this title  
2 or, subsequent to the effective date of this title, under any law of the  
3 United States, this State or any other state relating to marijuana, or  
4 stimulant, depressant, or hallucinogenic drugs, and who has not  
5 previously participated in a program of supervisory treatment  
6 pursuant to N.J.S.2C:43-12 or conditional dismissal pursuant to  
7 P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill) is  
8 charged with or convicted of any disorderly persons offense or petty  
9 disorderly persons offense under chapter 35 or 36 of this title, the  
10 court upon notice to the prosecutor and subject to subsection c. of  
11 this section, may on motion of the defendant or the court:

12 (1) Suspend further proceedings and with the consent of the  
13 person after reference to the State Bureau of Identification criminal  
14 history record information files, place him under supervisory  
15 treatment upon such reasonable terms and conditions as it may  
16 require; or

17 (2) After plea of guilty or finding of guilty, and without entering  
18 a judgment of conviction, and with the consent of the person after  
19 proper reference to the State Bureau of Identification criminal  
20 history record information files, place him on supervisory treatment  
21 upon reasonable terms and conditions as it may require, or as  
22 otherwise provided by law.

23 b. In no event shall the court require as a term or condition of  
24 supervisory treatment under this section, referral to any residential  
25 treatment facility for a period exceeding the maximum period of  
26 confinement prescribed by law for the offense for which the  
27 individual has been charged or convicted, nor shall any term of  
28 supervisory treatment imposed under this subsection exceed a  
29 period of three years. If a person is placed under supervisory  
30 treatment under this section after a plea of guilty or finding of guilt,  
31 the court as a term and condition of supervisory treatment shall  
32 suspend the person's driving privileges for a period to be fixed by  
33 the court at not less than six months or more than two years unless  
34 the court finds compelling circumstances warranting an exception.  
35 For the purposes of this subsection, compelling circumstances  
36 warranting an exception exist if the suspension of the person's  
37 driving privileges will result in extreme hardship and alternative  
38 means of transportation are not available. In the case of a person  
39 who at the time of placement under supervisory treatment under this  
40 section is less than 17 years of age, the period of suspension of  
41 driving privileges authorized herein, including a suspension of the  
42 privilege of operating a motorized bicycle, shall commence on the  
43 day the person is placed on supervisory treatment and shall run for a  
44 period as fixed by the court of not less than six months or more than  
45 two years after the day the person reaches the age of 17 years.

46 If the driving privilege of a person is under revocation,  
47 suspension, or postponement for a violation of this title or Title 39  
48 of the Revised Statutes at the time of the person's placement on

1 supervisory treatment under this section, the revocation, suspension  
2 or postponement period imposed herein shall commence as of the  
3 date of the termination of the existing revocation, suspension or  
4 postponement. The court which places a person on supervisory  
5 treatment under this section shall collect and forward the person's  
6 driver's license to the New Jersey Motor Vehicle Commission and  
7 file an appropriate report with the commission in accordance with  
8 the procedure set forth in N.J.S.2C:35-16. The court shall also  
9 inform the person of the penalties for operating a motor vehicle  
10 during the period of license suspension or postponement as required  
11 in N.J.S.2C:35-16.

12 Upon violation of a term or condition of supervisory treatment  
13 the court may enter a judgment of conviction and proceed as  
14 otherwise provided, or where there has been no plea of guilty or  
15 finding of guilty, resume proceedings. Upon fulfillment of the terms  
16 and conditions of supervisory treatment the court shall terminate the  
17 supervisory treatment and dismiss the proceedings against him.  
18 Termination of supervisory treatment and dismissal under this  
19 section shall be without court adjudication of guilt and shall not be  
20 deemed a conviction for purposes of disqualifications or  
21 disabilities, if any, imposed by law upon conviction of a crime or  
22 disorderly persons offense but shall be reported by the clerk of the  
23 court to the State Bureau of Identification criminal history record  
24 information files. Termination of supervisory treatment and  
25 dismissal under this section may occur only once with respect to  
26 any person. Imposition of supervisory treatment under this section  
27 shall not be deemed a conviction for the purposes of determining  
28 whether a second or subsequent offense has occurred under section  
29 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or  
30 any law of this State.

31 c. Proceedings under this section shall not be available to any  
32 defendant unless the court in its discretion concludes that:

33 (1) The defendant's continued presence in the community, or in  
34 a civil treatment center or program, will not pose a danger to the  
35 community; or

36 (2) That the terms and conditions of supervisory treatment will  
37 be adequate to protect the public and will benefit the defendant by  
38 serving to correct any dependence on or use of controlled  
39 substances which he may manifest; and

40 (3) The person has not previously received supervisory  
41 treatment under section 27 of P.L.1970, c.226 (C.24:21-27),  
42 N.J.S.2C:43-12, or the provisions of this chapter.

43 d. A person seeking conditional discharge pursuant to this  
44 section shall pay to the court a fee of \$75~~].~~ The court shall forward  
45 all money collected under this subsection to the treasurer of the  
46 county in which the court is located. This money shall be used to  
47 defray the cost of juror compensation within that county] which  
48 shall be paid to the Treasurer of the State of New Jersey for deposit

1 in the General Fund. The defendant shall also be required to pay  
2 restitution, costs and other assessments as provided by law. A  
3 person may apply for a waiver of this fee, by reason of poverty,  
4 pursuant to the Rules Governing the Courts of the State of New  
5 Jersey]. Of the moneys collected under this subsection, \$30 of each  
6 fee shall be deposited in the temporary reserve fund created by  
7 section 25 of P.L.1993, c.275. After December 31, 1994, the \$75  
8 fee shall be paid to the court, for use by the State] , or the court  
9 may permit the defendant to pay the conditional discharge fee and  
10 other assessments in installments or may order other alternatives  
11 pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).  
12 (cf: P.L.2008, c.84, s.1)

13

14 11. N.J.S.2C:43-12 is amended to read as follows:

15 2C:43-12. Supervisory Treatment--Pretrial Intervention.

16 a. Public policy. The purpose of [sections] N.J.S.2C:43-12  
17 through N.J.S.2C:43-22 [of this chapter] is to effectuate a  
18 Statewide program of Pretrial Intervention. It is the policy of the  
19 State of New Jersey that supervisory treatment should ordinarily be  
20 limited to persons who have not previously been convicted of any  
21 criminal offense under the laws of New Jersey, or under any  
22 criminal law of the United States, or any other state when  
23 supervisory treatment would:

24 (1) Provide applicants, on an equal basis, with opportunities to  
25 avoid ordinary prosecution by receiving early rehabilitative services  
26 or supervision, when such services or supervision can reasonably be  
27 expected to deter future criminal behavior by an applicant, and  
28 when there is apparent causal connection between the offense  
29 charged and the rehabilitative or supervisory need, without which  
30 cause both the alleged offense and the need to prosecute might not  
31 have occurred; or

32 (2) Provide an alternative to prosecution for applicants who  
33 might be harmed by the imposition of criminal sanctions as  
34 presently administered, when such an alternative can be expected to  
35 serve as sufficient sanction to deter criminal conduct; or

36 (3) Provide a mechanism for permitting the least burdensome  
37 form of prosecution possible for defendants charged with  
38 "victimless" offenses, other than defendants who were public  
39 officers or employees charged with offenses that involved or  
40 touched their office or employment; or

41 (4) Provide assistance to criminal calendars in order to focus  
42 expenditure of criminal justice resources on matters involving  
43 serious criminality and severe correctional problems; or

44 (5) Provide deterrence of future criminal or disorderly behavior  
45 by an applicant in a program of supervisory treatment.

46 b. Admission of an applicant into a program of supervisory  
47 treatment shall be measured according to the applicant's amenability  
48 to correction, responsiveness to rehabilitation and the nature of the

1 offense. There shall be a presumption against admission into a  
2 program of supervisory treatment for a defendant who was a public  
3 officer or employee whose offense involved or touched upon his  
4 public office or employment.

5 c. The decision and reasons therefore made by the designated  
6 judges (or assignment judges), prosecutors and program directors in  
7 granting or denying applications for supervisory treatment, in  
8 recommending and ordering termination from the program or  
9 dismissal of charges, in all cases shall be reduced to writing and  
10 disclosed to the applicant.

11 d. If an applicant desires to challenge the decision of the  
12 prosecutor or program director not to recommend enrollment in a  
13 program of supervisory treatment the proceedings prescribed under  
14 **【section 14】** N.J.S.2C:43-14 and in accordance with Rules of Court  
15 shall be followed.

16 e. Referral. At any time prior to trial but after the filing of a  
17 criminal complaint, or the filing of an accusation or the return of an  
18 indictment, with the consent of the prosecutor and upon written  
19 recommendation of the program director, the assignment judge or a  
20 judge designated by him may postpone all further proceedings  
21 against an applicant and refer said applicant to a program of  
22 supervisory treatment approved by the Supreme Court. Prosecutors  
23 and program directors shall consider in formulating their  
24 recommendation of an applicant's participation in a supervisory  
25 treatment program, among others, the following criteria:

- 26 (1) The nature of the offense;
- 27 (2) The facts of the case;
- 28 (3) The motivation and age of the defendant;
- 29 (4) The desire of the complainant or victim to forego  
30 prosecution;
- 31 (5) The existence of personal problems and character traits  
32 which may be related to the applicant's crime and for which services  
33 are unavailable within the criminal justice system, or which may be  
34 provided more effectively through supervisory treatment and the  
35 probability that the causes of criminal behavior can be controlled by  
36 proper treatment;
- 37 (6) The likelihood that the applicant's crime is related to a  
38 condition or situation that would be conducive to change through  
39 his participation in supervisory treatment;
- 40 (7) The needs and interests of the victim and society;
- 41 (8) The extent to which the applicant's crime constitutes part of  
42 a continuing pattern of anti-social behavior;
- 43 (9) The applicant's record of criminal and penal violations and  
44 the extent to which he may present a substantial danger to others;
- 45 (10) Whether or not the crime is of an assaultive or violent  
46 nature, whether in the criminal act itself or in the possible injurious  
47 consequences of such behavior;



- 1 (11) Consideration of whether or not prosecution would  
2 exacerbate the social problem that led to the applicant's criminal  
3 act;
- 4 (12) The history of the use of physical violence toward others;
- 5 (13) Any involvement of the applicant with organized crime;
- 6 (14) Whether or not the crime is of such a nature that the value  
7 of supervisory treatment would be outweighed by the public need  
8 for prosecution;
- 9 (15) Whether or not the applicant's involvement with other  
10 people in the crime charged or in other crime is such that the  
11 interest of the State would be best served by processing his case  
12 through traditional criminal justice system procedures;
- 13 (16) Whether or not the applicant's participation in pretrial  
14 intervention will adversely affect the prosecution of codefendants;  
15 and
- 16 (17) Whether or not the harm done to society by abandoning  
17 criminal prosecution would outweigh the benefits to society from  
18 channeling an offender into a supervisory treatment program.
- 19 f. Review of Supervisory Treatment Applications; Procedure  
20 Upon Denial. Each applicant for supervisory treatment shall be  
21 entitled to full and fair consideration of his application. If an  
22 application is denied, the program director or the prosecutor shall  
23 precisely state his findings and conclusion which shall include the  
24 facts upon which the application is based and the reasons offered  
25 for the denial. If the applicant desires to challenge the decision of a  
26 program director not to recommend, or of a prosecutor not to  
27 consent to, enrollment into a supervisory treatment program, a  
28 motion shall be filed before the designated judge (or assignment  
29 judge) authorized pursuant to the rules of court to enter orders.
- 30 g. Limitations. Supervisory treatment may occur only once  
31 with respect to any defendant and any person who has previously  
32 received supervisory treatment under section 27 of P.L.1970, c.226  
33 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1,  
34 or a conditional dismissal pursuant to P.L. , c (C. ) (pending  
35 before the Legislature as this bill) shall not be eligible for  
36 supervisory treatment under this section. However, supervisory  
37 treatment, as provided herein, shall be available to a defendant  
38 irrespective of whether the defendant contests his guilt of the charge  
39 or charges against him.
- 40 h. Termination. Termination of supervisory treatment under  
41 this section shall be immediately reported to the assignment judge  
42 of the county who shall forward such information to the  
43 Administrative Director of the Courts.
- 44 i. Appointment of Program Directors; Authorized Referrals.  
45 Programs of supervisory treatment and appointment of the program  
46 directors require approval by the Supreme Court with the consent of  
47 the assignment judge and prosecutor. Referrals of participants from  
48 supervisory treatment programs may be to any public or private

1 office or agency, including but not limited to, programs within the  
2 probation service of the court, offering counseling or any other  
3 social service likely to aid in the rehabilitation of the participant  
4 and to deter the commission of other offenses.

5 j. Health Care Professional Licensing Board Notification. The  
6 program director shall promptly notify the State Board of Medical  
7 Examiners when a State licensed physician or podiatrist has been  
8 enrolled in a supervisory treatment program after he has been  
9 charged with an offense involving drugs or alcohol.

10 (cf: P.L.2007, c.49, s.9)

11  
12 12. N.J.S.2C:43-13 is amended to read as follows:

13 2C:43-13. Supervisory Treatment Procedure. a. Agreement. The  
14 terms and duration of the supervisory treatment shall be set forth in  
15 writing, signed by the prosecutor and agreed to and signed by the  
16 participant. Payment of the assessment required by section 2 of  
17 P.L.1979, c.396 (C.2C:43-3.1) shall be included as a term of the  
18 agreement. If the participant is represented by counsel, defense  
19 counsel shall also sign the agreement. Each order of supervisory  
20 treatment shall be filed with the county clerk.

21 b. Charges. During a period of supervisory treatment the  
22 charge or charges on which the participant is undergoing  
23 supervisory treatment shall be held in an inactive status pending  
24 termination of the supervisory treatment pursuant to subsection d.  
25 or e. of this section.

26 c. Period of treatment. Supervisory treatment may be for such  
27 period, as determined by the designated judge or the assignment  
28 judge, not to exceed three years, provided, however, that the period  
29 of supervisory treatment may be shortened or terminated as the  
30 program director may determine with the consent of the prosecutor  
31 and the approval of the court.

32 d. Dismissal. Upon completion of supervisory treatment, and  
33 with the consent of the prosecutor, the complaint, indictment or  
34 accusation against the participant may be dismissed with prejudice.

35 e. Violation of conditions. Upon violation of the conditions of  
36 supervisory treatment, the court shall determine, after summary  
37 hearing, whether said violation warrants the participant's dismissal  
38 from the supervisory treatment program or modification of the  
39 conditions of continued participation in that or another supervisory  
40 treatment program. Upon dismissal of the participant from the  
41 supervisory treatment program, the charges against the participant  
42 may be reactivated and the prosecutor may proceed as though no  
43 supervisory treatment had been commenced.

44 f. Evidence. No statement or other disclosure by a participant  
45 undergoing supervisory treatment made or disclosed to the person  
46 designated to provide such supervisory treatment shall be disclosed,  
47 at any time, to the prosecutor in connection with the charge or  
48 charges against the participant, nor shall any such statement or

1 disclosure be admitted as evidence in any civil or criminal  
2 proceeding against the participant. Nothing provided herein,  
3 however, shall prevent the person providing supervisory treatment  
4 from informing the prosecutor, or the court, upon request or  
5 otherwise as to whether or not the participant is satisfactorily  
6 responding to supervisory treatment.

7 g. Delay. No participant agreeing to undergo supervisory  
8 treatment shall be permitted to complain of a lack of speedy trial for  
9 any delay caused by the commencement of supervisory treatment.

10 A person applying for admission to a program of supervisory  
11 treatment shall pay to the court a fee of ~~[\$75.00]~~ \$75 which shall  
12 be paid to the Treasurer of the State of New Jersey for deposit into  
13 the General Fund. ~~【The court shall forward all money collected~~  
14 ~~under this subsection to the treasurer of the county in which the~~  
15 ~~court is located. This money shall be used to defray the cost of~~  
16 ~~juror compensation within that county.】~~ A person may apply for a  
17 waiver of this fee, by reason of poverty, pursuant to the Rules  
18 Governing the Courts of the State of New Jersey~~【~~. Of the moneys  
19 collected under this subsection, \$30.00 of each application fee shall  
20 be deposited in the temporary reserve fund created by section 25 of  
21 P.L.1993, c.275. After December 31, 1994, the \$75.00 fee shall be  
22 paid to the court, for use by the State~~】, or the court may allow for~~  
23 the payment of the fee and other financial obligations by  
24 installment.

25 (cf: P.L.1993, c.275, s.15)

26

27 13. N.J.S.2C:52-6 is amended to read as follows:

28 2C:52-6. Arrests not resulting in conviction

29 a. In all cases, except as herein provided, wherein a person has  
30 been arrested or held to answer for a crime, disorderly persons  
31 offense, petty disorderly persons offense or municipal ordinance  
32 violation under the laws of this State or of any governmental entity  
33 thereof and against whom proceedings were dismissed, or who was  
34 acquitted, or who was discharged without a conviction or finding of  
35 guilt, may at any time following the disposition of proceedings,  
36 present a duly verified petition as provided in ~~【section】~~  
37 N.J.S.2C:52-7 to the Superior Court in the county in which the  
38 disposition occurred praying that records of such arrest and all  
39 records and information pertaining thereto be expunged.

40 b. Any person who has had charges dismissed against him  
41 pursuant to P.L.1970, c.226, s.27 (C.24:21-27) or pursuant to a  
42 program of supervisory treatment pursuant to N.J.S.2C:43-12, or  
43 conditional discharge pursuant to N.J.S.2C:36A-1, or conditional  
44 dismissal pursuant to P.L. , c. (C. )(pending before the  
45 Legislature as this bill), shall be barred from the relief provided in  
46 this section until ~~【6】~~ six months after the entry of the order of  
47 dismissal.

1 c. Any person who has been arrested or held to answer for a  
2 crime shall be barred from the relief provided in this section where  
3 the dismissal, discharge, or acquittal resulted from a determination  
4 that the person was insane or lacked the mental capacity to commit  
5 the crime charged.

6 (cf: N.J.S.2C:52-6)

7  
8 14. R.S.53:1-15 is amended to read as follows:

9 53:1-15. The sheriffs, chiefs of police, members of the State  
10 Police and any other law enforcement agencies and officers shall,  
11 immediately upon the arrest of any person for an indictable offense,  
12 or for any of the grounds specified in paragraph (1), (2), (3) or (4)  
13 of subsection a. of section 5 of P.L.1991, c.261 (C.2C:25-21) or of  
14 any person believed to be wanted for an indictable offense, or  
15 believed to be an habitual criminal, or within a reasonable time after  
16 the filing of a complaint by a law enforcement officer charging any  
17 person with an indictable offense, or upon the arrest of any person  
18 for shoplifting, pursuant to N.J.S.2C:20-11, or upon the arrest of  
19 any person for prostitution, pursuant to N.J.S.2C:34-1, or the  
20 conviction of any other person charged with a nonindictable  
21 offense, where the identity of the person charged is in question, take  
22 the fingerprints of such person, according to the fingerprint system  
23 of identification established by the Superintendent of State Police  
24 and on the forms prescribed, and forward without delay two copies  
25 or more of the same, together with photographs and such other  
26 descriptions as may be required and with a history of the offense  
27 committed, to the State Bureau of Identification.

28 Such sheriffs, chiefs of police, members of the State Police and  
29 any other law enforcement agencies and officers shall also take the  
30 fingerprints, descriptions and such other information as may be  
31 required of unknown dead persons and as required by section 2 of  
32 P.L.1982, c.79 (C.2A:4A-61) of juveniles adjudicated delinquent  
33 and shall forward same to the State Bureau of Identification.

34 Any person charged in a complaint filed by a law enforcement  
35 officer with an indictable offense, who has not been arrested, or any  
36 person charged in an indictment, who has not been arrested, or any  
37 person convicted of assault or harassment constituting domestic  
38 violence as defined in section 3 of P.L.1991, c.261 (C.2C:25-19), or  
39 any person against whom a final order has been entered in any  
40 domestic violence matter pursuant to the provisions of section 13 of  
41 P.L.1991, c.261 (C.2C:25-29) , or any person applying for  
42 participation in a program of conditional dismissal pursuant to  
43 P.L. , c. (C. ) (pending before the Legislature as this bill),  
44 shall submit himself to the identification procedures provided  
45 herein either on the date of any court appearance or upon written  
46 request of the appropriate law enforcement agency within a  
47 reasonable time after the filing of the complaint. Any person who

1 refuses to submit to such identification procedures shall be a  
2 disorderly person.

3 (cf: P.L.1999, c.288, s.1).

4

5 15. This act shall take effect 120 days after enactment, and shall  
6 be applicable to any person who commits a disorderly persons or  
7 petty disorderly persons offense on or after the effective date.

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#### STATEMENT

11

12 This bill establishes a conditional dismissal program in  
13 municipal court similar to the existing supervisory treatment  
14 programs for pre-trial intervention and conditional discharge.

15 Currently, the supervisory treatment programs for pre-trial  
16 intervention and conditional discharge allow the court to suspend  
17 proceedings against eligible defendants while the defendants  
18 participate in supervisory treatment. Persons who are charged with  
19 indictable offenses (crimes of the first, second, third, or fourth  
20 degree) may be eligible for pretrial intervention (“PTI”) pursuant to  
21 N.J.S.2C:43-12 et seq. Persons charged with certain disorderly  
22 persons or petty disorderly persons drug offenses may be eligible  
23 for conditional discharge pursuant to N.J.S.2C:36A-1. If the  
24 defendant violates a term or condition of supervisory treatment, the  
25 court may enter a judgment of conviction or, where the defendant  
26 did not previously plead guilty and was not previously found guilty,  
27 resume the criminal proceedings. If the defendant successfully  
28 completes the program, the criminal charges are dismissed.

29 **CONDITIONAL DISMISSAL PROGRAM.** This bill establishes a  
30 similar diversion program in municipal court to be known as the  
31 conditional dismissal program. Under the provisions of the bill, a  
32 defendant who is charged with a petty disorderly persons offense or  
33 disorderly persons offense may apply to enter into the conditional  
34 dismissal program, provided the person has not been previously  
35 convicted of any petty disorderly persons offense, disorderly  
36 persons offense or crime under any law of the United States, this  
37 State or any other state. A defendant may make an application to  
38 the conditional dismissal program after a plea of guilty or a finding  
39 of guilt, but prior to the entry of judgment of conviction.

40 **FINGERPRINTING REQUIREMENT.** To allow sufficient time for  
41 verification of the defendant’s criminal history by the prosecutor  
42 and as a condition of the application, the defendant will be required  
43 to submit to the fingerprint identification procedures as provided in  
44 R.S.53:1-15 before making an application to the court. This bill  
45 amends R.S.53:1-15 to make that section of law consistent with the  
46 provisions of this bill.

47 **CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional  
48 dismissal will not be available to any person who has previously

1 participated in conditional discharge, conditional dismissal, or  
2 pretrial intervention (PTI). In addition, conditional dismissal will  
3 not be available if the offense for which the person is charged  
4 involved: organized criminal or gang activity; a continuing criminal  
5 business or enterprise; a breach of the public trust by a public  
6 officer or employee; domestic violence; an offense against an  
7 elderly, disabled or minor person; an offense involving driving or  
8 operating a motor vehicle while under the influence of alcohol,  
9 intoxicating liquor, narcotic, hallucinogenic or habit-producing  
10 drug; animal cruelty laws; or any disorderly persons offense or  
11 petty disorderly persons offense under chapter 35 or 36 of the  
12 Criminal Code. However, a person who is charged with a disorderly  
13 persons or petty disorderly persons offense involving drugs may  
14 apply for a conditional discharge in accordance with N.J.S.2C:36A-  
15 1.

16 In addition to these eligibility criteria, the court considering the  
17 application must also consider the following factors: the nature and  
18 circumstances of the offense; the facts surrounding the commission  
19 of the offense; the motivation, age, character and attitude of the  
20 defendant; the desire of the complainant or victim to forego  
21 prosecution; the needs and interests of the victim and the  
22 community; the extent to which the defendant's offense constitutes  
23 part of a continuing pattern of anti-social behavior; whether the  
24 offense is of an assaultive or violent nature, either in the act itself or  
25 in the possible injurious consequences of such behavior; whether  
26 the applicant's participation will adversely affect the prosecution of  
27 codefendants; whether diversion of the defendant from prosecution  
28 is consistent with the public interest; and any other factors deemed  
29 relevant by the court.

30 If the court approves a defendant's participation in the  
31 conditional dismissal program over the municipal prosecutor's  
32 objection, that order will, upon the request of the prosecutor, be  
33 stayed for a period of 10 days in order to permit the prosecutor to  
34 appeal the order to the Superior Court.

35 **PROGRAM REQUIREMENTS.** After taking into consideration the  
36 eligibility criteria, the defendant's criminal history and the  
37 prosecutor's recommendation, the court may approve the  
38 defendant's participation in the conditional dismissal program and  
39 place the defendant under a probation monitoring status for a period  
40 of one year. The court may also impose financial obligations and  
41 other terms and conditions in accordance with the bill. The bill  
42 permits the defendant to apply to the court for an extension of the  
43 term to allow sufficient time to pay financial obligations imposed  
44 by the court. In addition, a judge could extend the term for good  
45 cause.

46 If a defendant who is participating in conditional dismissal is  
47 convicted of any petty disorderly persons offense, disorderly  
48 persons offense or crime under any law of the United States, this

1 State or any other state, or otherwise fails to comply with the terms  
2 and conditions imposed by the court, the court can enter a judgment  
3 of conviction and impose a fine, penalty, or other assessment in  
4 accordance with the defendant's prior plea of guilty or prior finding  
5 of guilt.

6 If, at the end of the term, the defendant has not been convicted of  
7 any subsequent offense in this State or any other state, and has  
8 complied with any other terms and conditions imposed by the court,  
9 the court may terminate the probation monitoring and dismiss the  
10 proceedings against the defendant.

11 The bill provides that a conditional dismissal of a petty  
12 disorderly persons or disorderly persons offense granted pursuant to  
13 the program will not be deemed a conviction for purposes of  
14 disqualifications or disabilities, but shall be reported to the State  
15 Bureau of Identification criminal history record information files  
16 for purposes of determining future eligibility or exclusion from  
17 court diversion programs. A conditional dismissal granted will not  
18 be deemed a conviction for the purposes of determining whether a  
19 second or subsequent offense has occurred under any law of this  
20 State.

21 LIMITATION. A conditional dismissal can only be granted once  
22 with respect to any defendant.

23 CONDITIONAL DISMISSAL APPLICATION FEE. A person applying  
24 for admission to the conditional dismissal program will pay to the  
25 court an application fee of \$75. The fee would be deposited in the  
26 newly created "Municipal Court Diversion Fund" established under  
27 the bill. Monies in this new fund will be used to offset the cost of  
28 intake and monitoring services related to the conditional dismissal  
29 program. If admitted into the program, the defendant would also be  
30 required to pay any restitution, costs, and other mandatory  
31 assessments that would have been imposed by law for a conviction  
32 of the offense charged.

33 A municipal court judge may impose an assessment, based on the  
34 nature of the offense and the character of the defendant, that shall  
35 not exceed the amount of a fine that would have been imposed for  
36 conviction of the offense charged. Such assessment would be  
37 distributed in the same manner as a fine for the offense charged. A  
38 defendant would be advised of these financial conditions prior to  
39 seeking entry into the program.

40 The bill allows the defendant to apply for a waiver of the fee by  
41 reason of poverty. The court may also permit the defendant to pay  
42 the conditional dismissal fee and other assessments in installments  
43 or order other alternatives pursuant to section 1 of P.L.2009, c.317  
44 (C.2B:12-23.1). Under the provisions of that enactment, the court  
45 has several options available if it finds that a person does not have  
46 the ability to pay a penalty in full or has failed to pay a previously  
47 imposed penalty. The court may reduce, suspend, or modify the  
48 installment plan; order that credit be given against the amount owed

1 for each day of confinement if the court finds that the person has  
2 served jail time for the default; revoke any unpaid portion of the  
3 penalty; order the person to perform community service in lieu of  
4 payment of the penalty; or impose any other alternative permitted  
5 by law.

6 MUNICIPAL COURT DIVERSION FUND. The bill establishes a new  
7 dedicated, non-lapsing fund to be known as the "Municipal Court  
8 Diversion Fund," which will be administered by the Administrative  
9 Office of the Courts. The fund will be the depository of the  
10 application fee for the conditional dismissal program. Monies in  
11 the fund will be used to offset the cost of intake and monitoring  
12 services for defendants under the conditional dismissal program.

13 CONDITIONAL DISCHARGE. Currently, the conditional discharge  
14 statute, N.J.S.2C:36A-1, provides that the \$75 fee which is charged  
15 for this program is used to defray the costs of juror compensation.  
16 However, this provision is outdated since these monies are no  
17 longer used to defray the costs of juror compensation, but instead  
18 are paid to the State Treasurer to for deposit in the General Fund.  
19 This bill updates this section of law accordingly.

20 Under the current provisions of the conditional discharge statute,  
21 a person is not eligible for conditional discharge if that person has  
22 committed a disorderly persons or petty disorderly persons drug  
23 offense under any law of the United States, this State or any other  
24 state. The bill amends section a. of N.J.S.2C:36A-1 to also provide  
25 that a person who has participated in any supervisory treatment  
26 program or the conditional dismissal program established under the  
27 bill will not be eligible for participation in the conditional discharge  
28 program.

29 SUPERVISORY TREATMENT (PTI). Similar to the conditional  
30 discharge statute, the PTI statute, N.J.S.2C:43-12, provides that the  
31 \$75 fee charged for the program is used to defray the costs of juror  
32 compensation. Since these monies are no longer used to defray the  
33 costs of juror compensation, the bill updates this section of law  
34 accordingly.

35 Under the current provisions of N.J.S.2C:43-12 (PTI),  
36 supervisory treatment may only occur once and any person who has  
37 previously received supervisory treatment is not eligible for  
38 subsequent supervisory treatment. This bill expands this limitation  
39 by providing that a person who has participated in either conditional  
40 dismissal or conditional discharge will not be eligible for PTI.

41 EXPUNGEMENT. The bill amends N.J.S.2C:52-6 concerning  
42 expungement of arrests not resulting in conviction to allow for  
43 expungement of charges dismissed pursuant to conditional  
44 discharge or conditional dismissal six months after the entry of the  
45 order of dismissal. Currently, this section allows for expungment  
46 for a person who has had charges dismissed as a result of  
47 participation in a supervisory treatment program.



**A3598**

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1       EFFECTIVE DATE. This bill takes effect 120 days after enactment,  
2 and applies to any person who commits a disorderly persons offense  
3 or petty disorderly persons offense on or after the effective date of  
4 the bill.

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9       Establishes conditional dismissal program in municipal court.