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"New law offers second chance to some first-time offenders," The Express-Times, 9-30-2013

LAW/RWH

(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.

8

9

#### 10 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**

17

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.

5

6

7

8

9       Establishes conditional dismissal program in municipal court.

# ASSEMBLY, No. 3598

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 13, 2012

**Sponsored by:**

**Assemblyman REED GUSCIORA**  
**District 15 (Hunterdon and Mercer)**  
**Assemblyman JON M. BRAMNICK**  
**District 21 (Morris, Somerset and Union)**  
**Assemblyman ANGEL FUENTES**  
**District 5 (Camden and Gloucester)**  
**Assemblywoman PAMELA R. LAMPITT**  
**District 6 (Burlington and Camden)**  
**Assemblywoman HOLLY SCHEPISI**  
**District 39 (Bergen and Passaic)**

**Co-Sponsored by:**

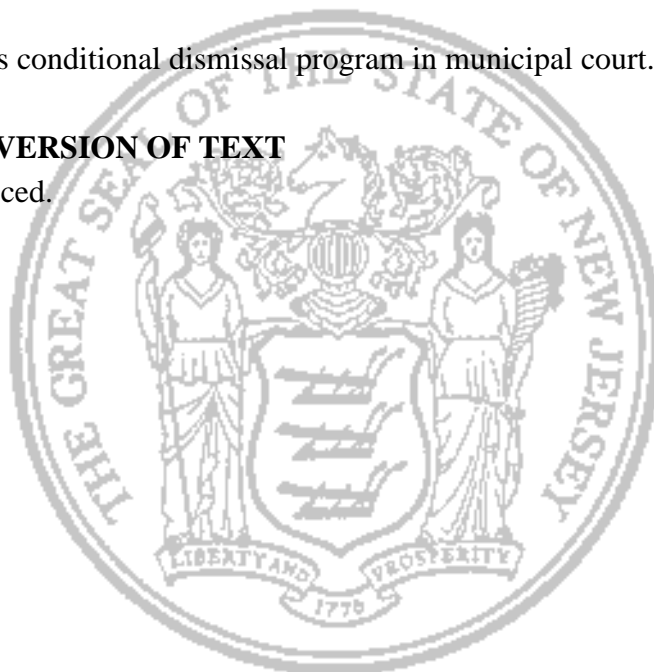
**Assemblymen C.A.Brown, Eustace, Diegnan, Coughlin, Senators Turner, Scutari, Bateman, Pou and Whelan**

**SYNOPSIS**

Establishes conditional dismissal program in municipal court.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/28/2013)**

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

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

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

**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 (1) The nature and circumstances of the offense;
- 2 (2) The facts surrounding the commission of the offense;
- 3 (3) The motivation, age, character and attitude of the defendant;
- 4 (4) The desire of the complainant or victim to forego  
5 prosecution;
- 6 (5) The needs and interests of the victim and the community;
- 7 (6) The extent to which the defendant's offense constitutes part  
8 of a continuing pattern of anti-social behavior;
- 9 (7) Whether the offense is of an assaultive or violent nature,  
10 whether in the act itself or in the possible injurious consequences of  
11 such behavior;
- 12 (8) Whether the applicant's participation will adversely affect  
13 the prosecution of codefendants;
- 14 (9) Whether diversion of the defendant from prosecution is  
15 consistent with the public interest; and
- 16 (10) Any other factors deemed relevant by the court.

17  
18 2. (New section) Court Approval of Defendant's Participation  
19 in Conditional Dismissal Program. After considering the eligibility  
20 criteria set forth in section 1 of P.L. , c. (C. ) (pending before  
21 the Legislature as this bill), the defendant's criminal history and the  
22 municipal prosecutor's recommendation, the court may, without  
23 entering a judgment of conviction, and after proper reference to the  
24 State Bureau of Identification criminal history record information  
25 files, approve the defendant's participation in the conditional  
26 dismissal program established pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill) and place the defendant  
28 under a probation monitoring status for a period of one year. The  
29 court may also impose financial obligations and other terms and  
30 conditions in accordance with P.L. , c. (C. ) (pending before  
31 the Legislature as this bill). Where the court approves a defendant's  
32 participation in the conditional dismissal program over the  
33 municipal prosecutor's objection, the order approving the  
34 defendant's participation in the program shall be a final order but  
35 upon request of the municipal prosecutor shall be stayed for a  
36 period of 10 days in order to permit the prosecutor to appeal such  
37 order to the Superior Court.

38  
39 3. (New section) Extension of Conditional Dismissal Term. A  
40 defendant may apply to the court for an extension of a term of  
41 conditional dismissal pursuant to the provisions of P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill) to allow  
43 sufficient time to pay financial obligations imposed by the court. A  
44 judge may also extend a defendant's conditional dismissal term for  
45 good cause.

46  
47 4. (New section) Violation of Terms Prior To Dismissal. If a  
48 defendant who is participating in the conditional dismissal program

1 established pursuant to P.L. , c. (C. ) (pending before the  
2 Legislature as this bill) is convicted of any petty disorderly persons  
3 offense, disorderly persons offense or crime under any law of the  
4 United States, this State or any other state, or otherwise fails to  
5 comply with the terms and conditions imposed by the court, the  
6 court may enter a judgment of conviction and impose a fine,  
7 penalty, or other assessment which may be imposed by the court in  
8 accordance with the defendant's prior plea of guilty or finding of  
9 guilt.

10

11 5. (New section) Dismissal. If, at the end of the term of the  
12 conditional dismissal, the defendant has not been convicted of any  
13 subsequent petty disorderly persons offense, disorderly persons  
14 offense or crime under any law of the United States, this State or  
15 any other state, and has complied with any other terms and  
16 conditions imposed by the court, the court may terminate the  
17 probation monitoring and dismiss the proceedings against the  
18 defendant.

19

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

34

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

38

39 8. (New section) Conditional Dismissal Assessment,  
40 Restitution and Other Assessments. A defendant applying for  
41 admission to the conditional dismissal program pursuant to P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill) shall pay to  
43 the court an application fee of \$75 which, upon collection, shall be  
44 deposited into the "Municipal Court Diversion Fund" established  
45 pursuant to section 9 of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill). Monies in the fund shall be used to defray  
47 the cost of intake and monitoring services related to the defendant's  
48 participation in the conditional dismissal program as provided by

1 the Probation Division of the Superior Court. If admitted into the  
2 program, the defendant shall be required to pay any restitution,  
3 costs, and other mandatory assessments that would have been  
4 imposed by law for a conviction of the offense charged.

5 A municipal court judge may impose an assessment, based on the  
6 nature of the offense and the character of the defendant, that shall  
7 not exceed the amount of a fine that would have been imposed for  
8 conviction of the offense charged. Such assessment shall be  
9 distributed in the same manner as a fine for the offense charged. A  
10 defendant shall be advised of these financial conditions prior to  
11 seeking entry into the program.

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

18

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

23 b. The fund shall be the depository of \$75 application fee  
24 collected pursuant to section 8 of P.L. , c. (C. ) (pending  
25 before the Legislature as this bill) for admission to the conditional  
26 dismissal program established pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill).

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

33

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

35 2C:36A-1. Conditional discharge for certain first offenses **【**;  
36 expunging of records**】**. a. Whenever any person who has not  
37 previously been convicted of any offense under section 20 of  
38 P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty  
39 disorderly persons offense defined in chapter 35 or 36 of this title  
40 or, subsequent to the effective date of this title, under any law of the  
41 United States, this State or any other state relating to marijuana, or  
42 stimulant, depressant, or hallucinogenic drugs, and who has not  
43 previously participated in a program of supervisory treatment  
44 pursuant to N.J.S.2C:43-12 or conditional dismissal pursuant to  
45 P.L. , c. (C. ) (pending before the Legislature as this bill) is  
46 charged with or convicted of any disorderly persons offense or petty  
47 disorderly persons offense under chapter 35 or 36 of this title, the



1 court upon notice to the prosecutor and subject to subsection c. of  
2 this section, may on motion of the defendant or the court:

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

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

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

37 If the driving privilege of a person is under revocation,  
38 suspension, or postponement for a violation of this title or Title 39  
39 of the Revised Statutes at the time of the person's placement on  
40 supervisory treatment under this section, the revocation, suspension  
41 or postponement period imposed herein shall commence as of the  
42 date of the termination of the existing revocation, suspension or  
43 postponement. The court which places a person on supervisory  
44 treatment under this section shall collect and forward the person's  
45 driver's license to the New Jersey Motor Vehicle Commission and  
46 file an appropriate report with the commission in accordance with  
47 the procedure set forth in N.J.S.2C:35-16. The court shall also  
48 inform the person of the penalties for operating a motor vehicle

1 during the period of license suspension or postponement as required  
2 in N.J.S.2C:35-16.

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

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

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

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

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

34 d. A person seeking conditional discharge pursuant to this  
35 section shall pay to the court a fee of \$75~~].~~ The court shall forward  
36 all money collected under this subsection to the treasurer of the  
37 county in which the court is located. This money shall be used to  
38 defray the cost of juror compensation within that county~~]~~ which  
39 shall be paid to the Treasurer of the State of New Jersey for deposit  
40 in the General Fund. The defendant shall also be required to pay  
41 restitution, costs and other assessments as provided by law. A  
42 person may apply for a waiver of this fee, by reason of poverty,  
43 pursuant to the Rules Governing the Courts of the State of New  
44 Jersey]. Of the moneys collected under this subsection, \$30 of each  
45 fee shall be deposited in the temporary reserve fund created by  
46 section 25 of P.L.1993, c.275. After December 31, 1994, the \$75  
47 fee shall be paid to the court, for use by the State~~]~~ , or the court  
48 may permit the defendant to pay the conditional discharge fee and

1 other assessments in installments or may order other alternatives  
2 pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

3 (cf: P.L.2008, c.84, s.1)

4  
5 11. N.J.S.2C:43-12 is amended to read as follows:

6 2C:43-12. Supervisory Treatment--Pretrial Intervention.

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

15 (1) Provide applicants, on an equal basis, with opportunities to  
16 avoid ordinary prosecution by receiving early rehabilitative services  
17 or supervision, when such services or supervision can reasonably be  
18 expected to deter future criminal behavior by an applicant, and  
19 when there is apparent causal connection between the offense  
20 charged and the rehabilitative or supervisory need, without which  
21 cause both the alleged offense and the need to prosecute might not  
22 have occurred; or

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

27 (3) Provide a mechanism for permitting the least burdensome  
28 form of prosecution possible for defendants charged with  
29 "victimless" offenses, other than defendants who were public  
30 officers or employees charged with offenses that involved or  
31 touched their office or employment; or

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

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

37 b. Admission of an applicant into a program of supervisory  
38 treatment shall be measured according to the applicant's amenability  
39 to correction, responsiveness to rehabilitation and the nature of the  
40 offense. There shall be a presumption against admission into a  
41 program of supervisory treatment for a defendant who was a public  
42 officer or employee whose offense involved or touched upon his  
43 public office or employment.

44 c. The decision and reasons therefore made by the designated  
45 judges (or assignment judges), prosecutors and program directors in  
46 granting or denying applications for supervisory treatment, in  
47 recommending and ordering termination from the program or

1 dismissal of charges, in all cases shall be reduced to writing and  
2 disclosed to the applicant.

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

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

18 (1) The nature of the offense;

19 (2) The facts of the case;

20 (3) The motivation and age of the defendant;

21 (4) The desire of the complainant or victim to forego  
22 prosecution;

23 (5) The existence of personal problems and character traits  
24 which may be related to the applicant's crime and for which services  
25 are unavailable within the criminal justice system, or which may be  
26 provided more effectively through supervisory treatment and the  
27 probability that the causes of criminal behavior can be controlled by  
28 proper treatment;

29 (6) The likelihood that the applicant's crime is related to a  
30 condition or situation that would be conducive to change through  
31 his participation in supervisory treatment;

32 (7) The needs and interests of the victim and society;

33 (8) The extent to which the applicant's crime constitutes part of  
34 a continuing pattern of anti-social behavior;

35 (9) The applicant's record of criminal and penal violations and  
36 the extent to which he may present a substantial danger to others;

37 (10) Whether or not the crime is of an assaultive or violent  
38 nature, whether in the criminal act itself or in the possible injurious  
39 consequences of such behavior;

40 (11) Consideration of whether or not prosecution would  
41 exacerbate the social problem that led to the applicant's criminal  
42 act;

43 (12) The history of the use of physical violence toward others;

44 (13) Any involvement of the applicant with organized crime;

45 (14) Whether or not the crime is of such a nature that the value  
46 of supervisory treatment would be outweighed by the public need  
47 for prosecution;

1 (15) Whether or not the applicant's involvement with other  
2 people in the crime charged or in other crime is such that the  
3 interest of the State would be best served by processing his case  
4 through traditional criminal justice system procedures;

5 (16) Whether or not the applicant's participation in pretrial  
6 intervention will adversely affect the prosecution of codefendants;  
7 and

8 (17) Whether or not the harm done to society by abandoning  
9 criminal prosecution would outweigh the benefits to society from  
10 channeling an offender into a supervisory treatment program.

11 f. Review of Supervisory Treatment Applications; Procedure  
12 Upon Denial. Each applicant for supervisory treatment shall be  
13 entitled to full and fair consideration of his application. If an  
14 application is denied, the program director or the prosecutor shall  
15 precisely state his findings and conclusion which shall include the  
16 facts upon which the application is based and the reasons offered  
17 for the denial. If the applicant desires to challenge the decision of a  
18 program director not to recommend, or of a prosecutor not to  
19 consent to, enrollment into a supervisory treatment program, a  
20 motion shall be filed before the designated judge (or assignment  
21 judge) authorized pursuant to the rules of court to enter orders.

22 g. Limitations. Supervisory treatment may occur only once  
23 with respect to any defendant and any person who has previously  
24 received supervisory treatment under section 27 of P.L.1970, c.226  
25 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1,  
26 or a conditional dismissal pursuant to P.L. , c (C. ) (pending  
27 before the Legislature as this bill) shall not be eligible for  
28 supervisory treatment under this section. However, supervisory  
29 treatment, as provided herein, shall be available to a defendant  
30 irrespective of whether the defendant contests his guilt of the charge  
31 or charges against him.

32 h. Termination. Termination of supervisory treatment under  
33 this section shall be immediately reported to the assignment judge  
34 of the county who shall forward such information to the  
35 Administrative Director of the Courts.

36 i. Appointment of Program Directors; Authorized Referrals.  
37 Programs of supervisory treatment and appointment of the program  
38 directors require approval by the Supreme Court with the consent of  
39 the assignment judge and prosecutor. Referrals of participants from  
40 supervisory treatment programs may be to any public or private  
41 office or agency, including but not limited to, programs within the  
42 probation service of the court, offering counseling or any other  
43 social service likely to aid in the rehabilitation of the participant  
44 and to deter the commission of other offenses.

45 j. Health Care Professional Licensing Board Notification. The  
46 program director shall promptly notify the State Board of Medical  
47 Examiners when a State licensed physician or podiatrist has been

1 enrolled in a supervisory treatment program after he has been  
2 charged with an offense involving drugs or alcohol.  
3 (cf: P.L.2007, c.49, s.9)

4  
5 12. N.J.S.2C:43-13 is amended to read as follows:

6 2C:43-13. Supervisory Treatment Procedure. a. Agreement. The  
7 terms and duration of the supervisory treatment shall be set forth in  
8 writing, signed by the prosecutor and agreed to and signed by the  
9 participant. Payment of the assessment required by section 2 of  
10 P.L.1979, c.396 (C.2C:43-3.1) shall be included as a term of the  
11 agreement. If the participant is represented by counsel, defense  
12 counsel shall also sign the agreement. Each order of supervisory  
13 treatment shall be filed with the county clerk.

14 b. Charges. During a period of supervisory treatment the  
15 charge or charges on which the participant is undergoing  
16 supervisory treatment shall be held in an inactive status pending  
17 termination of the supervisory treatment pursuant to subsection d.  
18 or e. of this section.

19 c. Period of treatment. Supervisory treatment may be for such  
20 period, as determined by the designated judge or the assignment  
21 judge, not to exceed three years, provided, however, that the period  
22 of supervisory treatment may be shortened or terminated as the  
23 program director may determine with the consent of the prosecutor  
24 and the approval of the court.

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

28 e. Violation of conditions. Upon violation of the conditions of  
29 supervisory treatment, the court shall determine, after summary  
30 hearing, whether said violation warrants the participant's dismissal  
31 from the supervisory treatment program or modification of the  
32 conditions of continued participation in that or another supervisory  
33 treatment program. Upon dismissal of the participant from the  
34 supervisory treatment program, the charges against the participant  
35 may be reactivated and the prosecutor may proceed as though no  
36 supervisory treatment had been commenced.

37 f. Evidence. No statement or other disclosure by a participant  
38 undergoing supervisory treatment made or disclosed to the person  
39 designated to provide such supervisory treatment shall be disclosed,  
40 at any time, to the prosecutor in connection with the charge or  
41 charges against the participant, nor shall any such statement or  
42 disclosure be admitted as evidence in any civil or criminal  
43 proceeding against the participant. Nothing provided herein,  
44 however, shall prevent the person providing supervisory treatment  
45 from informing the prosecutor, or the court, upon request or  
46 otherwise as to whether or not the participant is satisfactorily  
47 responding to supervisory treatment.

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

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

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

20  
21 13. N.J.S.2C:52-6 is amended to read as follows:

22 2C:52-6. Arrests not resulting in conviction

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

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

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

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

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

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

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

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

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

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



STATEMENT

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

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

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

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

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or pretrial intervention (PTI). In addition, conditional dismissal will not be available if the offense for which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing

1 drug; animal cruelty laws; or any disorderly persons offense or  
2 petty disorderly persons offense under chapter 35 or 36 of the  
3 Criminal Code. However, a person who is charged with a disorderly  
4 persons or petty disorderly persons offense involving drugs may  
5 apply for a conditional discharge in accordance with N.J.S.2C:36A-  
6 1.

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

21 If the court approves a defendant's participation in the  
22 conditional dismissal program over the municipal prosecutor's  
23 objection, that order will, upon the request of the prosecutor, be  
24 stayed for a period of 10 days in order to permit the prosecutor to  
25 appeal the order to the Superior Court.

26 PROGRAM REQUIREMENTS. After taking into consideration the  
27 eligibility criteria, the defendant's criminal history and the  
28 prosecutor's recommendation, the court may approve the  
29 defendant's participation in the conditional dismissal program and  
30 place the defendant under a probation monitoring status for a period  
31 of one year. The court may also impose financial obligations and  
32 other terms and conditions in accordance with the bill. The bill  
33 permits the defendant to apply to the court for an extension of the  
34 term to allow sufficient time to pay financial obligations imposed  
35 by the court. In addition, a judge could extend the term for good  
36 cause.

37 If a defendant who is participating in conditional dismissal is  
38 convicted of any petty disorderly persons offense, disorderly  
39 persons offense or crime under any law of the United States, this  
40 State or any other state, or otherwise fails to comply with the terms  
41 and conditions imposed by the court, the court can enter a judgment  
42 of conviction and impose a fine, penalty, or other assessment in  
43 accordance with the defendant's prior plea of guilty or prior finding  
44 of guilt.

45 If, at the end of the term, the defendant has not been convicted of  
46 any subsequent offense in this State or any other state, and has  
47 complied with any other terms and conditions imposed by the court,

1 the court may terminate the probation monitoring and dismiss the  
2 proceedings against the defendant.

3 The bill provides that a conditional dismissal of a petty  
4 disorderly persons or disorderly persons offense granted pursuant to  
5 the program will not be deemed a conviction for purposes of  
6 disqualifications or disabilities, but shall be reported to the State  
7 Bureau of Identification criminal history record information files  
8 for purposes of determining future eligibility or exclusion from  
9 court diversion programs. A conditional dismissal granted will not  
10 be deemed a conviction for the purposes of determining whether a  
11 second or subsequent offense has occurred under any law of this  
12 State.

13 LIMITATION. A conditional dismissal can only be granted once  
14 with respect to any defendant.

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

25 A municipal court judge may impose an assessment, based on the  
26 nature of the offense and the character of the defendant, that shall  
27 not exceed the amount of a fine that would have been imposed for  
28 conviction of the offense charged. Such assessment would be  
29 distributed in the same manner as a fine for the offense charged. A  
30 defendant would be advised of these financial conditions prior to  
31 seeking entry into the program.

32 The bill allows the defendant to apply for a waiver of the fee by  
33 reason of poverty. The court may also permit the defendant to pay  
34 the conditional dismissal fee and other assessments in installments  
35 or order other alternatives pursuant to section 1 of P.L.2009, c.317  
36 (C.2B:12-23.1). Under the provisions of that enactment, the court  
37 has several options available if it finds that a person does not have  
38 the ability to pay a penalty in full or has failed to pay a previously  
39 imposed penalty. The court may reduce, suspend, or modify the  
40 installment plan; order that credit be given against the amount owed  
41 for each day of confinement if the court finds that the person has  
42 served jail time for the default; revoke any unpaid portion of the  
43 penalty; order the person to perform community service in lieu of  
44 payment of the penalty; or impose any other alternative permitted  
45 by law.

46 MUNICIPAL COURT DIVERSION FUND. The bill establishes a new  
47 dedicated, non-lapsing fund to be known as the "Municipal Court  
48 Diversion Fund," which will be administered by the Administrative

1 Office of the Courts. The fund will be the depository of the  
2 application fee for the conditional dismissal program. Monies in  
3 the fund will be used to offset the cost of intake and monitoring  
4 services for defendants under the conditional dismissal program.

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

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

21 SUPERVISORY TREATMENT (PTI). Similar to the conditional  
22 discharge statute, the PTI statute, N.J.S.2C:43-12, provides that the  
23 \$75 fee charged for the program is used to defray the costs of juror  
24 compensation. Since these monies are no longer used to defray the  
25 costs of juror compensation, the bill updates this section of law  
26 accordingly.

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

33 EXPUNGEMENT. The bill amends N.J.S.2C:52-6 concerning  
34 expungement of arrests not resulting in conviction to allow for  
35 expungement of charges dismissed pursuant to conditional  
36 discharge or conditional dismissal six months after the entry of the  
37 order of dismissal. Currently, this section allows for expungment  
38 for a person who has had charges dismissed as a result of  
39 participation in a supervisory treatment program.

40 EFFECTIVE DATE. This bill takes effect 120 days after enactment,  
41 and applies to any person who commits a disorderly persons offense  
42 or petty disorderly persons offense on or after the effective date of  
43 the bill.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3598

# STATE OF NEW JERSEY

DATED: JANUARY 17, 2013

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3598.

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

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

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

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant's criminal history by the prosecutor and as a condition of the application, the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In

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

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

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

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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment

in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment would be distributed in the same manner as a fine for the offense.

A defendant would be advised of these financial conditions prior to seeking entry into the program.

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

penalty; order the person to perform community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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



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

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3598

# STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2013

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3598.

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

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

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

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant's criminal history by the prosecutor and as a condition of the application, the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In

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

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

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

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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment

in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that does not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment will be distributed in the same manner as a fine for the offense.

A defendant will be advised of these financial conditions prior to seeking entry into the program.

The bill allows the defendant to apply for a waiver of the fee by reason of poverty. The court may also permit the defendant to pay the conditional dismissal fee and other assessments in installments or order other alternatives pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1). Under that law, the court has several options available if it finds that a person does not have the ability to pay a penalty in full or has failed to pay a previously imposed penalty. The court may reduce, suspend, or modify the installment plan; order that credit be given against the amount owed for each day of confinement if the court finds that the person has served jail time for the default; revoke any unpaid portion of the penalty; order the person to perform

community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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

**EFFECTIVE DATE.** The bill takes effect 120 days after enactment, and applies to any person who commits a disorderly persons offense or

petty disorderly persons offense on or after the effective date of the bill.

**FISCAL IMPACT:**

The bill requires an individual applying for admission to the conditional dismissal program to pay a \$75 fee, which is payable to the Municipal Court Diversion Fund created by the bill.

The Office of Legislative Services (OLS) estimates that the bill will generate revenue totaling \$1,652,400 annually for the Municipal Court Diversion Fund. The OLS also notes that an indeterminate one-time cost will be incurred by the Judiciary to re-program its data processing system to accommodate the new fee.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 3598**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: FEBRUARY 12, 2013

**SUMMARY**

**Synopsis:** Establishes conditional dismissal program in municipal court; alters eligibility requirements and increases fees for existing conditional discharge and supervisory treatment programs.

**Type of Impact:** General Fund and municipal revenue

**Agencies Affected:** Municipal courts, Judiciary.

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Indeterminate	\$0	\$0
<b>Local Revenue</b>			
<b>Municipal Court</b>			
<b>Diversion Fund</b>	\$1,652,400	\$1,652,400	\$1,652,400

- The Office of Legislative Services (OLS) states that the bill would generate revenue totaling \$1,652,400 for the Municipal Court Diversion Fund. The OLS also notes that an indeterminate one-time cost would be incurred by the Judiciary to re-program its data processing system to accommodate the new fee.
- The bill would establish a conditional dismissal program in municipal court similar to the existing supervisory treatment programs for pre-trial intervention and conditional discharge.
- The bill would require an individual applying for admission to the conditional dismissal program to pay a \$75 fee, which would be payable to the Municipal Court Diversion Fund created by the bill.

**BILL DESCRIPTION**

Assembly Bill No. 3598 of 2012 establishes a conditional dismissal program in municipal court similar to the existing supervisory treatment programs for pre-trial intervention and conditional discharge.

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

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

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant’s criminal history by the prosecutor and as a condition of the application, the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In addition, conditional dismissal will not be available if the offense for which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; animal cruelty laws; or any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of the Criminal Code (drugs and drug paraphernalia). However, a person who is charged with a disorderly persons or petty disorderly persons offense involving drugs or drug paraphernalia may apply for a conditional discharge in accordance with N.J.S.2C:36A-1.

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

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



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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment would be distributed in the same manner as a fine for the offense.

A defendant would be advised of these financial conditions prior to seeking entry into the program.

The bill allows the defendant to apply for a waiver of the fee by reason of poverty. The court may also permit the defendant to pay the conditional dismissal fee and other assessments in installments or order other alternatives pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1). Under the provisions of that enactment, the court has several options available if it finds that a person does not have the ability to pay a penalty in full or has failed to pay a previously imposed penalty. The court may reduce, suspend, or modify the installment plan; order that credit be given against the amount owed for each day of confinement if the court finds that the person has served jail time for the default; revoke any unpaid portion of the penalty; order the person to perform community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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

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

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

In a fiscal note for a similar bill in this session (Assembly Bill No. 3096), the Administrative Office of the Courts (AOC) stated that according to data collected from the Criminal Division's case management and information system (PROMIS/Gavel), there were a total of 1,461 Superior Court defendants convicted of only disorderly persons or petty disorderly persons offenses in calendar year 2011. In addition, based on data collected from the Municipal Division's ATS/ACS, there are on average 56,518 defendants found guilty annually of disorderly persons or petty disorderly persons offenses in the Municipal Courts for a total of approximately 57,979 (1,461 + 56,518) defendants convicted of only disorderly persons or petty disorderly persons offenses annually Statewide.

The AOC stated that the Judiciary does not collect all of the data regarding the program's disqualifiers. For example, the Judiciary cannot identify the percentage of disorderly persons or petty disorderly persons defendants who previously received a conditional discharge or was admitted into a PTI program. Further, the Judiciary is unable to identify the percentage of cases which involved organized crime or gang activity; involved a continuing criminal business or enterprise; involved a breach of the public trust by a public officer or employee; involved domestic violence; involved an offense against an elderly, disabled or minor person; involved an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; involved animal cruelty; etc. In this regard, the Judiciary is unable to estimate the number of defendants who would be eligible for participation in the conditional dismissal program or the number who would apply for participation in the program.

The AOC stated it is likely that a portion of the 57,979 defendants convicted of disorderly persons or petty disorderly persons offenses annually statewide would be eligible for reduced or eliminated fees because of indigency. The AOC noted that although the Judiciary cannot provide a reliable estimate of the number of defendants that would be considered indigent, data collected from the Criminal Division's case management and information system (PROMIS/Gavel) indicate that 906 or 62 percent of the 1,461 defendants convicted only of disorderly or petty disorderly persons offenses in the Superior Court during calendar year 2011 were represented by either the Public Defender's Office or by pool attorneys.

The AOC noted that while the number of defendants represented by the Public Defender's Office or by pool attorneys is not considered a qualified indicator of a defendant's qualification for indigence regarding the program's application fee, it is possible that as many as 62 percent of the eligible defendants or 35,947 defendants could apply to have those fees waived. The remaining 22,032 defendants would be required to pay the \$75 fee.

#### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS notes that if all of the 57,979 defendants who were eligible to apply for the conditional dismissal program did apply, the fees collected would total \$4,348,425. However, if 62 percent of the 57,979 defendants who were eligible to apply for participation in the conditional dismissal program qualified as indigent, there would be a decrease in fee payments of approximately \$2,696,025 (35,947 x \$75), with \$1,652,400 (22,032 x \$75) remaining payable to the Municipal Court Diversion Fund. The OLS also notes that an indeterminate one-time cost would be incurred by the Judiciary to re-program its data processing system to accommodate the new fee.

*Section: Judiciary*  
*Analyst: Anne Raughley*  
*Principal Fiscal Analyst*  
*Approved: David J. Rosen*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3598

# STATE OF NEW JERSEY

DATED: JUNE 6, 2013

The Senate Judiciary Committee reports favorably Assembly Bill No. 3598.

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

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

**CONDITIONAL DISMISSAL PROGRAM.** Under the provisions of the bill, a defendant who is charged with a petty disorderly persons offense or disorderly persons offense may apply to the municipal court to enter into the conditional dismissal program, provided the defendant has not been previously convicted of any offense or crime under any law of the United States, this State or any other state. A defendant may make an application to the conditional dismissal program after a plea of guilty or a finding of guilt, but prior to the entry of judgment of conviction.

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant’s criminal history by the prosecutor and as a condition of the application, under the bill the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In addition, conditional dismissal will not be available if the offense for

which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; animal cruelty laws; or any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of the Criminal Code (drugs and drug paraphernalia). However, a person who is charged with a disorderly persons or petty disorderly persons offense involving drugs or drug paraphernalia may apply for a conditional discharge in accordance with N.J.S.2C:36A-1.

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

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

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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment

in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment would be distributed in the same manner as a fine for the offense.

A defendant would be advised of these financial conditions prior to seeking entry into the program.

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

penalty; order the person to perform community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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

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



**FISCAL NOTE**  
**ASSEMBLY, No. 3598**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: JUNE 12, 2013

**SUMMARY**

**Synopsis:** Establishes conditional dismissal program in municipal court.

**Type of Impact:** General Fund and municipal revenue

**Agencies Affected:** Municipal courts, Judiciary.

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$348,000	\$0	\$0
<b>Local Revenue</b>			
<b>Municipal Court</b>	Indeterminate - See comments below		
<b>Diversion Fund</b>			

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The Administrative Office of the Courts (AOC) states that the proposed legislation would impact revenue in three distinct areas: Conditional Dismissal Program; Conditional Discharge Program; and Supervisory Treatment – Pretrial Intervention (PTI) Program.
- The AOC states that municipalities would not lose revenues currently yielded from assessed court costs, since these costs would be imposed under the Conditional Dismissal Program.
- The AOC states that because of the discretionary nature of the proposed Conditional Dismissal Program, the Judiciary is unable to estimate the number of defendants who would be eligible for participation in that program, or the number of defendants who would be impacted by the modifications to the Conditional Discharge Program and the Supervisory Treatment – Pretrial Intervention (PTI) Program. Thus, the Judiciary is not able to estimate the fiscal impact of revenue with regards to the proposed legislation.
- The AOC states that extensive programming to the Judiciary’s ATS/ACS computer system would be required to implement the proposed legislation. It is estimated that \$348,000 would be needed to pay for those changes.

## **BILL DESCRIPTION**

Assembly Bill No. 3598 of 2012 establishes a conditional dismissal program in municipal court similar to the existing supervisory treatment programs for pre-trial intervention and conditional discharge.

Currently, the supervisory treatment programs for pre-trial intervention and conditional discharge allow the court to suspend proceedings against eligible defendants while the defendants participate in supervisory treatment. Persons who are charged with indictable offenses may be eligible for pre-trial intervention (“PTI”). Persons charged with certain disorderly persons or petty disorderly persons drug offenses may be eligible for conditional discharge. If the defendant violates a term or condition of supervisory treatment, the court may enter a judgment of conviction or, where the defendant did not previously plead guilty and was not previously found guilty, resume the criminal proceedings. If the defendant successfully completes the program, the criminal charges are dismissed.

**CONDITIONAL DISMISSAL PROGRAM.** The bill establishes a similar diversion program in municipal court to be known as the conditional dismissal program. Under the bill, a defendant who is charged with a petty disorderly persons offense or disorderly persons offense may apply to enter into the conditional dismissal program, provided the defendant has not been previously convicted of any offense or crime. A defendant may apply to the program after a plea of guilty or a finding of guilt, but prior to the entry of judgment of conviction.

**FINGERPRINTING REQUIREMENT.** Under the program, the defendant would be required to submit to the fingerprint identification procedures.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** A person is ineligible for Conditional Dismissal if they have been charged with certain offenses described in the bill, and also if they have previously participated in the Conditional Discharge or Pre-Trial Intervention programs. Furthermore, Conditional Dismissal is granted on a one-time basis.

**PROGRAM REQUIREMENTS.** After taking into consideration the eligibility criteria, the defendant’s criminal history and the prosecutor’s recommendation, the court may approve the defendant’s participation in the program and place the defendant under a probation monitoring status for one year. The court may also impose financial obligations and other terms and conditions. The bill permits the defendant to apply for an extension of the term of conditional dismissal to allow sufficient time to pay financial obligations imposed. In addition, a judge could extend the term for good cause.

If a defendant who is participating in conditional dismissal is convicted of any offense or crime, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment in accordance with the defendant’s prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

**CONDITIONAL DISMISSAL APPLICATION FEE AND ASSESSMENT.** A person applying for admission to the conditional dismissal program would pay an application fee of \$75 to be deposited in the newly created “Municipal Court Diversion Fund.” Monies in this fund would be used to offset the cost of intake and monitoring services related to the conditional dismissal program. If admitted into the program, the defendant would also be required to pay any restitution, costs, and other mandatory assessments that would have been imposed by law for a conviction of the offense charged.

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged.

The bill allows the defendant to apply for a waiver of the fee by reason of poverty. The court may also permit the defendant to pay the conditional dismissal fee and other assessments in installments or order other alternatives.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a dedicated, non-lapsing fund, known as the "Municipal Court Diversion Fund," to be administered by the AOC. The fund will be the depository of the \$75 application fee and will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

**CONDITIONAL DISCHARGE.** The bill provides that a person who has participated in any supervisory treatment program or the conditional dismissal program established under the bill will not be eligible for participation in the conditional discharge program.

**SUPERVISORY TREATMENT (PTI).** The bill provides that a person who has participated in either conditional dismissal or conditional discharge will not be eligible for PTI.

**EXPUNGEMENT.** The bill allows for expungement of charges dismissed pursuant to conditional discharge or conditional dismissal six months after the entry of the order of dismissal.

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

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Judiciary**

The AOC states that the proposed legislation would impact revenue in three distinct areas:

- Conditional Dismissal Program;
- Conditional Discharge Program; and
- Supervisory Treatment – Pretrial Intervention (PTI) Program.

#### **Conditional Dismissal Program:**

The AOC states that judges would be able to impose restitution, costs and assessments as they do now when someone is convicted of offenses under the bill. Thus, monies going into state funds, such as Victims of Crime Compensation Office and Safe Streets, would likely not be diminished. Further, municipalities would not lose revenues currently yielded from assessed court costs, since these costs would be imposed.

The AOC notes that the imposition of the assessment rests entirely within the judge's discretion. While some DP/PDP statutes cite a specific fine amount or range, others are silent. If there is no fine amount specified, the fine for the offense is determined under N.J.S.A. 2C:43-3, which sets the maximum DP and PDP fine amounts at \$1,000 and \$500, respectively. The AOC cannot project whether judges will impose an assessment or the amount of those assessments for defendant's who have been approved to enter the conditional dismissal program. These decisions will be made on a case-by-case basis. Thus, the impact on local government revenue is unknown. However, the bill will not increase revenue to local government since the assessments cannot exceed the existing statutory limits. The AOC states that there is no impact on State

revenues since amounts collected from the assessments would be distributed to local government as they are now.

The AOC notes that the bill also requires that defendants pay a \$75 application fee, which would be deposited by the court into the “Municipal Court Division Fund” and used to defray the cost of probation intake and monitoring so that that State and local government would assume no new costs. The AOC adds that the bill provides judges with the discretion to waive the application fee for good cause.

The AOC states that the Judiciary does not collect all of the data regarding the program’s disqualifiers. For example, the Judiciary cannot identify the percentage of disorderly persons or petty disorderly persons defendants who previously received a conditional discharge or was admitted into a PTI program, or those who have committed specific crimes making them ineligible or the program. Further, the AOC is not able to provide a reliable estimate of the number of defendants that would be considered indigent.

As a result, the AOC is not able to estimate the number of defendants who would be eligible for participation in the conditional dismissal program or the number of defendants who would apply for participation in the program.

**Conditional Discharge Program:**

The AOC notes that although the \$75 Conditional Discharge Program application fee amount would remain the same, the bill may result in a decrease in the number of defendants applying for conditional discharge as a result of various disqualifiers enumerated in the bill. The Judiciary cannot estimate the number of defendants who would be affected or the revenue impact, if any.

**Supervisory Treatment – Pretrial Intervention (PTI) Program:**

The AOC notes that although the \$75 Supervisory Treatment – Pretrial Intervention (PTI) Program application fee amount would remain the same, the bill may result in a decrease in the number of defendants applying for PTI as a result of various disqualifiers enumerated in the bill. The Judiciary cannot estimate the number of defendants who would be affected or the revenue impact, if any.

**Revenue Summary:**

The AOC states that because of the discretionary nature of the proposed conditional dismissal program, the Judiciary is unable to estimate the number of defendants who would be eligible for participation in the Conditional Dismissal Program, or the number of defendants who would be impacted by the modifications to the Conditional Discharge Program and the Supervisory Treatment – Pretrial Intervention (PTI) Program. Thus, the Judiciary is not able to estimate the fiscal impact of revenue with regards to the proposed legislation.

**Expenditures:**

The AOC states that extensive programming to the Judiciary’s ATS/ACS computer system would be required to implement the proposed legislation. It is estimated that \$348,000 will be needed to pay for those changes.

**OFFICE OF LEGISLATIVE SERVICES**

The OLS concurs with the Executive estimate.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3598

# STATE OF NEW JERSEY

DATED: JUNE 24, 2013

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3598.

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

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

**CONDITIONAL DISMISSAL PROGRAM.** Under the provisions of the bill, a defendant who is charged with a petty disorderly persons offense or disorderly persons offense may apply to the municipal court to enter into the conditional dismissal program, provided the defendant has not been previously convicted of any offense or crime under any law of the United States, this State or any other state. A defendant may make an application to the conditional dismissal program after a plea of guilty or a finding of guilt, but prior to the entry of judgment of conviction.

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant’s criminal history by the prosecutor and as a condition of the application, under the bill the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In addition, conditional dismissal will not be available if the offense for

which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; animal cruelty laws; or any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of the Criminal Code (drugs and drug paraphernalia). However, a person who is charged with a disorderly persons or petty disorderly persons offense involving drugs or drug paraphernalia may apply for a conditional discharge in accordance with N.J.S.2C:36A-1.

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

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

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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment

in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment would be distributed in the same manner as a fine for the offense.

A defendant would be advised of these financial conditions prior to seeking entry into the program.

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

penalty; order the person to perform community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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



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

As reported, this bill is identical to Senate Bill No. 2588, as also reported by the committee.

FISCAL IMPACT:

The bill requires an individual applying for admission to the conditional dismissal program to pay a \$75 fee, which is payable to the Municipal Court Diversion Fund created by the bill.

The Office of Legislative Services (OLS) estimates that the bill will generate revenue totaling \$1,652,400 annually for the Municipal Court Diversion Fund. The OLS also notes that an indeterminate one-time cost will be incurred by the Judiciary to re-program its data processing system to accommodate the new fee.

**SENATE, No. 2588**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED FEBRUARY 26, 2013

**Sponsored by:**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**Co-Sponsored by:**

**Senators Bateman, Pou and Whelan**

**SYNOPSIS**

Establishes conditional dismissal program in municipal court.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/28/2013)**

S2588 TURNER, SCUTARI

2

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

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

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

**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 (1) The nature and circumstances of the offense;
- 2 (2) The facts surrounding the commission of the offense;
- 3 (3) The motivation, age, character and attitude of the defendant;
- 4 (4) The desire of the complainant or victim to forego  
5 prosecution;
- 6 (5) The needs and interests of the victim and the community;
- 7 (6) The extent to which the defendant's offense constitutes part  
8 of a continuing pattern of anti-social behavior;
- 9 (7) Whether the offense is of an assaultive or violent nature,  
10 whether in the act itself or in the possible injurious consequences of  
11 such behavior;
- 12 (8) Whether the applicant's participation will adversely affect  
13 the prosecution of codefendants;
- 14 (9) Whether diversion of the defendant from prosecution is  
15 consistent with the public interest; and
- 16 (10) Any other factors deemed relevant by the court.

17  
18 2. (New section) Court Approval of Defendant's Participation  
19 in Conditional Dismissal Program. After considering the eligibility  
20 criteria set forth in section 1 of P.L. , c. (C. ) (pending before  
21 the Legislature as this bill), the defendant's criminal history and the  
22 municipal prosecutor's recommendation, the court may, without  
23 entering a judgment of conviction, and after proper reference to the  
24 State Bureau of Identification criminal history record information  
25 files, approve the defendant's participation in the conditional  
26 dismissal program established pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill) and place the defendant  
28 under a probation monitoring status for a period of one year. The  
29 court may also impose financial obligations and other terms and  
30 conditions in accordance with P.L. , c. (C. ) (pending before  
31 the Legislature as this bill). Where the court approves a defendant's  
32 participation in the conditional dismissal program over the  
33 municipal prosecutor's objection, the order approving the  
34 defendant's participation in the program shall be a final order but  
35 upon request of the municipal prosecutor shall be stayed for a  
36 period of 10 days in order to permit the prosecutor to appeal such  
37 order to the Superior Court.

38  
39 3. (New section) Extension of Conditional Dismissal Term. A  
40 defendant may apply to the court for an extension of a term of  
41 conditional dismissal pursuant to the provisions of P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill) to allow  
43 sufficient time to pay financial obligations imposed by the court. A  
44 judge may also extend a defendant's conditional dismissal term for  
45 good cause.

46  
47 4. (New section) Violation of Terms Prior To Dismissal. If a  
48 defendant who is participating in the conditional dismissal program

1 established pursuant to P.L. , c. (C. ) (pending before the  
2 Legislature as this bill) is convicted of any petty disorderly persons  
3 offense, disorderly persons offense or crime under any law of the  
4 United States, this State or any other state, or otherwise fails to  
5 comply with the terms and conditions imposed by the court, the  
6 court may enter a judgment of conviction and impose a fine,  
7 penalty, or other assessment which may be imposed by the court in  
8 accordance with the defendant's prior plea of guilty or finding of  
9 guilt.

10

11 5. (New section) Dismissal. If, at the end of the term of the  
12 conditional dismissal, the defendant has not been convicted of any  
13 subsequent petty disorderly persons offense, disorderly persons  
14 offense or crime under any law of the United States, this State or  
15 any other state, and has complied with any other terms and  
16 conditions imposed by the court, the court may terminate the  
17 probation monitoring and dismiss the proceedings against the  
18 defendant.

19

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

34

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

38

39 8. (New section) Conditional Dismissal Assessment,  
40 Restitution and Other Assessments. A defendant applying for  
41 admission to the conditional dismissal program pursuant to P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill) shall pay to  
43 the court an application fee of \$75 which, upon collection, shall be  
44 deposited into the "Municipal Court Diversion Fund" established  
45 pursuant to section 9 of P.L. , c. (C. ) (pending before the  
46 Legislature as this bill). Monies in the fund shall be used to defray  
47 the cost of intake and monitoring services related to the defendant's  
48 participation in the conditional dismissal program as provided by

1 the Probation Division of the Superior Court. If admitted into the  
2 program, the defendant shall be required to pay any restitution,  
3 costs, and other mandatory assessments that would have been  
4 imposed by law for a conviction of the offense charged.

5 A municipal court judge may impose an assessment, based on the  
6 nature of the offense and the character of the defendant, that shall  
7 not exceed the amount of a fine that would have been imposed for  
8 conviction of the offense charged. Such assessment shall be  
9 distributed in the same manner as a fine for the offense charged. A  
10 defendant shall be advised of these financial conditions prior to  
11 seeking entry into the program.

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

18

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

23 b. The fund shall be the depository of \$75 application fee  
24 collected pursuant to section 8 of P.L. , c. (C. ) (pending  
25 before the Legislature as this bill) for admission to the conditional  
26 dismissal program established pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill).

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

33

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

35 2C:36A-1. Conditional discharge for certain first offenses **;**  
36 expunging of records**].** a. Whenever any person who has not  
37 previously been convicted of any offense under section 20 of  
38 P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty  
39 disorderly persons offense defined in chapter 35 or 36 of this title  
40 or, subsequent to the effective date of this title, under any law of the  
41 United States, this State or any other state relating to marijuana, or  
42 stimulant, depressant, or hallucinogenic drugs, and who has not  
43 previously participated in a program of supervisory treatment  
44 pursuant to N.J.S.2C:43-12 or conditional dismissal pursuant to  
45 P.L. , c. (C. ) (pending before the Legislature as this bill) is  
46 charged with or convicted of any disorderly persons offense or petty  
47 disorderly persons offense under chapter 35 or 36 of this title, the

1 court upon notice to the prosecutor and subject to subsection c. of  
2 this section, may on motion of the defendant or the court:

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

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

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

37 If the driving privilege of a person is under revocation,  
38 suspension, or postponement for a violation of this title or Title 39  
39 of the Revised Statutes at the time of the person's placement on  
40 supervisory treatment under this section, the revocation, suspension  
41 or postponement period imposed herein shall commence as of the  
42 date of the termination of the existing revocation, suspension or  
43 postponement. The court which places a person on supervisory  
44 treatment under this section shall collect and forward the person's  
45 driver's license to the New Jersey Motor Vehicle Commission and  
46 file an appropriate report with the commission in accordance with  
47 the procedure set forth in N.J.S.2C:35-16. The court shall also  
48 inform the person of the penalties for operating a motor vehicle

1 during the period of license suspension or postponement as required  
2 in N.J.S.2C:35-16.

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

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

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

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

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

34 d. A person seeking conditional discharge pursuant to this  
35 section shall pay to the court a fee of \$75~~].~~ The court shall forward  
36 all money collected under this subsection to the treasurer of the  
37 county in which the court is located. This money shall be used to  
38 defray the cost of juror compensation within that county~~]~~ which  
39 shall be paid to the Treasurer of the State of New Jersey for deposit  
40 in the General Fund. The defendant shall also be required to pay  
41 restitution, costs and other assessments as provided by law. A  
42 person may apply for a waiver of this fee, by reason of poverty,  
43 pursuant to the Rules Governing the Courts of the State of New  
44 Jersey]. Of the moneys collected under this subsection, \$30 of each  
45 fee shall be deposited in the temporary reserve fund created by  
46 section 25 of P.L.1993, c.275. After December 31, 1994, the \$75  
47 fee shall be paid to the court, for use by the State~~]~~ , or the court  
48 may permit the defendant to pay the conditional discharge fee and



1 other assessments in installments or may order other alternatives  
2 pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

3 (cf: P.L.2008, c.84, s.1)

4

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

6 2C:43-12. Supervisory Treatment--Pretrial Intervention.

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

15 (1) Provide applicants, on an equal basis, with opportunities to  
16 avoid ordinary prosecution by receiving early rehabilitative services  
17 or supervision, when such services or supervision can reasonably be  
18 expected to deter future criminal behavior by an applicant, and  
19 when there is apparent causal connection between the offense  
20 charged and the rehabilitative or supervisory need, without which  
21 cause both the alleged offense and the need to prosecute might not  
22 have occurred; or

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

27 (3) Provide a mechanism for permitting the least burdensome  
28 form of prosecution possible for defendants charged with  
29 "victimless" offenses, other than defendants who were public  
30 officers or employees charged with offenses that involved or  
31 touched their office or employment; or

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

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

37 b. Admission of an applicant into a program of supervisory  
38 treatment shall be measured according to the applicant's amenability  
39 to correction, responsiveness to rehabilitation and the nature of the  
40 offense. There shall be a presumption against admission into a  
41 program of supervisory treatment for a defendant who was a public  
42 officer or employee whose offense involved or touched upon his  
43 public office or employment.

44 c. The decision and reasons therefore made by the designated  
45 judges (or assignment judges), prosecutors and program directors in  
46 granting or denying applications for supervisory treatment, in  
47 recommending and ordering termination from the program or

1 dismissal of charges, in all cases shall be reduced to writing and  
2 disclosed to the applicant.

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

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

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

1 (15) Whether or not the applicant's involvement with other  
2 people in the crime charged or in other crime is such that the  
3 interest of the State would be best served by processing his case  
4 through traditional criminal justice system procedures;

5 (16) Whether or not the applicant's participation in pretrial  
6 intervention will adversely affect the prosecution of codefendants;  
7 and

8 (17) Whether or not the harm done to society by abandoning  
9 criminal prosecution would outweigh the benefits to society from  
10 channeling an offender into a supervisory treatment program.

11 f. Review of Supervisory Treatment Applications; Procedure  
12 Upon Denial. Each applicant for supervisory treatment shall be  
13 entitled to full and fair consideration of his application. If an  
14 application is denied, the program director or the prosecutor shall  
15 precisely state his findings and conclusion which shall include the  
16 facts upon which the application is based and the reasons offered  
17 for the denial. If the applicant desires to challenge the decision of a  
18 program director not to recommend, or of a prosecutor not to  
19 consent to, enrollment into a supervisory treatment program, a  
20 motion shall be filed before the designated judge (or assignment  
21 judge) authorized pursuant to the rules of court to enter orders.

22 g. Limitations. Supervisory treatment may occur only once  
23 with respect to any defendant and any person who has previously  
24 received supervisory treatment under section 27 of P.L.1970, c.226  
25 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1,  
26 or a conditional dismissal pursuant to P.L. , c (C. ) (pending  
27 before the Legislature as this bill) shall not be eligible for  
28 supervisory treatment under this section. However, supervisory  
29 treatment, as provided herein, shall be available to a defendant  
30 irrespective of whether the defendant contests his guilt of the charge  
31 or charges against him.

32 h. Termination. Termination of supervisory treatment under  
33 this section shall be immediately reported to the assignment judge  
34 of the county who shall forward such information to the  
35 Administrative Director of the Courts.

36 i. Appointment of Program Directors; Authorized Referrals.  
37 Programs of supervisory treatment and appointment of the program  
38 directors require approval by the Supreme Court with the consent of  
39 the assignment judge and prosecutor. Referrals of participants from  
40 supervisory treatment programs may be to any public or private  
41 office or agency, including but not limited to, programs within the  
42 probation service of the court, offering counseling or any other  
43 social service likely to aid in the rehabilitation of the participant  
44 and to deter the commission of other offenses.

45 j. Health Care Professional Licensing Board Notification. The  
46 program director shall promptly notify the State Board of Medical  
47 Examiners when a State licensed physician or podiatrist has been

1 enrolled in a supervisory treatment program after he has been  
2 charged with an offense involving drugs or alcohol.

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

4

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

6 2C:43-13. Supervisory Treatment Procedure. a. Agreement. The  
7 terms and duration of the supervisory treatment shall be set forth in  
8 writing, signed by the prosecutor and agreed to and signed by the  
9 participant. Payment of the assessment required by section 2 of  
10 P.L.1979, c.396 (C.2C:43-3.1) shall be included as a term of the  
11 agreement. If the participant is represented by counsel, defense  
12 counsel shall also sign the agreement. Each order of supervisory  
13 treatment shall be filed with the county clerk.

14 b. Charges. During a period of supervisory treatment the  
15 charge or charges on which the participant is undergoing  
16 supervisory treatment shall be held in an inactive status pending  
17 termination of the supervisory treatment pursuant to subsection d.  
18 or e. of this section.

19 c. Period of treatment. Supervisory treatment may be for such  
20 period, as determined by the designated judge or the assignment  
21 judge, not to exceed three years, provided, however, that the period  
22 of supervisory treatment may be shortened or terminated as the  
23 program director may determine with the consent of the prosecutor  
24 and the approval of the court.

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

28 e. Violation of conditions. Upon violation of the conditions of  
29 supervisory treatment, the court shall determine, after summary  
30 hearing, whether said violation warrants the participant's dismissal  
31 from the supervisory treatment program or modification of the  
32 conditions of continued participation in that or another supervisory  
33 treatment program. Upon dismissal of the participant from the  
34 supervisory treatment program, the charges against the participant  
35 may be reactivated and the prosecutor may proceed as though no  
36 supervisory treatment had been commenced.

37 f. Evidence. No statement or other disclosure by a participant  
38 undergoing supervisory treatment made or disclosed to the person  
39 designated to provide such supervisory treatment shall be disclosed,  
40 at any time, to the prosecutor in connection with the charge or  
41 charges against the participant, nor shall any such statement or  
42 disclosure be admitted as evidence in any civil or criminal  
43 proceeding against the participant. Nothing provided herein,  
44 however, shall prevent the person providing supervisory treatment  
45 from informing the prosecutor, or the court, upon request or  
46 otherwise as to whether or not the participant is satisfactorily  
47 responding to supervisory treatment.

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

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

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

20  
21 13. N.J.S.2C:52-6 is amended to read as follows:

22 2C:52-6. Arrests not resulting in conviction

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

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

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

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

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

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

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

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

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

44

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

STATEMENT

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

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

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

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

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant’s criminal history by the prosecutor and as a condition of the application, the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In addition, conditional dismissal will not be available if the offense for which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; animal cruelty laws; or any

1 disorderly persons offense or petty disorderly persons offense under  
2 chapter 35 or 36 of the Criminal Code (drugs and drug  
3 paraphernalia). However, a person who is charged with a disorderly  
4 persons or petty disorderly persons offense involving drugs or drug  
5 paraphernalia may apply for a conditional discharge in accordance  
6 with N.J.S.2C:36A-1.

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

21 If the court approves a defendant's participation in the  
22 conditional dismissal program over the municipal prosecutor's  
23 objection, that order will, upon the request of the prosecutor, be  
24 stayed for a period of 10 days to permit the prosecutor to appeal the  
25 order to the Superior Court.

26 PROGRAM REQUIREMENTS. After taking into consideration the  
27 eligibility criteria, the defendant's criminal history and the  
28 prosecutor's recommendation, the court may approve the  
29 defendant's participation in the conditional dismissal program and  
30 place the defendant under a probation monitoring status for a period  
31 of one year. The court may also impose financial obligations and  
32 other terms and conditions in accordance with the bill. The bill  
33 permits the defendant to apply to the court for an extension of the  
34 term of conditional dismissal to allow sufficient time to pay  
35 financial obligations imposed by the court. In addition, a judge  
36 could extend the term for good cause.

37 If a defendant who is participating in conditional dismissal is  
38 convicted of any offense or crime under any law of the United  
39 States, this State or any other state, or otherwise fails to comply  
40 with the terms and conditions imposed by the court, the court can  
41 enter a judgment of conviction and impose a fine, penalty, or other  
42 assessment in accordance with the defendant's prior plea of guilty  
43 or prior finding of guilt.

44 If, at the end of the term, the defendant has not been convicted of  
45 any subsequent offense or crime under any law of the United States,  
46 this State or any other state, and has complied with any other terms  
47 and conditions imposed by the court, the court may terminate the



1 probation monitoring and dismiss the proceedings against the  
2 defendant.

3 The bill provides that a conditional dismissal of a petty  
4 disorderly persons or disorderly persons offense granted pursuant to  
5 the program will not be deemed a conviction for purposes of  
6 disqualifications or disabilities, but will be reported to the State  
7 Bureau of Identification criminal history record information files  
8 for purposes of determining future eligibility or exclusion from  
9 court diversion programs. A conditional dismissal granted will not  
10 be deemed a conviction for the purposes of determining whether a  
11 second or subsequent offense has occurred under any law of this  
12 State.

13 LIMITATION. A conditional dismissal can only be granted once  
14 with respect to any defendant.

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

25 A municipal court judge may impose an assessment, based on the  
26 nature of the offense and the character of the defendant, that does  
27 not exceed the amount of a fine that would have been imposed for  
28 conviction of the offense charged. Such assessment will be  
29 distributed in the same manner as a fine for the offense.

30 A defendant will be advised of these financial conditions prior to  
31 seeking entry into the program.

32 The bill allows the defendant to apply for a waiver of the fee by  
33 reason of poverty. The court may also permit the defendant to pay  
34 the conditional dismissal fee and other assessments in installments  
35 or order other alternatives pursuant to section 1 of P.L.2009, c.317  
36 (C.2B:12-23.1). Under that law, the court has several options  
37 available if it finds that a person does not have the ability to pay a  
38 penalty in full or has failed to pay a previously imposed penalty.  
39 The court may reduce, suspend, or modify the installment plan;  
40 order that credit be given against the amount owed for each day of  
41 confinement if the court finds that the person has served jail time  
42 for the default; revoke any unpaid portion of the penalty; order the  
43 person to perform community service in lieu of payment of the  
44 penalty; or impose any other alternative permitted by law.

45 MUNICIPAL COURT DIVERSION FUND. The bill establishes a new  
46 dedicated, non-lapsing fund to be known as the "Municipal Court  
47 Diversion Fund," which will be administered by the Administrative  
48 Office of the Courts. The fund will be the depository of the \$75

1 application fee for the conditional dismissal program. Monies in  
2 the fund will be used to offset the cost of intake and monitoring  
3 services for defendants under the conditional dismissal program.

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

11       Under the current conditional discharge statute, a person is not  
12 eligible for conditional discharge if that person has committed a  
13 disorderly persons or petty disorderly persons drug offense under  
14 any law of the United States, this State or any other state. The bill  
15 amends section a. of N.J.S.2C:36A-1 to also provide that a person  
16 who has participated in any supervisory treatment program or the  
17 conditional dismissal program established under the bill will not be  
18 eligible for participation in the conditional discharge program.

19       SUPERVISORY TREATMENT (PTI). Similar to the conditional  
20 discharge statute, the PTI statute, N.J.S.2C:43-12, provides that the  
21 \$75 fee charged for the program is used to defray the costs of juror  
22 compensation. Since these monies are no longer used to defray the  
23 costs of juror compensation, the bill updates this section of law  
24 accordingly.

25       Under the current provisions of N.J.S.2C:43-12, PTI may only  
26 occur once and any person who has previously received PTI is not  
27 eligible for subsequent PTI. This bill expands this provision by  
28 providing that a person who has participated in either conditional  
29 dismissal or conditional discharge will not be eligible for PTI.

30       The bill amends the conditional discharge and PTI statutes to  
31 provide that the court may allow the payment of the fees and other  
32 financial obligations in installments.

33       EXPUNGEMENT. The bill amends N.J.S.2C:52-6 concerning  
34 expungement of arrests not resulting in conviction to allow for  
35 expungement of charges dismissed pursuant to conditional  
36 discharge or conditional dismissal six months after the entry of the  
37 order of dismissal. Currently, this section allows for expungement  
38 for a person who has had charges dismissed as a result of  
39 participation in a supervisory treatment program.

40       EFFECTIVE DATE. The bill takes effect 120 days after enactment,  
41 and applies to any person who commits a disorderly persons offense  
42 or petty disorderly persons offense on or after the effective date of  
43 the bill.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 2588

# STATE OF NEW JERSEY

DATED: JUNE 6 , 2013

The Senate Judiciary Committee reports favorably Senate Bill No. 2588.

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

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

**CONDITIONAL DISMISSAL PROGRAM.** Under the provisions of the bill, a defendant who is charged with a petty disorderly persons offense or disorderly persons offense may apply to the municipal court to enter into the conditional dismissal program, provided the defendant has not been previously convicted of any offense or crime under any law of the United States, this State or any other state. A defendant may make an application to the conditional dismissal program after a plea of guilty or a finding of guilt, but prior to the entry of judgment of conviction.

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant’s criminal history by the prosecutor and as a condition of the application, under the bill the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In addition, conditional dismissal will not be available if the offense for

which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; animal cruelty laws; or any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of the Criminal Code (drugs and drug paraphernalia). However, a person who is charged with a disorderly persons or petty disorderly persons offense involving drugs or drug paraphernalia may apply for a conditional discharge in accordance with N.J.S.2C:36A-1.

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

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

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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment

in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment would be distributed in the same manner as a fine for the offense.

A defendant would be advised of these financial conditions prior to seeking entry into the program.

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

penalty; order the person to perform community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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

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

**FISCAL NOTE**  
**SENATE, No. 2588**  
**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

DATED: JUNE 12, 2013

**SUMMARY**

**Synopsis:** Establishes conditional dismissal program in municipal court.

**Type of Impact:** General Fund and municipal revenue

**Agencies Affected:** Municipal courts, Judiciary.

**Executive Estimate**

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	\$348,000	\$0	\$0
<b>Local Revenue</b>			
<b>Municipal Court</b>	Indeterminate - See comments below		
<b>Diversion Fund</b>			

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- The Administrative Office of the Courts (AOC) states that the proposed legislation would impact revenue in three distinct areas: Conditional Dismissal Program; Conditional Discharge Program; and Supervisory Treatment – Pretrial Intervention (PTI) Program.
- The AOC states that municipalities would not lose revenues currently yielded from assessed court costs, since these costs would be imposed under the Conditional Dismissal Program.
- The AOC states that because of the discretionary nature of the proposed Conditional Dismissal Program, the Judiciary is unable to estimate the number of defendants who would be eligible for participation in that program, or the number of defendants who would be impacted by the modifications to the Conditional Discharge Program and the Supervisory Treatment – Pretrial Intervention (PTI) Program. Thus, the Judiciary is not able to estimate the fiscal impact of revenue with regards to the proposed legislation.
- The AOC states that extensive programming to the Judiciary’s ATS/ACS computer system would be required to implement the proposed legislation. It is estimated that \$348,000 would be needed to pay for those changes.



## **BILL DESCRIPTION**

Senate Bill No. 2588 of 2013 establishes a conditional dismissal program in municipal court similar to the existing supervisory treatment programs for pre-trial intervention and conditional discharge.

Currently, the supervisory treatment programs for pre-trial intervention and conditional discharge allow the court to suspend proceedings against eligible defendants while the defendants participate in supervisory treatment. Persons who are charged with indictable offenses may be eligible for pre-trial intervention (“PTI”). Persons charged with certain disorderly persons or petty disorderly persons drug offenses may be eligible for conditional discharge. If the defendant violates a term or condition of supervisory treatment, the court may enter a judgment of conviction or, where the defendant did not previously plead guilty and was not previously found guilty, resume the criminal proceedings. If the defendant successfully completes the program, the criminal charges are dismissed.

**CONDITIONAL DISMISSAL PROGRAM.** The bill establishes a similar diversion program in municipal court to be known as the conditional dismissal program. Under the bill, a defendant who is charged with a petty disorderly persons offense or disorderly persons offense may apply to enter into the conditional dismissal program, provided the defendant has not been previously convicted of any offense or crime. A defendant may apply to the program after a plea of guilty or a finding of guilt, but prior to the entry of judgment of conviction.

**FINGERPRINTING REQUIREMENT.** Under the program, the defendant would be required to submit to the fingerprint identification procedures.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** A person is ineligible for Conditional Dismissal if they have been charged with certain offenses described in the bill, and also if they have previously participated in the Conditional Discharge or Pre-Trial Intervention programs. Furthermore, Conditional Dismissal is granted on a one-time basis.

**PROGRAM REQUIREMENTS.** After taking into consideration the eligibility criteria, the defendant’s criminal history and the prosecutor’s recommendation, the court may approve the defendant’s participation in the program and place the defendant under a probation monitoring status for one year. The court may also impose financial obligations and other terms and conditions. The bill permits the defendant to apply for an extension of the term of conditional dismissal to allow sufficient time to pay financial obligations imposed. In addition, a judge could extend the term for good cause.

If a defendant who is participating in conditional dismissal is convicted of any offense or crime, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment in accordance with the defendant’s prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

**CONDITIONAL DISMISSAL APPLICATION FEE AND ASSESSMENT.** A person applying for admission to the conditional dismissal program would pay an application fee of \$75 to be deposited in the newly created “Municipal Court Diversion Fund.” Monies in this fund would be used to offset the cost of intake and monitoring services related to the conditional dismissal program. If admitted into the program, the defendant would also be required to pay any restitution, costs, and other mandatory assessments that would have been imposed by law for a conviction of the offense charged.

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged.

The bill allows the defendant to apply for a waiver of the fee by reason of poverty. The court may also permit the defendant to pay the conditional dismissal fee and other assessments in installments or order other alternatives.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a dedicated, non-lapsing fund, known as the "Municipal Court Diversion Fund," to be administered by the AOC. The fund will be the depository of the \$75 application fee and will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

**CONDITIONAL DISCHARGE.** The bill provides that a person who has participated in any supervisory treatment program or the conditional dismissal program established under the bill will not be eligible for participation in the conditional discharge program.

**SUPERVISORY TREATMENT (PTI).** The bill provides that a person who has participated in either conditional dismissal or conditional discharge will not be eligible for PTI.

**EXPUNGEMENT.** The bill allows for expungement of charges dismissed pursuant to conditional discharge or conditional dismissal six months after the entry of the order of dismissal.

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

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Judiciary**

The AOC states that the proposed legislation would impact revenue in three distinct areas:

- Conditional Dismissal Program;
- Conditional Discharge Program; and
- Supervisory Treatment – Pretrial Intervention (PTI) Program.

#### **Conditional Dismissal Program:**

The AOC states that judges would be able to impose restitution, costs and assessments as they do now when someone is convicted of offenses under the bill. Thus, monies going into state funds, such as Victims of Crime Compensation Office and Safe Streets, would likely not be diminished. Further, municipalities would not lose revenues currently yielded from assessed court costs, since these costs would be imposed.

The AOC notes that the imposition of the assessment rests entirely within the judge's discretion. While some DP/PDP statutes cite a specific fine amount or range, others are silent. If there is no fine amount specified, the fine for the offense is determined under N.J.S.A. 2C:43-3, which sets the maximum DP and PDP fine amounts at \$1,000 and \$500, respectively. The AOC cannot project whether judges will impose an assessment or the amount of those assessments for defendant's who have been approved to enter the conditional dismissal program. These decisions will be made on a case-by-case basis. Thus, the impact on local government revenue is unknown. However, the bill will not increase revenue to local government since the assessments cannot exceed the existing statutory limits. The AOC states that there is no impact on State

revenues since amounts collected from the assessments would be distributed to local government as they are now.

The AOC notes that the bill also requires that defendants pay a \$75 application fee, which would be deposited by the court into the “Municipal Court Division Fund” and used to defray the cost of probation intake and monitoring so that that State and local government would assume no new costs. The AOC adds that the bill provides judges with the discretion to waive the application fee for good cause.

The AOC states that the Judiciary does not collect all of the data regarding the program’s disqualifiers. For example, the Judiciary cannot identify the percentage of disorderly persons or petty disorderly persons defendants who previously received a conditional discharge or was admitted into a PTI program, or those who have committed specific crimes making them ineligible or the program. Further, the AOC is not able to provide a reliable estimate of the number of defendants that would be considered indigent.

As a result, the AOC is not able to estimate the number of defendants who would be eligible for participation in the conditional dismissal program or the number of defendants who would apply for participation in the program.

**Conditional Discharge Program:**

The AOC notes that although the \$75 Conditional Discharge Program application fee amount would remain the same, the bill may result in a decrease in the number of defendants applying for conditional discharge as a result of various disqualifiers enumerated in the bill. The Judiciary cannot estimate the number of defendants who would be affected or the revenue impact, if any.

**Supervisory Treatment – Pretrial Intervention (PTI) Program:**

The AOC notes that although the \$75 Supervisory Treatment – Pretrial Intervention (PTI) Program application fee amount would remain the same, the bill may result in a decrease in the number of defendants applying for PTI as a result of various disqualifiers enumerated in the bill. The Judiciary cannot estimate the number of defendants who would be affected or the revenue impact, if any.

**Revenue Summary:**

The AOC states that because of the discretionary nature of the proposed conditional dismissal program, the Judiciary is unable to estimate the number of defendants who would be eligible for participation in the Conditional Dismissal Program, or the number of defendants who would be impacted by the modifications to the Conditional Discharge Program and the Supervisory Treatment – Pretrial Intervention (PTI) Program. Thus, the Judiciary is not able to estimate the fiscal impact of revenue with regards to the proposed legislation.

**Expenditures:**

The AOC states that extensive programming to the Judiciary’s ATS/ACS computer system would be required to implement the proposed legislation. It is estimated that \$348,000 will be needed to pay for those changes.

**OFFICE OF LEGISLATIVE SERVICES**

The OLS concurs with the Executive estimate.

*Section: Judiciary*

*Analyst: Anne Raughley  
Principal Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 2588

# STATE OF NEW JERSEY

DATED: JUNE 24, 2013

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2588.

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

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

**CONDITIONAL DISMISSAL PROGRAM.** Under the provisions of the bill, a defendant who is charged with a petty disorderly persons offense or disorderly persons offense may apply to the municipal court to enter into the conditional dismissal program, provided the defendant has not been previously convicted of any offense or crime under any law of the United States, this State or any other state. A defendant may make an application to the conditional dismissal program after a plea of guilty or a finding of guilt, but prior to the entry of judgment of conviction.

**FINGERPRINTING REQUIREMENT.** To allow sufficient time for verification of the defendant’s criminal history by the prosecutor and as a condition of the application, under the bill the defendant will be required to submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making an application to the court.

**CONDITIONAL DISMISSAL PROGRAM ELIGIBILITY.** Conditional dismissal will not be available to any person who has previously participated in conditional discharge, conditional dismissal, or PTI. In addition, conditional dismissal will not be available if the offense for

which the person is charged involved: organized criminal or gang activity; a continuing criminal business or enterprise; a breach of the public trust by a public officer or employee; domestic violence; an offense against an elderly, disabled or minor person; an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug; animal cruelty laws; or any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of the Criminal Code (drugs and drug paraphernalia). However, a person who is charged with a disorderly persons or petty disorderly persons offense involving drugs or drug paraphernalia may apply for a conditional discharge in accordance with N.J.S.2C:36A-1.

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

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

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

If a defendant who is participating in conditional dismissal is convicted of any offense or crime under any law of the United States, this State or any other state, or otherwise fails to comply with the terms and conditions imposed by the court, the court can enter a judgment of conviction and impose a fine, penalty, or other assessment

in accordance with the defendant's prior plea of guilty or prior finding of guilt.

If, at the end of the term, the defendant has not been convicted of any subsequent offense or crime under any law of the United States, this State or any other state, and has complied with any other terms and conditions imposed by the court, the court may terminate the probation monitoring and dismiss the proceedings against the defendant.

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

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

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

A municipal court judge may impose an assessment, based on the nature of the offense and the character of the defendant, that shall not exceed the amount of a fine that would have been imposed for conviction of the offense charged. Such assessment would be distributed in the same manner as a fine for the offense.

A defendant would be advised of these financial conditions prior to seeking entry into the program.

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

penalty; order the person to perform community service in lieu of payment of the penalty; or impose any other alternative permitted by law.

**MUNICIPAL COURT DIVERSION FUND.** The bill establishes a new dedicated, non-lapsing fund to be known as the "Municipal Court Diversion Fund," which will be administered by the Administrative Office of the Courts. The fund will be the depository of the \$75 application fee for the conditional dismissal program. Monies in the fund will be used to offset the cost of intake and monitoring services for defendants under the conditional dismissal program.

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

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

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

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

The bill amends the conditional discharge and PTI statutes to provide that the court may allow the payment of the fees and other financial obligations in installments.

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

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

As reported, this bill is identical to Assembly Bill No. 3598, as also reported by the committee.

FISCAL IMPACT:

The bill requires an individual applying for admission to the conditional dismissal program to pay a \$75 fee, which is payable to the Municipal Court Diversion Fund created by the bill.

The Office of Legislative Services (OLS) estimates that the bill will generate revenue totaling \$1,652,400 annually for the Municipal Court Diversion Fund. The OLS also notes that an indeterminate one-time cost will be incurred by the Judiciary to re-program its data processing system to accommodate the new fee.