

**Garden State CLE Presents**



**Municipal Court Conditional Discharge  
Program**

**Lesson Plan**

# **Table of Contents**

**1. Introduction**

**2. Pre-Trial Intervention – In General**

**3. Qualifications for Conditional Dismissal**

**4. Completion of Conditional Dismissal Program**

**5. Failure to successfully complete CDP**

**6. Collateral Consequences**

**7. Statute, amendments & legislative statement**

## **1. Introduction**

**New Jersey law provides a variety of programs and procedures that will divert defendants who have been charged in municipal court from the criminal justice system. Typically, the diversionary programs will address a wide array of disorderly and petty disorderly persons' offenses. In cases involving alcohol abuse, municipal ordinances can also be considered as the subject of diversion. Among the available programs and procedures are:**

**NJSA 2C:2-11 - *De Minimis* Infractions**

**NJSA 26:2B-17 - ATRA**

**NJSA 2C:36A-1 - Conditional Discharge**

**NJSA 2C:51-2 – Waiver of Forfeiture of Public Office**

**NJSA 2C:43-12 – PTI on Upgraded D/P charges**

**Rule 7:8-1 & 1:40-8 – Complementary Dispute Resolution**

**Plea Bargaining Process**

**By contrast, apart of the plea bargaining process, there is no statutory program that will authorize a diversion for a person charged with a traffic offense.**

## **2. Pre-Trial Intervention – In General**

**PTI is a diversionary program designed to 'augment the options of prosecutors in disposing of criminal matters ... [and] provide applicants with opportunities to avoid ordinary prosecution by receiving early rehabilitative services or supervision, when such services or supervision can reasonably be expected to deter future criminal behavior by an applicant.'**

**To gain admission, a defendant must obtain a positive recommendation from the PTI director and the consent of the prosecutor. In making a PTI determination, the prosecutor must evaluate the criteria set forth in *N.J.S.A. 2C:43-12e* and the *Rule 3:28 Guidelines*.. As part of that determination, the prosecutor must "assess a defendant's 'amenability to correction' and potential 'responsiveness to rehabilitation.'**

**A defendant generally has a heavy burden when seeking to overcome a prosecutorial denial of his admission into PTI. In order to overturn a prosecutor's rejection, a defendant must clearly and convincingly establish that the prosecutor's decision constitutes a patent and gross abuse of discretion. A patent and gross abuse of discretion is defined as a decision that has gone so wide of the mark sought to be accomplished by PTI that fundamental fairness and justice require judicial intervention. Ordinarily, an abuse of discretion will be manifest if defendant can show that a prosecutorial veto (a) was not premised upon a consideration of all relevant factors, (b) was based upon a consideration of irrelevant or inappropriate factors, or (c) amounted to a clear error in judgment." Prosecutors are granted "wide latitude in deciding whom to divert into the PTI program and whom to prosecute through a traditional trial." We afford the prosecutor's decision great deference. For that reason, the scope of judicial review of a decision to reject a PTI application is severely limited. A trial court can only overturn a prosecutor's decision to deny PTI upon finding a patent and gross abuse of discretion.**

**a. NJSA 2C:43-12 and 13**

**b. Rule 3:28 (with Guidelines)**

**c. Admission and Rejection**

**State v. Leonardis, 73 N.J. 360 (1977)**

**State v. Kraft, 265 N.J. Super. 106 (App. Div. 1993)**

**State v. Nwobu, 139 N.J. 236 (1995)**

**State v. Watkins, 193 N.J. 507 (2008)**

**State v. Negran, 178 N.J. 73 (2003)**

**d. Diversion in another State – State v. McKeon, 385 N.J. Super. 559 (App. Div. 2006)**

**e. Conditioned on plea to traffic offenses – State v. Mosner, 407 N.J. Super. 40 (App. Div. 2009)**

**f. Six-month delay for expungement following dismissal – N.J.S.A. 2C:52-6(b)**

**g. Will serve as a bar to expungement of criminal conviction - N.J.S.A. 2C:52-14(f)**

**h. Overcoming statutory bar (e.g. prior conditional discharge – State v. Dylag, 267 N.J. Super. 348 (Law Div. 1993)) overruled by State v. O'Brien, 418 NJ Super. 428 (App. Div. 2011).**

### **3. Qualifications for Conditional Dismissal**

**Client Name:** \_\_\_\_\_

**Municipal Court:** \_\_\_\_\_

**Charges** \_\_\_\_\_ **Docket #** \_\_\_\_\_

#### **Client Check-off list**

- 1. Offense qualifies for diversion** \_\_\_\_\_
- 2. Client is prepared to plead guilty (with factual basis)** \_\_\_\_\_
- 3. No prior criminal/DP/PDP offenses anywhere** \_\_\_\_\_
- 4. No prior diversions in New Jersey** \_\_\_\_\_
- 5. Fingerprint Identification** \_\_\_\_\_
- 6. Provided Notice to Prosecutor** \_\_\_\_\_
- 7. Can Pass Judicial Evaluation** \_\_\_\_\_
- 8. Program payments, terms & conditions** \_\_\_\_\_

[Note – date of offense must be on or after effective date of the statute]

**The burden of demonstrating statutory eligibility for diversion in the municipal court conditional dismissal program (CDP) is on the defendant. Note that amenability to rehabilitation is not a requirement as in PTI. In order to qualify for consideration, an applicant must simply meet each of the following eight criteria:**

**1.) Nature of Offense. The CDP is limited to those charged with disorderly and petty disorderly persons' offenses in municipal court. Traffic violations and local ordinance are not eligible for consideration. In addition, certain types of serious disorderly persons' and petty disorderly persons' offenses are excluded. These include:**

- (a) organized criminal or gang activity;<sup>1</sup>**
- (b) a continuing criminal business or enterprise;<sup>2</sup>**
- (c) a breach of the public trust by a public officer or employee;<sup>3</sup>**
- (d) domestic violence as defined by subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19);**
- (e) an offense against an elderly, disabled or minor person;<sup>4</sup>**
- (f) an offense involving driving or operating a motor vehicle while under the influence of alcohol, intoxicating liquor, narcotic, hallucinogenic or habit-producing drug;<sup>5</sup>**
- (g) a violation of animal cruelty laws; or**
- (h) any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of Title 2C.<sup>6</sup>**

---

<sup>1</sup> Note this prohibition tracks the aggravating circumstance set forth under N.J.S.A. 2C:44-1(a)(5).

<sup>2</sup> Note this prohibition tracks the aggravating circumstance set forth under N.J.S.A. 2C:44-1(a)(11).

<sup>3</sup> Note this prohibition tracks the aggravating circumstance set forth under N.J.S.A. 2C:44-1(a)(4).

The unfortunate wording in section (c) dealing with a breach of the public trust by a public officer or employee would probably cover petty offenses that touch on the public office. The obvious reason for this provision is to make it impossible for a public official to avoid a forfeiture of public office by being diverted from the criminal justice system through CDP. However, by its wording, a public official who committed disorderly persons' offenses involving dishonesty unrelated to the public offense would be eligible for diversion and could avoid forfeiture. See N.J.S.A. 2C:51-2(a)(2) and (a)(1).

<sup>4</sup> Note this prohibition tracks the aggravating circumstance set forth under N.J.S.A. 2C:44-1(a)(2).

<sup>5</sup> This section is probably intended to eliminate disorderly and petty disorder persons' offenses that arise from or are companion to a drunk driving case. As a traffic offense, a drunk driving charge under N.J.S.A. 39:4-50(a) is ineligible since it is not a disorderly or petty disorderly persons' offense. See *State v. Hamm*, 121 N.J. 109, 577 A.2d 1259 (1990) and *State v. Hammond*, 118 N.J. 306, 571 A.2d 942 (1990).

<sup>6</sup> Defendants who are charged with drug offenses under these chapters can obtain diversion through the conditional discharge procedure in N.J.S.A. 2C:36A-1.

**2.) Plea or finding of guilt. A defendant who seeks diversion through CDP must plead guilty by providing a voluntary and knowing plea with an adequate factual basis to the subject disorderly or petty disorderly persons' offense. A defendant may also apply for diversion upon conviction by the court following a full, adversarial trial. A judge who is considering a CDP application may enter a finding of guilt on the complaint but must withhold recording a judgment of conviction. The purpose of the guilty plea/finding requirement is to eliminate the inconvenience and expense to the court and the prosecution associated with trying a case where an earlier attempt at diversion has failed. Thus, if the defendant is unable to successfully complete the CDP program, the only issue left for the court will be the imposition of sentence. It is important to note that nothing in the statute bars an agreement whereby the prosecutor will ask the court to dismiss a variety of criminal or traffic offenses in exchange for the defendant's conditional plea and admittance to CDP.**

**3.) No prior offenses. An applicant for diversion through CDP must be a legitimate first offender and this fact must be verified by the court. (See criterion #5 below). Under section (1)(a), he cannot have 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. Presumably this would also include prior convictions that were subsequently subject to expungement.<sup>7</sup>**

**4. No prior diversions in New Jersey. Under section (1)(a) of the statute, an applicant may not have had the benefit of a previous diversion from the criminal justice system. The disqualifying diversionary programs include Conditional Discharge,<sup>8</sup> Pre-trial Intervention<sup>9</sup> and a prior**

---

<sup>7</sup> Records of New Jersey convictions that have been expunged may be examined in connection with a CDP application. See generally N.J.S.A. 2C:52-20. "Expunged records may be used by any judge in determining whether to grant or deny the person's application for acceptance into a supervisory treatment or diversion program for subsequent charges. Any expunged records which are possessed by any law enforcement agency may be supplied to the Attorney General, any county prosecutor or judge of this State when same are requested and are to be used for the purpose of determining whether or not to accept a person into a supervisory treatment or diversion program for subsequent charges."

<sup>8</sup> N.J.S.A. 2C:36A-1 or N.J.S.A. 24:21-27 (repealed).

<sup>9</sup> N.J.S.A. 2C:43-12 and Rule 3:28

**municipal court conditional dismissal application.<sup>10</sup> There are two critical issues associated with these prior diversionary programs. First, whether the defendant ever successfully completed the program is irrelevant. The mere application for any of them will serve as a subsequent disqualification.<sup>11</sup> Secondly, a diversionary program that was successfully completed by the defendant in another state does not serve as an absolute bar to diversion in New Jersey.<sup>12</sup>**

**5. Fingerprint Identification. As a condition of a CDP application, the defendant must submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making such application to the court to allow sufficient time for verification of the defendant's criminal history by the prosecutor. The court must consider this information and refer to it on the record under section (c)(2) prior to granting the defendant's CDP application.**

**6. Notice to the prosecutor. The role of the municipal prosecutor in the CDP program is somewhat limited. An applicant must provide appropriate notice to the prosecutor of his intention to seek diversion through CDP. The prosecutor may have specific recommendations related to terms and condition, restitution to victims and the like which the judge can consider. The prosecutor can also object to the defendant's admittance into CDP. However, a municipal prosecutor's objection to diversion through CDP cannot block a judge's decision to grant the defendant's application. Under section (c)(2) of the statute, a CDP diversion granted by the court over the objection of the municipal prosecutor must be stayed for 10-days to permit the prosecutor to appeal the decision to the Superior Court.**

---

<sup>10</sup> An application for any single diversionary program serves as a bar to future consideration for diversion in every program.

<sup>11</sup> State v. O'Brien, 418 N.J.Super. 428, 14 A.3d 56 (App. Div. 2011).

<sup>12</sup> State v. McKeon, 385 N.J.Super. 559, 897 A.2d 1127 (App. Div. 2006).

**7. Judicial evaluation.** Under section (c) of the statute, a municipal court judge considering an application for CDP must weigh and evaluate the following factors that generally track the criteria for PTI admission:<sup>13</sup>

- (a) The nature and circumstances of the offense;**
- (b) The facts surrounding the commission of the offense;**
- (c) The motivation, age, character and attitude of the defendant;**
- (d) The desire of the complainant or victim to forego prosecution;**
- (e) The needs and interests of the victim and the community;**
- (f) The extent to which the defendant's offense constitutes part of a continuing pattern of anti-social behavior;**
- (g) Whether the offense is of an assaultive or violent nature, whether in the act itself or in the possible injurious consequences of such behavior;**
- (h) Whether the applicant's participation will adversely affect the prosecution of codefendants;**
- (i) Whether diversion of the defendant from prosecution is consistent with the public interest; and**
- (j) Any other factors deemed relevant by the court.**

---

<sup>13</sup> Compare N.J.S.A. 2C:43-12(e)(1) through (17).

**8. Payments. Admittance to CDP is dependent upon payment of a variety of fees and assessments. Initially, each applicant must pay an application fee of \$75. Under section (c)(8), payment of the fee may be waived due to poverty or paid in reasonable installments. If admitted into the program, the defendant is also be required to pay any restitution, costs<sup>14</sup>, and other mandatory assessments<sup>15</sup> that would have been imposed by law for a conviction of the offense charged. In addition, instead of a fine, the 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.<sup>16</sup> These assessments may also be subject to payment in installments, conversion to community service or vacating under the general authority vested in municipal court judges by N.J.S.A. 2B:12-23.1.<sup>17</sup>**

---

<sup>14</sup> See N.J.S.A. 22A:3-4

<sup>15</sup> See N.J.S.A. 2C:43-3.1 Victims of Crime Compensation Organization. And N.J.S.A. 2C:43-3.2 for the Safe Neighborhoods Services Fund assessment.

<sup>16</sup> Typically, this amount will be capped at \$1000 for disorderly persons' offenses under N.J.S.A. 2C:43-3(c) and \$500 for a petty disorderly persons' offense under N.J.S.A. 2C:43-3(d).

<sup>17</sup> **2B:12-23.1. Inability to pay fine on date of court hearing; installment payments; alternative penalties**

a. Notwithstanding any other provision of law to the contrary, if a municipal court finds that a person does not have the ability to pay a penalty in full on the date of the hearing or has failed to pay a previously imposed penalty, the court may order the payment of the penalty in installments for a period of time determined by the court. If a person defaults on any payment and a municipal court finds that the defendant does not have the ability to pay, the court may:

- (1) reduce the penalty, suspend the penalty, or modify the installment plan;
- (2) 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;
- (3) revoke any unpaid portion of the penalty, if the court finds that the circumstances that warranted the imposition have changed or that it would be unjust to require payment;
- (4) order the person to perform community service in lieu of payment of the penalty; or
- (5) impose any other alternative permitted by law in lieu of payment of the penalty.

b. For the purposes of this section, "penalty" means any fine, statutorily-mandated assessment, surcharge or other financial penalty imposed by a municipal court, except restitution or a surcharge assessed pursuant to

**When imposed, the assessment will be distributed in the same manner as a fine for the offense charged. A defendant must be advised of these financial conditions prior to seeking entry into the program.**

#### **4. Completion of Conditional Dismissal Program**

**Typically, a defendant will be afforded an initial one-year period to complete the CDP. Supervision of the defendant during CDP is done through the local county probation department. During this time, the defendant must pay the assessments, fees, restitution and mandatory costs imposed by the court. The defendant must also complete any additional terms and conditions required by the judge, such as alcohol treatment, counseling, continuing education, community service and the like. In the event the defendant has been unable to complete the payments or the other terms and conditions of CDP, the court may extend the program.**

**Successful completion of CDP will result in dismissal of the underlying charge and is based upon the following criteria:**

- 1. Payment of application fee;**
- 2. Payment of costs, restitution and assessment;**
- 3. No conviction during the CDP term of a disorderly persons' offense, petty disorderly persons' offense or a crime anywhere in the United States'**
- 4. Successful completion of any other program terms and conditions that were initially ordered by the judge.**

**A complaint that has been dismissed through CDP may not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a petty disorderly persons or disorderly persons' offense. However, a record of the transaction 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 successful conditional dismissal is not considered to be a conviction for the purposes of determining whether a second or subsequent offense has occurred under any law of this State.<sup>18</sup>**

---

<sup>18</sup> This is an important point for certain offenses with mandatory sentence enhancement for subsequent offenses. For example, shoplifting requires community service and a jail term for subsequent offenses. See N.J.S.A. 2C:201-11(c)(4).

## **5. Failure to successfully complete CDP**

**Failure to complete CDP will usually be based upon an intervening conviction for a petty offense or crime, Often it is also based upon failure to pay required monetary assessments. Finally, on occasion, the defendant is simply incapable of competing the terms and condition of CDP, such as community service or alcohol treatment. An allegation that the defendant has not cooperated in the CDP process can be brought on the court's own motion, by the prosecutor or the probation department. The defendant is entitled to a hearing on the issue of program termination. If the defendant fails to complete the program, the he immediately becomes subject to entry of a judgment of conviction and the imposition of sentence, including jail and fines. The statute does not address whether a defendant must be given a credit against the fine or costs that he has previously paid into court on the underlying charge prior to the termination of his failed CDP attempt.**

## **6. Conditional Dismissal Program – Collateral Consequences**

**The decision to use CDP is critical and depends upon many factors, including client's age and future prospects.**

**a. Expungements - A complaint that dismissed under through CDP may be subject to expungement. However, under N.J.S.A. 2C:52-6(b), there is a six-month waiting period before the defendant can apply for the expungement of the dismissed complaint.**

**b. No future PTI**

**c. No future conditional discharge**

**d. No future CDP**

## **7. Statute, amendments & legislative statement**

**a. Eligibility and Application.** Whenever any defendant who 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, and who has not previously participated in conditional discharge under N.J.S.2C:36A-1, supervisory treatment under N.J.S.2C:43-12, or conditional dismissal under P.L. , c. (C. ) (pending before the Legislature as this bill), is charged with a petty disorderly offense or disorderly persons offense except as provided in subsection b. of this section, the defendant may, after a plea of guilty or a finding of guilt, but prior to the entry of a judgment of conviction and with appropriate notice to the prosecutor, apply to the court for entry into the conditional dismissal program pursuant to the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill). As a condition of such application, the defendant shall submit to the fingerprint identification procedures as provided in R.S.53:1-15 before making such application to the court to allow sufficient time for verification of the defendant's criminal history by the prosecutor.

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

**(2)** Nothing in this act shall preclude a defendant charged with any disorderly persons offense or petty disorderly persons offense under chapter 35

or 36 of Title 2C from applying to the court for admission into the conditional discharge program in accordance with N.J.S.2C:36A-1.

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

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

2. (New section) Court Approval of Defendant's Participation in Conditional Dismissal Program. After considering the eligibility criteria set forth in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill), the defendant's criminal history and the municipal prosecutor's recommendation, the court may, without entering a judgment of conviction, and after proper reference to the State Bureau of Identification criminal history record information files, approve the defendant's participation in the conditional dismissal program established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) 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 P.L. , c. (C. ) (pending before the Legislature as this bill). Where the court approves a

defendant's participation in the conditional dismissal program over the municipal prosecutor's objection, the order approving the defendant's participation in the program shall be a final order but upon request of the municipal prosecutor shall be stayed for a period of 10 days in order to permit the prosecutor to appeal such order to the Superior Court.

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

4. (New section) **Violation of Terms Prior To Dismissal.** If a defendant who is participating in the conditional dismissal program established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) is 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, or otherwise fails to comply with the terms and conditions imposed by the court, the court may enter a judgment of conviction and impose a fine, penalty, or other assessment which may be imposed by the court in accordance with the defendant's prior plea of guilty or finding of guilt.

5. (New section) **Dismissal.** If, at the end of the term of the conditional dismissal, the defendant has not been convicted of any subsequent petty disorderly persons offense, disorderly persons 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.

**6. (New section) Effect of Dismissal.** The conditional dismissal of petty disorderly persons or disorderly persons offenses granted pursuant P.L. , c. (C. ) (pending before the Legislature as this bill) shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a petty disorderly persons or disorderly persons offense 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 pursuant to P.L. , c. (C. )(pending before the Legislature as this bill) shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under any law of this State.

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

**8. (New section) Conditional Dismissal Assessment, Restitution and Other Assessments.** A defendant applying for admission to the conditional dismissal program pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) shall pay to the court an application fee of \$75 which, upon collection, shall be deposited into the “Municipal Court Diversion Fund” established pursuant to section 9 of P.L. , c. (C. ) (pending before the Legislature as this bill). Monies in the fund shall be used to defray the cost of intake and monitoring services related to the defendant’s participation in the conditional dismissal program as provided by the Probation Division of the Superior Court. If admitted into the program, the defendant shall 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 shall be distributed in the same manner as a fine for the offense charged. A defendant shall be advised of these financial conditions prior to seeking entry into the program.

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

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

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

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

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

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

pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) is charged with or convicted of any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of this title, the court upon notice to the prosecutor and subject to subsection c. of this section, may on motion of the defendant or the court:

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

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

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

supervisory treatment and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years.

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

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

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

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

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

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

d. A person seeking conditional discharge pursuant to this section shall pay to the court a fee of \$75[. The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county] which shall be paid to the Treasurer of the State of New Jersey for deposit in the General Fund. The defendant shall also be required to pay restitution, costs and other assessments as provided by law. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey[. Of the moneys collected under this subsection, \$30 of each fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75 fee shall be paid to the court, for use by the State] , or the court may permit the defendant to pay the conditional discharge fee and other assessments in installments or may order other alternatives pursuant to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

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

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

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

a. Public policy. The purpose of [sections] N.J.S.2C:43-12 through N.J.S.2C:43-22 [of this chapter] is to effectuate a Statewide program of Pretrial Intervention. It is the policy of the State of New Jersey that supervisory

treatment should ordinarily be limited to persons who have not previously been convicted of any criminal offense under the laws of New Jersey, or under any criminal law of the United States, or any other state when supervisory treatment would:

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

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

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

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

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

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

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

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

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

- (1) The nature of the offense;
- (2) The facts of the case;
- (3) The motivation and age of the defendant;
- (4) The desire of the complainant or victim to forego prosecution;
- (5) The existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;
- (6) The likelihood that the applicant's crime is related to a condition or situation that would be conducive to change through his participation in supervisory treatment;
- (7) The needs and interests of the victim and society;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2C:43-13. Supervisory Treatment Procedure.** a. **Agreement.** The terms and duration of the supervisory treatment shall be set forth in writing, signed by the prosecutor and agreed to and signed by the participant. Payment of the assessment required by section 2 of P.L.1979, c.396 (C.2C:43-3.1) shall be

included as a term of the agreement. If the participant is represented by counsel, defense counsel shall also sign the agreement. Each order of supervisory treatment shall be filed with the county clerk.

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

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

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

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

f. **Evidence.** No statement or other disclosure by a participant undergoing supervisory treatment made or disclosed to the person designated to provide such supervisory treatment shall be disclosed, at any time, to the prosecutor in connection with the charge or charges against the participant, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant. Nothing provided herein, however, shall prevent the person providing supervisory treatment from informing the

prosecutor, or the court, upon request or otherwise as to whether or not the participant is satisfactorily responding to supervisory treatment.

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

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

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

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

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

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

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

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

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

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

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

Such sheriffs, chiefs of police, members of the State Police and any other law enforcement agencies and officers shall also take the fingerprints, descriptions

**and such other information as may be required of unknown dead persons and as required by section 2 of P.L.1982, c.79 (C.2A:4A-61) of juveniles adjudicated delinquent and shall forward same to the State Bureau of Identification.**

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

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

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

## STATEMENT

**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 drug; animal cruelty laws; or any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of the Criminal Code. However, a person who is charged with a disorderly persons or petty disorderly persons offense involving drugs 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 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 petty disorderly persons offense, disorderly persons 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 in 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.** 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 charged. 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 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), supervisory treatment may only occur once and any person who has previously received supervisory treatment is not eligible for subsequent supervisory treatment. This bill expands this limitation by providing that a person who has participated in either conditional dismissal or conditional discharge will not be eligible for PTI.

**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.**