

CHAPTER 188
CORRECTED COPY

AN ACT concerning offenders with mental health concerns, amending various sections of the law, and supplementing Title 2C of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2C:43-32 Findings, declarations.

1. The Legislature finds and declares that, to facilitate the expansion and growth of programming for individuals with mental disorders who, due to their mental health issues, engage in conduct that results in involvement in the criminal justice system, a comprehensive response is needed. It is the goal of the Legislature to establish a Statewide Mental Health Diversion Program to divert individuals with serious mental disorders from having a public record of conviction or serving custodial time in the county jail or State prison, to allow participants to engage in mental health treatment and social services, and to reduce recidivism, thereby increasing public safety.

The Legislature further declares that the objectives of the program include: (1) reducing incarceration rates for the appropriate target population through effective diversion away from the criminal justice system; (2) increasing quality of life for the target population through efficient linkage to available social entitlements and community-based mental health treatment providers, in conjunction with supportive monitoring to ensure compliance; (3) increasing community awareness and understanding through cross training of law enforcement and mental health communities; and (4) reducing recidivism and re-hospitalization rates for the target population leading to an increase in public safety.

The Mental Health Diversion Program established by this enactment is grounded in principles of restorative justice where victims of crimes are empowered by maximizing their input when considering legal outcomes, and participants are held accountable yet supported in achieving long-term stability with mental health issues, gaining recovery tools, becoming law-abiding citizens, and being successful community members. This process is enhanced by the critical role of the diversion team which is anchored by the judge, who presides over a team of professionals from the fields of mental health and criminal justice, and the prosecutor. When the prosecutor makes the determination that a defendant is legally eligible for admission, a clinical determination of appropriateness is made, including a psychosocial evaluation which assists the prosecutor in a final determination of appropriateness for the program, and provides critical information for other professionals involved in programming, including the case managers, probation officers, public defenders, and clinical personnel.

This act initially establishes the program in three vicinages of the State. It is the intention of the Legislature to eventually expand the program to a Statewide mental health diversion program in all vicinages.

C.2C:43-33 Definitions.

2. As used in this act:

“Eligible offense” means a crime of the third or fourth degree that does not involve violence or the threat of violence. A crime or offense does not involve violence or threat of violence if none of the following apply: the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by word or gesture to use a deadly weapon or threatens to inflict bodily injury. “Eligible offense” shall not include a crime of the first degree, sexual

offenses, subject to subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-2) or pursuant to chapter 14 of Title 2C of the New Jersey Statutes, or a presumptively ineligible offense.

“Eligible person” means a person who: (1) is mentally competent as that term is defined in N.J.S.2C:4-4; (2) allegedly committed an eligible offense, or allegedly committed a presumptively ineligible offense but is approved for participation by the prosecutor, and is not otherwise disqualified by the provisions of this act; and (3) has been diagnosed with a mental disorder, either previously or through a mental health evaluation conducted through the program, and there is a nexus between the person’s mental disorder and the commission of the alleged crime as determined by a licensed mental health professional.

“Mental Health Diversion Program” or “program” means the criminal diversionary program established pursuant to this act that shall have the purpose of diverting eligible persons away from the criminal justice system and into appropriate case management and mental health services following interaction with law enforcement and where there is a nexus between the commission of the alleged offense and the eligible person’s mental disorder.

“Mental Health Diversion Team” is a collaboration of professionals led by the Superior Court Judge and comprised of Assistant Prosecutors, designated Public Defenders, a licensed mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. If resources are available, a certified drug and alcohol counselor shall be included as a member of the diversion team.

“Mental disorder” means a serious mental disorder, other than a personality disorder, classified within the current version of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM), including, but not limited to, psychotic disorder, bipolar disorder, major depressive disorder, post-traumatic stress disorder (PTSD), and co-occurring substance use disorders.

“Presumptively ineligible offense” means a crime of second degree, a crime of the third or fourth degree that involves violence or the threat of violence, an offense enumerated in subsection a., b., c., or e. of N.J.S.2C:39-5, or an arson offense as defined in chapter 17 of Title 2C of the New Jersey Statutes. For purposes of this section, a crime or offense involves violence or threat of violence if the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens by word or gesture to use a deadly weapon or threatens to inflict bodily injury. A crime of the first degree and sexual offenses subject to Megan’s Law P.L.2001, c.167 (C.2C:7-12 et seq.) as defined in chapter 14 of Title 2C of the New Jersey Statutes shall be ineligible under all circumstances.

“Psychosocial assessment” or “psychosocial evaluation” means a written evaluation of an individual's mental and emotional functioning.

C.2C:43-34 Statewide Mental Health Diversion Program, parameters, initial implementation.

3. a. (1) There is hereby established a Statewide Mental Health Diversion Program that shall have the purpose of diverting certain persons away from the criminal justice system and into appropriate case management and mental health services as early as possible following an interaction with law enforcement where the person meets the statutory criteria for participation in the program and is alleged to have committed an eligible offense or, subject to the approval of the prosecutor, a presumptively ineligible offense where there is a nexus between the commission of the alleged offense and the eligible person’s mental disorder.

(2) The Statewide Mental Health Diversion Program shall be established initially in no less than three judicial vicinages, with at least one program operating in each of the northern, central, and southern regions of the State. As used in this act “northern region” means Bergen,

Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, and Warren Counties; “central region” means Middlesex, Monmouth, Mercer and Union Counties; and “southern region” means Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties.

(3) The Attorney General, in consultation with the Administrative Office of the Courts, shall select the vicinages that shall participate in the Statewide Mental Health Diversion program, and, within one year of the effective date of P.L.2023 c.188 (C.2C:43-32 et al.), shall designate currently operating mental health diversion programs pursuant to paragraph (5) of this section or cause to be established and maintained new mental health diversion programs in additional selected vicinages, which shall accept eligible persons from within the vicinage.

(4) Programs in vicinages selected to participate in the Statewide Mental Health Diversion Program shall be eligible to receive funding from the “Statewide Mental Health Diversion Support Program Fund” established pursuant to section 14 of P.L.2023 c.188 (C.2C:43-41) to defray the costs of program administration and operation.

(5) A mental health diversion program in operation on the effective date of this act that serves the purpose of diverting eligible persons away from the criminal justice system and into appropriate case management and mental health services, and that applies the same eligibility criteria as provided under this act, may be deemed to comply with the requirements of this act and may be selected by the Attorney General for inclusion in the Mental Health Diversion Program established pursuant to this act.

b. The Attorney General, in consultation with the Administrative Office of the Courts and the Department of Human Services, shall, to the extent consistent with the selected program model, designate at least one regional Mental Health Diversion Team for the northern, central, and southern regions of program operation to coordinate case management and mental health services to eligible persons participating in the Mental Health Diversion Program established or maintained in accordance with this act, provided, however, that nothing in this section shall be construed to prevent a Mental Health Diversionary Program from using other providers if authorized by the county prosecutor.

c. No later than two years after the establishment of the Mental Health Diversion Program pursuant to subsection a. of this section, the Attorney General, in conjunction with the Administrative Office of the Courts and the Department of Human Services, may, subject to the availability of funds, expand the program to additional vicinages, and shall have discretion to modify the program to meet the intent of P.L.2023 c.188 (C.2C:43-32 et al.).

d. The Attorney General shall publish on its website information regarding the Mental Health Diversion Program, including the guidelines required pursuant to P.L.2023 c.188 (C.2C:43-32 et al.).

C.2C:43-35 Mental Health Diversion Program, leader, Superior Court judge, duties.

4. The program leader in a selected vicinage shall be a judge of the Superior Court who shall preside over all participant appearances, regularly held Mental Health Diversion Team meetings, and all related court proceedings. The judge shall preside over regular Mental Health Diversion Team meetings where participant treatment, progress, and barriers are discussed. All sanctions shall be subject to discussion by team members, but final sanction decisions shall be the sole province of the court.

The judge shall meet with each participant individually along with all members of the Mental Health Diversion Team in a location, such as the court well, which is suitable to facilitate private conversations, to review and discuss the participant’s progress, problems, and goal achievements.

Court proceedings include, but are not limited to, Orders of Acceptance, guilty pleas, sentencings, sanctions, recognitions, notices of termination, termination hearings, graduations, withdrawals, and violations of probation.

Three months prior to any participant moving on, the judge shall review a formal goal attainment log with the participant and team members. At the conclusion of the court supervision term, a “moving on” or graduation ceremony shall be held where an individual, their family or friends, and other participants recognize the achievement of completion.

C.2C:43-36 Prosecutor, refer person, consideration, Mental Health Diversion Program, timing.

5. a. At any time after the filing of a criminal complaint, including the pre-indictment and post-indictment period, but prior to the disposition of the complaint, a prosecutor may refer a person for consideration for diversion to the Mental Health Diversion Program.

b. At any time after the filing of a criminal complaint, including the pre-indictment and post-indictment period, but prior to the disposition of such complaint, an eligible person, or their defense counsel, may make an application to the prosecutor for diversion to the Mental Health Diversion Program.

C.2C:43-37 Application process, legal determination, clinical determination.

6. a. Application process. An eligible person who seeks to apply to the Mental Health Diversion Program shall, by submitting an application, agree to postpone their speedy trial rights. Applicants who are detained pre-trial shall agree to a reasonable amount of excludable time while legal and clinical determinations of eligibility are made.

b. Legal determination. The prosecutor shall have the discretion to determine if an eligible person qualifies for diversion to the Mental Health Diversion Program established or maintained pursuant to P.L.2023 c.188 (C.2C:43-32 et al.) after consideration of the nature of the eligible offense, the causative relationship between the person’s diagnosed or apparent mental disorder and the commission of the offense as determined by a mental health professional, the amenability of the person to participation in the services of the program, the availability of case management and mental health services, the desires of any victim, the person’s history of prior convictions, any accompanying violations of probation, and the probability that diversion will promote the person’s recovery, prevent future criminal behavior, and protect public safety. The prosecutor’s office shall make a determination as to legal eligibility within a reasonable time frame. If an applicant is detained, no more than 30 days of excludable time should be granted as against an applicant for a legal determination.

(1) A person who allegedly committed a presumptively ineligible offense shall not be permitted to participate in the Mental Health Diversion Program unless the prosecutor further determines, on a case-by-case basis, that mental health treatment will serve to benefit the eligible person by addressing the person’s mental disorder and will thereby reduce the likelihood that the person will thereafter commit another offense and no increased danger to the community will result from the person being admitted into the Mental Health Diversion Program.

(2) If the person was previously convicted of a violent crime enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2.), an application may be considered on a case-by-case basis. For purposes of this paragraph, a crime or offense involves violence or the threat of violence if the victim sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict bodily injury.

(3) Offenses enumerated in subsection a., b., c., or, e. of N.J.S.2C:39-5 are presumptively ineligible, however, each application may be considered by the prosecutor on a case-by-case basis subject to prosecutorial discretion.

(4) A person charged with a sexual offense as defined in chapter 14 of Title 2C of the New Jersey Statutes that is subject to P.L.2001, c.167 (C.2C:7-12 et seq.) known as Megan's Law and a person currently charged with an arson offense shall be ineligible unless the prosecutor determines on a case-by-case basis that an exception is warranted.

(5) The prosecutor shall consult with victims of an eligible offense prior to approving an eligible person's admission into the Mental Health Diversion Program and shall give due consideration to the victims' position on whether the eligible person should be admitted into the program. Nothing in this subsection shall be construed to alter or limit the authority or discretion of the prosecutor to admit an eligible person into the Mental Health Diversion Program which the prosecutor deems appropriate. Nothing in this section shall be construed to limit a prosecutor's discretion to admit any applicant for any ineligible offense on a case-by-case basis if, in the prosecutor's discretion, doing so is in the interests of justice.

(6) The prosecutor shall have the discretion to determine whether to approve, disapprove, or conditionally approve a person for diversion into the Mental Health Diversion Program and the determination shall not be subject to review by any court.

c. The prosecutor's approval of an application for diversion into the Mental Health Diversion Program pursuant to this section may be conditioned on an admission or plea of guilt by an eligible person.

d. Clinical determination. If a county prosecutor determines that an applicant meets the legal requirements for admission into the Mental Health Diversion Program as established in this act, a clinical determination of eligibility shall be made by a licensed mental health professional who holds a current, valid license issued pursuant to subsection a. of section 6 or subsection a. or d. of section 8 of P.L.1991, c.134 (C.45:15BB-1 et seq.) who shall conduct an interview with an applicant to determine clinical appropriateness, and who may also conduct interviews with family members, where the applicant has completed a release authorizing such communications. The licensed mental health professional should have training or certification in co-occurring diagnoses, treatment, and services. The licensed mental health professional shall also assess whether there is a nexus between the person's mental disorder and the alleged crime. The clinical interview may be done in-person or remotely. If conducted remotely, the interview shall be conducted through technology that enables the interviewer and applicant to see one another. The licensed mental health professional shall submit a psychosocial evaluation to aid the prosecutorial determination of the applicant's eligibility for the Mental Health Diversion Program. Psychosocial reports should be returned to the prosecutor's office and applicant's legal counsel simultaneously within a reasonable period of time following clinical interviews so as to not prejudice the prosecutor's office or the defendant's interests. The evaluation shall not be shared outside of the mental health evaluation process within the prosecutor's office. Defense counsel's use of the psychosocial evaluation is limited to the mental health diversion application process, and it cannot be used in any other proceeding. The psychosocial evaluation shall be provided to the judge presiding over the mental health diversion calendar prior to the issuance of any orders of acceptance or guilty pleas. Final decisions as to acceptance shall lie with the prosecutor's office provided appropriate mental health or co-occurring services are available in the community.

e. To qualify for prosecutorial diversion under this section, an eligible person shall, in addition to the terms set forth in the application to participate in the Mental Health Diversion Program, agree in writing to the following terms, where relevant to the eligible offense:

- (1) Participate in case management and mental health services initiated through the Mental Health Diversion Program or other similar services;
- (2) Provide through defense counsel their mental health records to consider the person's eligibility for the program, and cooperate with any recommended course of treatment, including the use of medications as prescribed and participation in counseling;
- (3) Authorize the case management or mental health service provider to release to the prosecutor and defense counsel periodic status reports regarding the person's participation, cooperation, and recovery progress with case management and mental health services;
- (4) Cooperate with case management service providers to procure housing, education, and employment services, where appropriate;
- (5) Refrain from the use of alcohol, use of any recreational drugs, or any illegal drugs;
- (6) Refrain from the possession or use of firearms or other weapons;
- (7) Refrain from further criminal activity;
- (8) Refrain from any contact with a victim of the offense unless otherwise permitted;
- (9) The tolling of time for the purposes of the person's right to a speedy trial while the person is participating in the program;
- (10) Advise the prosecutor of any change in the person's residential address or any change in the provider of case management and mental health services; and
- (11) Any other terms and conditions related to the person's recovery and public safety deemed appropriate by the prosecutor.

An eligible person, in consultation with the public defender assigned to the eligible person or the person's own legal counsel, shall be given the opportunity to review and sign all necessary agreements and informed consents after consulting with their designated or retained counsel.

f. The prosecutor shall determine the duration of the person's participation in the Mental Health Diversion Program, whether their acceptance into the diversion program requires a guilty plea or whether a person may be accepted without having to enter a plea of guilty. The length of the person's participation in the program shall not exceed two years from the date of the Order of Acceptance issued by the court unless the prosecutor requests that the person's participation in the program be extended based on the person's treatment needs and progress, and the court for good cause approves the request. The term of the person's participation shall be based on the initial clinical evaluation and recommendations, status reports of the person's participation and attaining established goals, and progress reports from the case management and mental health service providers.

g. The eligible person shall be responsible for executing any necessary releases to allow for the Mental Health Diversion Program or other case management and mental health service provider to receive periodic reports on the person's participation, cooperation, and recovery progress, including the execution of any necessary signed releases. The person shall contact the Mental Health Diversion Program or other case management and mental health service provider within seven days of the date of the diversion agreement to initiate treatment, services, and any other required activity.

h. If at any time the prosecutor finds that the person has willfully failed to comply with any term or condition of the diversion agreement, the prosecutor shall file a notice with the court and defense counsel alleging willful failure to comply with the conditions of diversion. The court shall afford the person notice and an opportunity to be heard on the issue of the defendant's continued participation in the program. All actions taken to terminate an eligible person's participation in a Mental Health Diversion Program shall be carried out in full compliance with due process laws and the Rules Governing the Courts of the State of New Jersey.

i. No fee shall be assessed to a person for application, participation, or treatment in the Mental Health Diversion Program, and program participants shall not be required to pay for treatment and services as a condition of participating in the program. Indigent participants who are sentenced to a term of probation may petition the court for a waiver of any other applicable fines, to the extent consistent with law. The mental health diversion team shall assist program participants in applying for all federal and State benefits that may cover or offset the cost of necessary treatment and services, including medication. The Department of Human Services shall assist a mental health diversion team in identifying available resources, programs, and benefits.

j. An eligible person may be admitted to the Mental Health Diversion Program one or more times at the discretion of the prosecutor, subject to the restrictions in this section, if diversion promotes the person's recovery, prevents the commission of future offenses, and protects the safety of the public. Nothing in P.L.2023 c.188 (C.2C:43-32 et al.) shall preclude an eligible person from applying for admission to a criminal justice diversion program, including a program of supervisory treatment pursuant to N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1), as an alternative to the Mental Health Diversion Program to the extent that the person meets the eligibility criteria and qualifies for those programs. Nothing in P.L.2023 c.188 (C.2C:43-32 et al.) shall preclude an otherwise eligible person with pending charges, prior convictions, or prior diversion through supervisory treatment pursuant to N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of P.L.2013, c. 158 (C.2C:43-13.1) from applying to the Mental Health Diversion Program. A dismissal of a criminal complaint resulting from successful participation in a Mental Health Diversion Program pursuant to this section shall bar a person's subsequent eligibility for a program of supervisory treatment pursuant to N.J.S.2C:43-12, conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of P.L.2013, c.158 (C.2C:43-13.1); however an eligible person may seek subsequent admission to the Mental Health Diversion Program and may be admitted at the discretion of the prosecutor.

k. The dismissal of charges for a crime of the second, third, or fourth degree, which did not involve violence or the threat of violence, based on a person's successful participation in Mental Health Diversion Program pursuant to this section shall not be deemed:

(1) a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a petty disorderly persons or disorderly persons offense or a crime, but shall be reported to the State Bureau of Identification criminal history record information files for purposes of determining future eligibility or exclusion from other diversion programs; or

(2) a conviction for the purpose of determining whether a second or subsequent offense has occurred under any law of this State.

l. Except as otherwise provided in this section, nothing in P.L.2023 c.188 (C.2C:43-32 et al.) shall limit the prosecutor's discretion to otherwise divert or provide any other available disposition for a person alleged to have committed any crime or offense other than an eligible offense, and in compelling circumstances may allow the person to participate in a Mental Health Diversion Program established or maintained in accordance with section 3 of P.L.2023, c.188 (C.2C:43-34).

C.2C:43-38 Authority, discretion, prosecutor, Mental Health Diversion Program.

7. Nothing in P.L.2023 c.188 (C.2C:43-32 et al.) shall be construed to limit or constrain in any way the authority or discretion of a prosecutor to divert, prosecute, or pursue any other

disposition of a criminal matter involving a defendant who is an eligible person. When considering the diversion of an eligible person from the criminal justice system, a prosecutor may use the Mental Health Diversion Program established pursuant to P.L.2023 c.188 (C.2C:43-32 et al.), any other diversion mechanism authorized by law, or a county-based law enforcement diversion program after considering each program's restrictions, the relief available to the person, and the safety of any victim and the public.

C.2C:43-39 Administrative Director of the Courts, differentiated mental health supervision case type, probation.

8. a. The Administrative Director of the Courts shall develop a differentiated mental health supervision case type within the Probation Division of the Superior Court for eligible persons who are sentenced to a term of probation supervision. To the extent that sufficient resources are available, probation officers assigned to the specialized caseload shall be experienced in behavioral health and evidence-based therapeutic interventions and shall coordinate with federal and State case management and mental health service providers available to persons to promote their recovery, compliance with the terms of probation, and re-integration into the community.

Eligible persons who are sentenced to a term of probation supervision shall be screened and assigned to a differentiated mental health supervision case type pursuant to procedures developed by the Administrative Director of the Courts. A person who is assigned to a differentiated mental health supervision case type shall provide written authorization for any case management or mental health service provider to release to the Probation Division, the court, prosecutor, and defense counsel periodic status reports regarding the person's participation, cooperation, and recovery progress.

Probation officers assigned to the Mental Health Diversion Program may provide supervision to those participants who have been accepted into the Mental Health Diversion Program.

b. A county prosecutor shall notify the Mental Health Diversion Judge that an eligible person has qualified for admission to the Mental Health Diversion Program, and request that the case be placed on the differentiated mental health supervision docket established pursuant to subsection a. of this section.

c. The Judge shall preside over all Orders of Acceptance for each individual who is accepted into the Mental Health Diversion Program. The Mental Health Diversion Team shall meet at regular intervals as determined by the court to discuss participant treatment plans and participant progress and other topics critical to treatment, reduction of recidivism, and public safety including, but not limited to, pending applications, legal statuses, timelines for psychosocial evaluation, plea agreements, and requirements for program participation to promote the goals of programming.

d. All guilty pleas are required to be entered before the court and may not originate from another court.

e. The Mental Health Diversion Team shall consist of a Judge of the Superior Court who shall preside over the Mental Health Diversion Program for each designated region of the State, designated Assistant Prosecutors, designated Public Defenders, a certified mental health professional, a case manager, a specially trained mental health probation officer, and a collaborative justice specialist. The Judge of the Superior Court shall be designated the Mental Health Diversion Team Leader. A social worker who is trained and or certified regarding co-occurring issues can, if resources are available, be incorporated into the mental health diversion team.

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

Arrests not resulting in conviction.

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

a. When 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 proceedings against the person were dismissed, the person was acquitted, or the person was discharged without a conviction or finding of guilt, the Superior Court shall, at the time of dismissal, acquittal, or discharge, or, in any case set forth in paragraph (1) of this subsection, order the expungement of all records and information relating to the arrest.

(1) If proceedings took place in municipal court, the municipal court shall follow procedures developed by the Administrative Director of the Courts.

(2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to an expungement pursuant to this subsection.

(3) An expungement under this subsection shall not be ordered where the dismissal, acquittal, or discharge resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.

(4) The court shall forward a copy of the expungement order to the county prosecutor. The county prosecutor shall promptly distribute copies of the expungement order to appropriate law enforcement agencies and correctional institutions who have custody and control of the records specified in the order so that they may comply with the requirements of N.J.S.2C:52-15.

(5) An expungement related to a dismissal, acquittal, or discharge ordered pursuant to this subsection shall not bar any future expungement.

(6) Where a dismissal of an offense is based on an eligible servicemember's successful participation in a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), the county prosecutor, on behalf of the eligible servicemember, may move before the court for the expungement of all records and information relating to the arrest and the diversion at the time of dismissal pursuant to this section.

(7) Where a dismissal of an offense is based on an eligible person's successful participation in a Mental Health Diversion Program pursuant to P.L.2023 c.188 (C.2C:43-32 et al.), the eligible person may make a motion before the court for the expungement of all records and information relating to the arrest or charge and the diversion at the time of dismissal pursuant to this section.

b. When a person did not apply or a prosecutor did not move on behalf of an eligible servicemember for an expungement of an arrest not resulting in a conviction pursuant to subsection a. of this section, the person may at any time following the disposition of proceedings, present a duly verified petition as provided in 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.

c. (1) Any person who has had charges dismissed against him 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.2013, c.158 (C.2C:43-13.1 et al.), shall be barred from the relief provided in this section until six months after the entry of the order of dismissal.

(2) A servicemember who has successfully participated in a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.) may apply for expungement pursuant to this

section at any time following the order of dismissal if an expungement was not granted at the time of dismissal.

(3) An eligible person who has successfully participated in the Mental Health Diversion Program pursuant to P.L.2023 c.188 (C.2C:43-32 et al.), may apply for expungement pursuant to this section at any time following the order of dismissal if an expungement was not granted at the time of dismissal.

d. 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.

10. Section 1 of P.L.2013, c.158 (C.2C:43-13.1) is amended to read as follows:

C.2C:43-13.1 Eligibility, application.

1. Eligibility and Application. a. 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.2013, c.158 (C.2C:43-13.1 et al.), a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), or a Mental Health Diversion Program pursuant to P.L.2023 c.188 (C.2C:43-32 et al.), 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.2013, c.158 (C.2C:43-13.1 et al.). 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.

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

Conditional discharge, first offenses, certain.

2C:36A-1. Conditional discharge for certain first offenses.

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.2013, c.158 (C.2C:43-13.1 et al.), a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), or a Mental Health Diversion Program pursuant to P.L.2023 c.188 (C.2C:43-32 et al.) 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 a 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.

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 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, 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).

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

Supervisory treatment - pretrial intervention.

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

a. Public policy. The purpose of N.J.S.2C:43-12 through N.J.S.2C:43-22 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. (1) 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.

(2) There shall be a presumption against admission into a program of supervisory treatment for:

(a) a defendant who was a public officer or employee whose offense involved or touched upon his public office or employment; and

(b) a defendant charged with any crime or offense involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) if the defendant committed the crime or offense while subject to a temporary or permanent restraining order issued pursuant to the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or if the crime or offense charged involved violence or the threat of violence. For purposes of this subparagraph, a crime or offense involves violence or the threat of violence if the victim sustains serious or significant bodily injury as defined in subsection b. or d. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly weapon or threatens by word or gesture to use a deadly weapon as defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict serious or significant bodily injury.

c. The decision and reasons therefor 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 N.J.S.2C:43-14 and in accordance with the 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.

The prosecutor and the court, in formulating their recommendations or decisions regarding an applicant's participation in a supervisory treatment program, shall give due consideration to the victim's position on whether the defendant should be admitted.

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. (1) 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, a conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et al.), or was granted a dismissal due to successful participation in the Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), or the Mental Health Diversion Program pursuant to P.L.2023 c.188 (C.2C:43-32 et al.), shall not be eligible for supervisory treatment under this section.

(2) Except as otherwise provided in paragraph (3) of this subsection, 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.

(3) Admission into supervisory treatment shall be available to the following defendants only upon entering a plea of guilty: (a) a defendant charged with a first or second degree crime;

(b) a defendant charged with any crime if the defendant had previously been convicted of a first or second degree crime; (c) a defendant charged with a third or fourth degree crime involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); or (d) a defendant charged with any disorderly persons or petty disorderly persons offense involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) if the defendant committed the offense while subject to a temporary or permanent restraining order issued pursuant to the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.). For any such defendant, following the plea of guilty the plea shall be held in an inactive status pending termination of supervisory treatment pursuant to subsection d. or e. of N.J.S.2C:43-13. Upon successful completion of the program of supervisory treatment the charges shall be dismissed.

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.

The Attorney General shall develop guidelines to ensure the uniform exercise of discretion by prosecutors in formulating their recommendations on participation in a supervisory treatment program by an applicant charged with a crime or offense involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19).

C.2C:43-40 Attorney General, Mental Health Diversion Program, report, Governor, Legislature.

13. The Attorney General, in cooperation with the Administrative Director of the Courts, Commissioner of the Department of Human Services and county prosecutors shall, no later than two years after the establishment of the Mental Health Diversion Program, prepare and submit a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature regarding the program. The report shall assist policymakers in determining whether the Mental Health Diversion Program should be modified or expanded to achieve the goals of recovery for eligible persons and public safety. The report shall include statistics regarding the number of applications, the number of eligible persons accepted into the Mental Health Diversion Program and the number who successfully completed this program; and other relevant information and recommendations at the discretion of the Attorney General.

C.2C:43-41 "Mental Health Diversion Program Support Fund", established, Department of the Treasury.

14. There is created in the Department of the Treasury a special, non-lapsing fund to be known as the "Mental Health Diversion Program Support Fund." There shall be deposited into the fund the amounts made available for the purposes of the fund and any interest earned thereon. Monies deposited in the fund shall be dedicated to the purposes of defraying the costs and expenses associated with the administration and operation of the Statewide Mental Health Diversion Program established pursuant to P.L.2023 c.188 (C.2C:43-32 et al.).

15. This act shall take effect on the first day of the seventh month next following enactment, except that the Attorney General, Commissioner of Human Services, county prosecutors, and the Administrative Director of the Courts may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved December 21, 2023.