

SENATE, No. 524

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

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District 29 (Essex)

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SYNOPSIS

Creates Mental Illness Diversion Program to divert eligible persons away from criminal justice system and into appropriate case management and mental health services.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 9/29/2022)

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

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) As used in this act:

9 a. "Eligible offense" means a non-violent petty disorderly persons
10 offense, disorderly persons offense, or crime of the third or fourth
11 degree.

12 c. "Eligible person" means a person who allegedly committed an
13 eligible offense and who has a prior diagnosis of mental illness or for
14 whom a law enforcement officer or prosecutor has a reasonable belief
15 that the person has a mental illness based on behaviors and symptoms
16 exhibited during the commission of the offense or while in custody,
17 or based on information provided by family members or associates
18 during the investigation of the offense.

19 d. "Mental Illness Diversion Resource Entity" means a point of
20 access or referral to case management and mental health services that
21 are currently available from federal, State and local government
22 agencies to eligible persons. The Division of Mental Health and
23 Addiction Services in the Department of Health shall prepare and
24 disseminate a directory of New Jersey Diversion Resource entities to
25 facilitate the diversion of eligible persons from the criminal justice
26 system. The department shall not be responsible for funding,
27 developing or delivering case management or mental health services
28 to eligible persons under P.L. , c. (C.) (pending before the
29 Legislature as this bill).

30 e. "Mentor" means a volunteer available to assist an eligible
31 person in accessing assistance to resolve the underlying problems
32 that led or contributed to the eligible person's involvement with the
33 criminal justice system.

34 f. "Mental illness" means a mental disorder classified within the
35 current version of the American Psychiatric Association Diagnostic
36 and Statistical Manual of Mental Disorders (DSM), including, but not
37 limited to, anxiety disorders, cognitive disorders, adjustment
38 disorders, schizophrenia and other psychotic disorders, bipolar
39 disorder, depression, and post-traumatic stress disorder (PTSD).

40
41 2. (New section) a. There is hereby established a Statewide
42 Mental Illness Diversion Program that shall have the purpose of
43 diverting eligible persons away from the criminal justice system and
44 into appropriate case management and mental health services as early
45 as possible following an interaction with law enforcement where the
46 person is alleged to have committed an eligible offense.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 b. The New Jersey Department of Human Services shall, in
2 conjunction with other federal, State, and local government agencies
3 prepare a directory of Diversion Resource entities within New Jersey.
4 Each Mental Illness Diversion Resource Entity shall serve as a point
5 of entry to facilitate the law enforcement diversion or referral of
6 eligible persons into existing case management and mental health
7 services offered by the New Jersey Department of Human Services,
8 or other appropriate case management and mental health services that
9 are available to persons with mental illness. A Mental Illness
10 Diversion Resource Entity, or an agency to which an eligible person
11 is referred by the Mental Illness Diversion Resource Entity, shall be
12 capable of providing screening, counseling, treatment and case
13 management for mental health issues and other co-occurring health
14 disorders to eligible persons, or coordinating such services through
15 the appropriate federal, State, and local government agencies that
16 offer assistance. To the extent feasible, a Mental Illness Diversion
17 Resource Entity, or an agency to which an eligible person is referred
18 to by the entity, shall be capable of accepting emergent referrals of
19 eligible persons who are being diverted from the criminal justice
20 system. A Mental Illness Diversion Resource Entity, or an agency to
21 which a eligible person is referred by the Mental Illness Diversion
22 Resource Entity, that accepts the referral of an eligible person shall
23 be capable of providing law enforcement officials with periodic
24 status reports regarding the participation and recovery progress of an
25 eligible person, when the person consents to the release of such
26 information, as a condition of diversion from prosecution. The
27 department shall provide the Attorney General, the Administrative
28 Director of the Courts, the Commissioner of the Department of
29 Corrections, and the Chairman of the State Parole Board with a
30 directory of Diversion Resource entities available within the State or
31 shall publish the directory on its departmental Internet web site.

32
33 3. (New section) a. When a person is taken into custody for an
34 eligible offense, if the law enforcement officer determines that the
35 person exhibits behavior or symptoms that may be related to a mental
36 illness, the law enforcement officer may proceed in accordance with
37 P.L. , c. (C.) (pending before the Legislature as this bill), but
38 with a preference for diversion of an eligible person to a Mental
39 Illness Diversion Resource Entity or other community-based mental
40 health services, including a screening service established pursuant to
41 the provisions of P.L.1987, c.116 (C.30:4-27.1 et seq.), in lieu of
42 filing a criminal complaint. If the alleged offense is not an eligible
43 offense or the person is resistant to diversion, the officer may file a
44 criminal complaint.

45 b. Law enforcement officers may divert an eligible person who
46 appears to have a mental illness to a Mental Illness Diversion
47 Resource Entity or other community-based mental health services,
48 including a screening service established pursuant to the provisions

1 of P.L.1987, c.116 (C.30:4-27.1 et seq.), in lieu of filing a criminal
2 complaint against the person. A law enforcement officer shall not
3 divert an eligible person prior to the filing of a criminal complaint if
4 the crime or offense involves restitution for damages, if the crime or
5 offense involves violence or the threat of violence, if the crime or
6 offense involves the violation of any restraining order or protective
7 order involving another person, or where a victim of the offense
8 objects to the diversion. For the purposes of this subsection, a crime
9 or offense involves violence or the threat of violence if the victim
10 sustains bodily injury as defined in subsection a. of N.J.S.2C:11-1,
11 or the actor is armed with and uses a deadly weapon or threatens by
12 word or gesture to use a deadly weapon as defined in subsection c. of
13 N.J.S.2C:11-1, or threatens to inflict bodily injury. If an eligible
14 person is not diverted, the officer may proceed with the filing of a
15 complaint-summons or complaint-warrant pursuant to law, the Rules
16 of Court, and the directives of the Attorney General.

17 c. If a law enforcement officer diverts an eligible person to a
18 Mental Illness Diversion Resource entity or other mental health
19 service provider without filing a criminal complaint, the law
20 enforcement officer may subsequently file the complaint, subject to
21 the time limitations of N.J.S.2C:1-6, if the person fails to cooperate
22 with the service provider or has subsequent interactions with law
23 enforcement.

24
25 4. (New section) a. At any time after the filing of a criminal
26 complaint, but prior to the disposition of such complaint, an eligible
27 person, the public defender assigned to the eligible person, or the
28 person's own legal counsel may make an application to the prosecutor
29 to participate in the Mental Illness Diversion Program. The
30 prosecutor may approve or conditionally approve an eligible person's
31 admission into the Diversion Program. An eligible person may be
32 conditionally approved for admission into the program pending
33 review of the person's criminal history, and consideration of the
34 findings of a clinical assessment of the person's mental health. Once
35 admitted to the program, the prosecutor may move before the court
36 to postpone proceedings while an eligible person obtains a mental
37 health assessment or participates in case management and mental
38 health services. The court may grant the postponement of
39 proceedings and release the person on the person's own recognizance
40 subject to compliance with the conditions specified in the
41 prosecutor's diversion agreement. If the prosecutor's review of the
42 person's records and the clinical assessment reveals that the person
43 does not qualify for the program or if the person does not comply
44 with the requirements of the diversion agreement, the prosecutor may
45 notify the court that the State is prepared to proceed with the
46 prosecution of the offense and the court shall schedule court
47 proceedings as appropriate.

1 b. (1) Except as provided in paragraph (2) of this subsection, the
2 prosecutor shall have the sole discretion to determine if an eligible
3 person qualifies for and is admitted to the Mental Illness Diversion
4 Program pursuant to P.L. , c. (C.) (pending before the Legislature
5 as this bill) after consideration of the nature of the eligible offense,
6 the causative relationship between the person's diagnosed or apparent
7 mental illness and the commission of the offense, the amenability of
8 the person to participation in the services of the program, the
9 availability of case management and mental health services, the
10 desires of any victim, the person's history of prior convictions, and
11 the probability that diversion will promote the person's recovery,
12 prevent future criminal behavior, and protect public safety. A
13 prosecutor may also consider and approve other diversion
14 alternatives for persons in lieu of the Mental Illness Diversion
15 Program pursuant to P.L. , c. (C.) (pending before the Legislature
16 as this bill).

17 (2) No eligible person shall be admitted to the Mental Illness
18 Diversion Program if the person has criminal charges pending for a
19 crime of the second degree or higher, if the crime or offense involved
20 violence or the threat of violence, or if the person was previously
21 convicted of a violent crime enumerated in subsection d. of section 2
22 of P.L.1997, c.117 (C.2C:43-7.2). There shall be a presumption
23 against admission into the Mental Illness Diversion Program, subject
24 to the discretion of the prosecutor after consulting with any victim,
25 for a person charged with any crime or offense involving domestic
26 violence, as defined in subsection a. of section 3 of P.L.1991, c.261
27 (C.2C:25-19) if the defendant committed the crime or offense while
28 subject to a temporary or permanent restraining order issued pursuant
29 to the provisions of the "Prevention of Domestic Violence Act of
30 1991," P.L.1991, c.261 (C.2C:25-17 et al.). For purposes of this
31 paragraph, a crime or offense involves violence or the threat of
32 violence if the victim sustains bodily injury as defined in subsection
33 a. of N.J.S.2C:11-1, or the actor is armed with and uses a deadly
34 weapon or threatens by word or gesture to use a deadly weapon as
35 defined in subsection c. of N.J.S.2C:11-1, or threatens to inflict
36 bodily injury.

37 (3) The prosecutor shall consult with victims of an eligible
38 offense prior to approving an eligible person's admission into the
39 Mental Illness Diversion Program. Nothing in this subsection shall
40 be construed to alter or limit the authority or discretion of the
41 prosecutor to admit an eligible person into the Mental Illness
42 Diversion Program which the prosecutor deems appropriate.

43 c. The prosecutor's approval of an application for admission into
44 the Mental Illness Diversion Program pursuant to this section shall
45 not be conditioned on an admission or plea of guilt by an eligible
46 person.

1 d. To qualify for prosecutorial diversion under this section, an
2 eligible person shall agree in writing to the following terms, where
3 relevant to the eligible offense:

4 (1) Participate in case management and mental health services
5 initiated through the Mental Illness Diversion Resource Entity or
6 other similar services and to cooperate with any recommended course
7 of treatment, including the use of medications as prescribed and
8 participation in counseling;

9 (2) Authorize the case management or mental health service
10 provider to release to the prosecutor periodic status reports regarding
11 the person's participation, cooperation, and recovery progress with
12 case management and mental health services;

13 (3) Cooperate with case management service providers to procure
14 housing, education, and employment services, where appropriate;

15 (4) Pay restitution for damages that have resulted from the
16 offense;

17 (5) Refrain from the use of alcohol or illegal drugs or frequent
18 any place where alcohol or illegal drugs are sold and used;

19 (6) Refrain from the possession or use of firearms or other
20 weapons;

21 (7) Refrain from further criminal activity;

22 (8) Refrain from any contact with a victim of the offense;

23 (9) Cooperate with a mentor, where assigned;

24 (10) Suspend the tolling of time for the purposes of the person's
25 right to a speedy trial while the person is participating in the program;

26 (11) Advise the prosecutor of any change in the person's
27 residential address or any change in the provider of case management
28 and mental health services; and

29 (12) Any other terms and conditions related to the person's
30 recovery and public safety deemed appropriate by the prosecutor.

31 e. The prosecutor shall determine the duration of the person's
32 participation in the Mental Illness Diversion Program, except that the
33 person's participation in the program shall not exceed two years from
34 the date of the diversion agreement. The term of the person's
35 participation shall be based on the initial clinical evaluation and
36 recommendations, status reports of the person's participation, and
37 progress reports from the case management and mental health service
38 providers, and, where assigned, the person's mentor.

39 f. The eligible person shall be responsible for coordinating with
40 the Mental Illness Diversion Resource Entity or other case
41 management and mental health service provider to ensure that the
42 prosecutor receives periodic reports on the person's participation,
43 cooperation and recovery progress. The person shall contact the
44 Mental Illness Diversion Resource Entity or other case management
45 and mental health service provider within seven days of the date of
46 the diversion agreement.

47 g. The court shall review the status of the deferred prosecution
48 of the person no later than six months from the date on which the

1 court approved the prosecutor's initial request for a postponement of
2 the proceedings, and, thereafter, every six months from the most
3 recent review, to consider, based on information provided by the
4 prosecutor, whether the postponement of court proceedings as
5 requested by the prosecutor should continue.

6 h. To the extent that a sufficient number of mentors are
7 available, the prosecutor or the case management provider on behalf
8 of the prosecutor, shall assign a mentor to the eligible person.

9 i. If, after a minimum of six months from the date of the
10 diversion agreement, the prosecutor is satisfied that the person has
11 complied with the terms and conditions of the diversion agreement,
12 has not been the subject of any subsequent criminal charges, and,
13 based on clinical reports, continues to make progress with case
14 management services and mental health recovery, the prosecutor may
15 move before the court for the dismissal of the criminal charge
16 pending against the person and terminate the person's participation in
17 the Mental Illness Diversion Program. Alternatively, the prosecutor
18 may require that the person continue participation in the program
19 until sufficient evidence of progress toward recovery is available,
20 except that continued participation shall not exceed the two-year time
21 limit as provided in subsection e. of this section.

22 j. If, at any time, the prosecutor finds that the person has failed
23 to comply with any term or condition of the diversion agreement, the
24 prosecutor may notify the court that the State is prepared to proceed
25 with the prosecution of the offense and the court shall schedule court
26 proceedings as appropriate.

27 k. No fee shall be assessed to a person for participation in the
28 Mental Illness Diversion Program.

29 l. An eligible person may be admitted to the Mental Illness
30 Diversion Program one or more times at the discretion of the
31 prosecutor, subject to the restrictions in this section, if such diversion
32 promotes the person's recovery, prevents the commission of future
33 offenses, and protects the safety of the public. Nothing in P.L. , c.
34 (C.) (pending before the Legislature as this bill) shall preclude an
35 eligible person from applying for admission to a criminal justice
36 diversion program, including a program of supervisory treatment
37 pursuant to N.J.S.2C:43-12, conditional discharge pursuant to
38 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of
39 P.L.2013, c.158 (C.2C:43-13.1), as an alternative to the Mental
40 Illness Diversion Program to the extent that the person meets the
41 eligibility criteria and qualifies for those programs. A dismissal of a
42 criminal complaint resulting from successful participation in a
43 Mental Illness Diversion Program pursuant to this section shall bar a
44 person's subsequent eligibility for a program of supervisory treatment
45 pursuant to N.J.S.2C:43-12, conditional discharge pursuant to
46 N.J.S.2C:36A-1, or conditional dismissal pursuant to section 1 of
47 P.L.2013, c.158 (C.2C:43-13.1); however an eligible person may

1 seek subsequent admission to the Mental Illness Diversion Program
2 and may be admitted at the sole discretion of the prosecutor.

3 m. The dismissal of charges based on a person's successful
4 participation in the Mental Illness Diversion Program pursuant to this
5 section shall not be deemed:

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

12 (2) a conviction for the purpose of determining whether a second
13 or subsequent offense has occurred under any law of this State.
14

15 5. (New section) Nothing in P.L. , c. (C.) (pending before
16 the Legislature as this bill) shall be construed to limit or constrain in
17 any way the authority or discretion of a prosecutor to divert,
18 prosecute or pursue any other disposition of a criminal matter
19 involving a defendant who is an eligible person. When considering
20 the diversion of an eligible person from the criminal justice system,
21 a prosecutor may use the Mental Illness Diversion Program
22 established pursuant to P.L. , c. (C.) (pending before the
23 Legislature as this bill), any other diversion mechanism authorized
24 by law, or a county-based law enforcement diversion program after
25 considering each program's restrictions, the relief available to the
26 person, and the safety of any victim and the public.
27

28 6. (New section) The Administrative Director of the Courts
29 shall develop a differentiated mental health supervision case type
30 within the Probation Division of the Superior Court for eligible
31 persons who are sentenced to a term of probation supervision. To the
32 extent that sufficient resources are available, probation officers
33 assigned to the specialized caseload shall be experienced in
34 behavioral health and evidence-based therapeutic interventions and
35 shall coordinate with mentors as well as federal and State case
36 management and health care providers available to persons to
37 promote their recovery, compliance with the terms of probation and
38 re-integration into the community. Eligible persons who are
39 sentenced to a term of probation supervision shall be screened and
40 assigned to a differentiated mental health supervision case type
41 pursuant to procedures developed by the Administrative Director of
42 the Courts. A person who is assigned to a differentiated mental health
43 supervision case type shall provide written authorization for any case
44 management or mental health service provider to release to the
45 Probation Division and the court periodic status reports regarding the
46 person's participation, cooperation, and recovery progress.
47

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

1 2C:52-6. Arrest not resulting in conviction. a. When a person
2 has been arrested or held to answer for a crime, disorderly persons
3 offense, petty disorderly persons offense, or municipal ordinance
4 violation under the laws of this State or of any governmental entity
5 thereof and proceedings against the person were dismissed, the
6 person was acquitted, or the person was discharged without a
7 conviction or finding of guilt, the Superior Court shall, at the time of
8 dismissal, acquittal, or discharge, or, in any case set forth in
9 paragraph (1) of this subsection, upon receipt of an application from
10 the person, order the expungement of all records and information
11 relating to the arrest or charge.

12 (1) If proceedings took place in municipal court, the municipal
13 court shall provide the person, upon request, with appropriate
14 documentation to transmit to the Superior Court to request
15 expungement pursuant to procedures developed by the
16 Administrative Office of the Courts. Upon receipt of the
17 documentation, the Superior Court shall enter an ex parte order
18 expunging all records and information relating to the person's arrest
19 or charge.

20 (2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14
21 shall not apply to an expungement pursuant to this subsection and no
22 fee shall be charged to the person making such application.

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

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

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

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

43 (7) Where a dismissal of an offense is based on an eligible
44 person's successful participation in a Mental Illness Diversion
45 Program pursuant to P.L. , c. (C.) (pending before the Legislature
46 as this bill), the county prosecutor, on behalf of the eligible person,
47 may move before the court for the expungement of all records and

1 information relating to the arrest or charge, and the diversion at the
2 time of dismissal pursuant to this section.

3 b. When a person did not apply or a prosecutor did not move on
4 behalf of an eligible person or eligible servicemember for an
5 expungement of an arrest or charge not resulting in a conviction
6 pursuant to subsection a. of this section, the person may at any time
7 following the disposition of proceedings, present a duly verified
8 petition as provided in N.J.S.2C:52-7 to the Superior Court in the
9 county in which the disposition occurred praying that records of such
10 arrest and all records and information pertaining thereto be
11 expunged. No fee shall be charged to the person for applying for an
12 expungement of an arrest or charge not resulting in a conviction
13 pursuant to this subsection.

14 c. (1) Any person who has had charges dismissed against him
15 pursuant to a program of supervisory treatment pursuant to
16 N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-
17 1, or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-
18 13.1 et al.), shall be barred from the relief provided in this section
19 until six months after the entry of the order of dismissal.

20 (2) A servicemember who has successfully participated in a
21 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
22 et al.) may apply for expungement pursuant to this section at any time
23 following the order of dismissal if an expungement was not granted
24 at the time of dismissal.

25 (3) An eligible person who has successfully participated in a
26 Mental Illness Diversion Program pursuant to P.L. , c. (C.)
27 (pending before the Legislature as this bill), may apply for
28 expungement pursuant to this section at any time following the order
29 of dismissal if an expungement was not granted at the time of
30 dismissal.

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

36 (cf: P.L. 2017, c.42, s.7)

37

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

40 1. Eligibility and Application. a. Whenever any defendant who
41 has not been previously convicted of any petty disorderly persons
42 offense, disorderly persons offense or crime under any law of the
43 United States, this State or any other state, and who has not
44 previously participated in conditional discharge under N.J.S.2C:36A-
45 1, supervisory treatment under N.J.S.2C:43-12, or conditional
46 dismissal under P.L.2013, c.158 (C.2C:43-13.1 et al.), **[or]** a
47 Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23
48 et al.), or a Mental Illness Diversion Program pursuant to P.L. , c.

1 (C.) (pending before the Legislature as this bill), is charged with a
2 petty disorderly offense or disorderly persons offense except as
3 provided in subsection b. of this section, the defendant may, after a
4 plea of guilty or a finding of guilt, but prior to the entry of a judgment
5 of conviction and with appropriate notice to the prosecutor, apply to
6 the court for entry into the conditional dismissal program pursuant to
7 the requirements of P.L.2013, c.158 (C.2C:43-13.1 et al.). As a
8 condition of such application, the defendant shall submit to the
9 fingerprint identification procedures as provided in R.S.53:1-15
10 before making such application to the court to allow sufficient time
11 for verification of the defendant's criminal history by the prosecutor.

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

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

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

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

46 (cf: P.L.2017, c.42, s.8)

47

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

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

2 a. Whenever any person who has not previously been convicted
3 of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or
4 a disorderly persons or petty disorderly persons offense defined in
5 chapter 35 or 36 of this title or, subsequent to the effective date of
6 this title, under any law of the United States, this State or any other
7 state relating to marijuana, or stimulant, depressant, or
8 hallucinogenic drugs, and who has not previously participated in a
9 program of supervisory treatment pursuant to N.J.S.2C:43-12 or
10 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et
11 al.), **[or]** a Veterans Diversion Program pursuant to P.L.2017, c.42
12 (C.2C:43-23 et al.), or a Mental Illness Diversion Program pursuant
13 to P.L. , c. (C.) (pending before the Legislature as this bill), is
14 charged with or convicted of any disorderly persons offense or petty
15 disorderly persons offense under chapter 35 or 36 of this title, the
16 court upon notice to the prosecutor and subject to subsection c. of
17 this section, may on motion of the defendant or the court:

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

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

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

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

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

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

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

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

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

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

1 d. A person seeking conditional discharge pursuant to this
2 section shall pay to the court a fee of \$75 which shall be paid to the
3 Treasurer of the State of New Jersey for deposit in the General Fund.
4 The defendant shall also be required to pay restitution, costs and
5 other assessments as provided by law. A person may apply for a
6 waiver of this fee, by reason of poverty, pursuant to the Rules
7 Governing the Courts of the State of New Jersey, or the court may
8 permit the defendant to pay the conditional discharge fee and other
9 assessments in installments or may order other alternatives pursuant
10 to section 1 of P.L.2009, c.317 (C.2B:12-23.1).

11 (cf: P.L.2017, c.42, s.9)

12

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

14 2C:43-12. Supervisory Treatment--Pretrial Intervention.

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

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

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

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

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

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

44 b. (1) Admission of an applicant into a program of supervisory
45 treatment shall be measured according to the applicant's amenability
46 to correction, responsiveness to rehabilitation and the nature of the
47 offense.

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

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

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

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

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

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

- 41 (1) The nature of the offense;
- 42 (2) The facts of the case;
- 43 (3) The motivation and age of the defendant;
- 44 (4) The desire of the complainant or victim to forego prosecution;
- 45 (5) The existence of personal problems and character traits which
46 may be related to the applicant's crime and for which services are
47 unavailable within the criminal justice system, or which may be
48 provided more effectively through supervisory treatment and the

- 1 probability that the causes of criminal behavior can be controlled by
2 proper treatment;
- 3 (6) The likelihood that the applicant's crime is related to a
4 condition or situation that would be conducive to change through his
5 participation in supervisory treatment;
- 6 (7) The needs and interests of the victim and society;
- 7 (8) The extent to which the applicant's crime constitutes part of a
8 continuing pattern of anti-social behavior;
- 9 (9) The applicant's record of criminal and penal violations and the
10 extent to which he may present a substantial danger to others;
- 11 (10) Whether or not the crime is of an assaultive or violent nature,
12 whether in the criminal act itself or in the possible injurious
13 consequences of such behavior;
- 14 (11) Consideration of whether or not prosecution would
15 exacerbate the social problem that led to the applicant's criminal act;
- 16 (12) The history of the use of physical violence toward others;
- 17 (13) Any involvement of the applicant with organized crime;
- 18 (14) Whether or not the crime is of such a nature that the value of
19 supervisory treatment would be outweighed by the public need for
20 prosecution;
- 21 (15) Whether or not the applicant's involvement with other people
22 in the crime charged or in other crime is such that the interest of the
23 State would be best served by processing his case through traditional
24 criminal justice system procedures;
- 25 (16) Whether or not the applicant's participation in pretrial
26 intervention will adversely affect the prosecution of codefendants;
27 and
- 28 (17) Whether or not the harm done to society by abandoning
29 criminal prosecution would outweigh the benefits to society from
30 channeling an offender into a supervisory treatment program.
- 31 The prosecutor and the court, in formulating their
32 recommendations or decisions regarding an applicant's participation
33 in a supervisory treatment program, shall give due consideration to
34 the victim's position on whether the defendant should be admitted.
- 35 f. Review of Supervisory Treatment Applications; Procedure
36 Upon Denial. Each applicant for supervisory treatment shall be
37 entitled to full and fair consideration of his application. If an
38 application is denied, the program director or the prosecutor shall
39 precisely state his findings and conclusion which shall include the
40 facts upon which the application is based and the reasons offered for
41 the denial. If the applicant desires to challenge the decision of a
42 program director not to recommend, or of a prosecutor not to consent
43 to, enrollment into a supervisory treatment program, a motion shall
44 be filed before the designated judge (or assignment judge) authorized
45 pursuant to the Rules of Court to enter orders.
- 46 g. Limitations. (1) Supervisory treatment may occur only once
47 with respect to any defendant and any person who has previously
48 received supervisory treatment under section 27 of P.L.1970, c.226

1 (C.24:21-27), a conditional discharge pursuant to N.J.S.2C:36A-1, a
2 conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-
3 13.1 et al.), or was granted a dismissal due to successful participation
4 in the Veterans Diversion Program pursuant to P.L.2017, c.42
5 (C.2C:43-23 et al.), or the Mental Illness Diversion Program pursuant
6 to P.L. , c. (C.) (pending before the Legislature as this bill),
7 shall not be eligible for supervisory treatment under this section.

8 (2) Except as otherwise provided in paragraph (3) of this
9 subsection, supervisory treatment, as provided herein, shall be
10 available to a defendant irrespective of whether the defendant
11 contests his guilt of the charge or charges against him.

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

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

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

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

1 The Attorney General shall develop guidelines to ensure the
2 uniform exercise of discretion by prosecutors in formulating their
3 recommendations on participation in a supervisory treatment
4 program by an applicant charged with a crime or offense involving
5 domestic violence, as defined in subsection a. of section 3 of
6 P.L.1991, c.261 (C.2C:25-19).
7 (cf: P.L.2017, c.42, s.10)

8
9 11. (New section) a. The Department of Human Services shall
10 provide county prosecutors with a registry of volunteer mentors to
11 facilitate the assignment of mentors to eligible persons who have
12 been admitted by the prosecutor into the Mental Health Diversion
13 Program established pursuant to P.L. , c. (C.) (pending before
14 the Legislature as this bill). A copy of the registry shall also be
15 provided to the Administrative Director of the Courts to facilitate the
16 assignment of mentors to eligible persons who have been sentenced
17 to a term of probation supervision. The registry of mentors shall be
18 periodically updated by the Department of Human Services.

19 b. The Department of Human Services shall also prepare and
20 disseminate a directory of Mental Illness Diversion Resource
21 Program entities currently available within New Jersey.

22
23 12. (New section) The Attorney General, in cooperation with the
24 Administrative Director of the Courts, shall prepare an annual report
25 to the Governor and, pursuant to section 2 of P.L.1991, c.164
26 (C.52:14-19.1), to the Legislature regarding the Mental Health
27 Diversion Program and other statutory and county-based law
28 enforcement programs used to divert eligible persons from the
29 criminal justice system. The report shall assist policymakers in
30 determining whether these diversion programs should be modified or
31 expanded to achieve the goals of recovery for eligible persons and
32 public safety. The report shall include statistics regarding the number
33 of arrests where the person indicates mental illness status; the number
34 of eligible persons accepted into the Mental Illness Diversion
35 Program or other diversion programs; the number of eligible persons
36 who successfully completed these programs; the number of eligible
37 persons who were found guilty at court proceedings; the number of
38 eligible persons who, subsequent to admission in the Mental Health
39 Diversion Program or other diversion programs, were sentenced to a
40 term of incarceration or probation; and other relevant information
41 and recommendations at the discretion of the Attorney General.

42
43 13. (New section) The Attorney General and the Administrative
44 Director of the Courts shall publish on their respective websites
45 information regarding diversion programs and government-based
46 resources available to assist justice-involved eligible persons.

1 14. This act shall take effect on the first day of the seventh month
2 next following enactment, except that the Attorney General and the
3 Administrative Director of the Courts may take any anticipatory
4 administrative action in advance as shall be necessary for the
5 implementation of this act.

6
7
8 STATEMENT
9

10 In 2004 a Special Offenders Unit was created in the Union County
11 Prosecutor's Office to deal with mentally ill criminal defendants.
12 The unit has helped to initiate "a jail diversion program, a court based
13 mental health program and an ongoing training program for law
14 enforcement." The jail diversion program, begun in 2006 has
15 diverted individuals with mental illness away from the criminal
16 justice system and into appropriate treatment. Since that time, county
17 prosecutor's offices in several New Jersey counties, including Ocean,
18 Essex and as recently as 2015, Gloucester, Hunterdon and Warren
19 Counties, have initiated similar diversion programs.

20 To facilitate the expansion and growth of programming for
21 individuals with mental illness involved in the criminal justice
22 system, this bill establishes a Statewide Mental Illness Diversion
23 Program to divert eligible persons who have committed certain
24 offenses away from the criminal justice system and into appropriate
25 case management and mental health services.

26 The Department of Human Services is directed, in conjunction
27 with other federal, State, and local government agencies, to prepare
28 and disseminate a directory of Mental Health Diversion Resource
29 entities within New Jersey to facilitate the diversion of eligible
30 persons from the criminal justice system. Each Mental Illness
31 Diversion Resource Entity would serve as a point of entry to facilitate
32 the law enforcement diversion or referral of eligible persons into
33 existing case management and mental health services offered by the
34 New Jersey Department of Human Services or other appropriate case
35 management and mental health services available to persons with
36 mental illness.

37 Eligibility. The bill provides that a person is eligible for
38 admission into the program if he committed an eligible offense and
39 has a prior diagnosis of mental illness or other indications of mental
40 illness. An eligible offense is defined by the bill as a non-violent
41 petty disorderly persons offense, disorderly persons offense, or crime
42 of the third or fourth degree.

43 Each Mental Illness Diversion Resource Entity would serve as a
44 point of entry to facilitate the diversion or referral of eligible persons
45 into existing case management and mental health services offered to
46 persons with mental illness. Under the bill, the Mental Illness
47 Diversion Resource Entity or any other agency to which an eligible
48 person is referred should be capable of providing screening,

1 counseling, treatment and case management for mental health issues
2 and other co-occurring health disorders to or coordinating these
3 services through the appropriate federal, State and local government
4 agencies that offer assistance.

5 A Mental Illness Diversion Resource Entity or an agency which
6 accepts the referral of an eligible person would be required to provide
7 law enforcement officials with periodic status reports regarding the
8 eligible person's participation and recovery progress, provided the
9 person consents to the release of such information.

10 Intake procedures. Under the bill, when a person is taken into
11 custody for an eligible offense, if the person exhibits behavior that
12 may be related to a mental illness, the law enforcement officer may
13 continue processing the individual with a preference for diversion to
14 a Mental Illness Diversion Resource Entity or other community-
15 based mental health services in lieu of filing a criminal complaint. If
16 the alleged offense is not an eligible offense or the person is resistant
17 to diversion, the officer may file a criminal complaint. Under the bill,
18 a law enforcement officer cannot divert an eligible person prior to the
19 filing of a criminal complaint if the crime or offense involves
20 restitution for damages, if the crime or offense involves violence or
21 the threat of violence, if the crime or offense involves the violation
22 of any restraining order or protective order of another person, or
23 where a victim of the offense objects to the diversion. If the person
24 is not diverted, the law enforcement officer may proceed with the
25 filing of a criminal complaint and indicate the person's status as an
26 eligible person.

27 At any time after the filing of a criminal complaint, but prior to
28 the disposition of such complaint, an eligible person, the assigned
29 public defender, or the individual's own legal counsel may make an
30 application to the prosecutor to participate in the Mental Illness
31 Diversion Program. The prosecutor may approve or conditionally
32 approve an eligible person's admission into the Mental Illness
33 Diversion Program. The prosecutor would have the sole discretion to
34 determine if an eligible person qualifies for and is admitted to the
35 Mental Illness Diversion Program after consideration of the nature of
36 the eligible offense, the causative relationship between the person's
37 diagnosed or apparent mental illness and the commission of the
38 offense, the amenability of the person to participation in the services
39 of the program, the availability of case management and mental
40 health services, the desires of any victim, the person's history of prior
41 convictions and the probability that diversion will promote the
42 person's recovery, prevent future criminal behavior and protect
43 public safety. The prosecutor would consult with the victim prior to
44 approving an admission into the program. The prosecutor's approval
45 of an application would not be conditioned on an admission or guilty
46 plea.

47 Disqualification. The bill prohibits admission into the Mental
48 Illness Diversion Program: (1) if the person has criminal charges

1 pending for a crime of the second degree or higher; (2) if the crime
2 or offense involved violence or the threat of violence; or (3) if the
3 person was previously convicted of a violent crime enumerated in
4 subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) such as
5 murder, vehicular homicide, kidnapping, aggravated assault, sexual
6 assault, robbery, carjacking, or firearms trafficking. In addition, the
7 bill provides a presumption against admission into the Mental Illness
8 Diversion Program if the person is charged with any crime or offense
9 involving domestic violence or if the person committed the crime or
10 offense while subject to a temporary or permanent restraining order.

11 Program requirements. To qualify for the Mental Illness Diversion
12 Program, an eligible person shall agree in writing to certain terms and
13 conditions. The prosecutor would determine the duration of the
14 person's participation in the program, except that the participation in
15 the program could not exceed two years from the date of the diversion
16 agreement.

17 The bill requires the eligible person to be responsible for
18 coordinating with the Mental Illness Diversion Resource entities to
19 ensure that the prosecutor receives periodic reports on the person's
20 participation, cooperation, and recovery progress. The person would
21 be required to contact the Mental Illness Diversion Resource Entity
22 or other case management and mental health service provider within
23 seven days of the date of the diversion agreement.

24 The court would review the status of the deferred prosecution no
25 later than six months from the date on which the court approved the
26 prosecutor's initial request for a postponement of the proceedings,
27 and, thereafter, every six months from the most recent review, to
28 consider whether the postponement of court proceedings should
29 continue. If, after a minimum of six months from the date of the
30 diversion agreement, the prosecutor is satisfied that the eligible
31 person has complied with the diversion agreement, has not been the
32 subject of any subsequent criminal charges, and continues to make
33 progress with case management services and mental health recovery,
34 the prosecutor may move for the dismissal of the criminal charge and
35 terminate the eligible person's participation. If, at any time, the
36 prosecutor finds that the eligible person has failed to comply with the
37 diversion agreement, the prosecutor may notify the court that the
38 State is prepared to proceed with the prosecution. The bill provides
39 that no fee would be assessed to an eligible person for participation
40 in the Mental Illness Diversion Program. An eligible person may be
41 admitted to the Mental Illness Diversion Program one or more times
42 at the discretion of the prosecutor.

43 The dismissal of charges based on successful participation in the
44 Mental Illness Diversion Program would not be deemed: (1) a
45 conviction for purposes of disqualifications or disabilities but would
46 be reported to the State Bureau of Identification criminal history
47 record information files for purposes of determining future eligibility
48 or exclusion from other diversion programs; or (2) a conviction for

1 the purpose of determining whether a second or subsequent offense
2 has occurred under any law of this State.

3 When considering the diversion of an eligible person from the
4 criminal justice system, a prosecutor may use the Mental Illness
5 Diversion Program established under the bill, any other diversion
6 mechanism authorized by law, or a county-based law enforcement
7 diversion program after considering each program's restrictions, the
8 relief available to the eligible person, and the safety of any victim
9 and the public.

10 Training. The bill would require the Administrative Director of
11 the Courts to develop a differentiated mental health supervision case
12 type within the Probation Division of the Superior Court for eligible
13 persons who are sentenced to a term of probation supervision. To the
14 extent that sufficient resources are available, probation officers
15 assigned to the specialized caseload should be experienced in
16 behavioral health and evidence-based therapeutic interventions. The
17 probation officers would coordinate with mentors as well as federal
18 and State case management and health care providers to promote
19 their recovery, compliance with the terms of probation.

20 Amendatory sections. The bill amends N.J.S.2C:52-6 to allow for
21 expungement of all records and information relating to the arrest or
22 charge dismissed based on an eligible person's successful
23 participation in the Mental Illness Diversion Program. In addition,
24 the bill amends the PTI statute (N.J.S.2C:43-12), conditional
25 discharge statute (N.J.S.2C:36A-1) and the conditional dismissal
26 statute (section 1 of P.L.2013, c.158 (C.2C:43-13.1)) to cross
27 reference the Mental Illness Diversion Program established by the
28 bill. Under the bill, successful completion of the Mental Illness
29 Diversion Program bars the person's eligibility for PTI, conditional
30 dismissal and conditional discharge programs; however an eligible
31 person may seek subsequent admission to the Mental Illness
32 Diversion Program and may be admitted at the sole discretion of the
33 prosecutor.