

CHAPTER 42

AN ACT concerning offenders who are veterans or servicemembers, amending various sections of the law and supplementing Title 2C and Title 38A of the New Jersey Statutes.

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

C.2C:43-23 Definitions relative to offenders who are veterans or servicemembers.

1. As used in this act, P.L.2017, c.42 (C.2C:43-23 et al.):

a. “Servicemember” means any veteran or enlisted person or officer of the United States Armed Forces, or a reserve component thereof, or the organized militia of the State of New Jersey pursuant to N.J.S.38A:1-3.

b. “Eligible offense” means a non-violent petty disorderly persons offense, disorderly persons offense, or crime of the third or fourth degree.

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

d. “Veterans Diversion Resource entity” means a point of access or referral to case management and mental health services that are currently available from federal, State and local government agencies to eligible servicemembers. The New Jersey Department of Military and Veterans’ Affairs shall, pursuant to section 2 of P.L.2017, c.42 (C.2C:43-24), prepare and disseminate a directory of New Jersey Veteran’s Diversion Resource entities to facilitate the diversion of eligible servicemembers from the criminal justice system. The department shall not be responsible for funding, developing or delivering case management or mental health services to eligible servicemembers under P.L.2017, c.42 (C.2C:43-23 et al.).

e. “Mentor” means a volunteer former servicemember recruited by the New Jersey Department of Military and Veterans’ Affairs pursuant to subsection (bb) of N.J.S.38A:3-6 to assist an eligible servicemember who is a veteran in accessing assistance to resolve the underlying problems that led or contributed to the eligible servicemember’s involvement with the criminal justice system.

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

g. “Veteran” means any enlisted person or officer who was discharged or otherwise released from active service in the United States Armed Forces, or any reserve component thereof, or the organized militia of New Jersey under conditions other than dishonorable, or as otherwise provided in subsection p. of section 6 of P.L.1954, c.84 (C.43:15A-6).

C.2C:43-24 Statewide Veterans Diversion Program.

2. a. There is hereby established a Statewide Veterans Diversion Program that shall have the purpose of diverting eligible servicemembers 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 servicemember is alleged to have committed an eligible offense.

b. The New Jersey Department of Military and Veterans' Affairs shall collaborate with the United States Department of Veterans Affairs, the United States Veterans Health Administration, United States Vet Centers, the New Jersey Department of Human Services and other federal, State, and local government agencies to prepare a directory of Veterans Diversion Resource entities within New Jersey. Each Veterans Diversion Resource entity shall serve as a point of entry to facilitate the law enforcement diversion or referral of eligible servicemembers who are veterans into existing case management and mental health services offered by the United States Department of Veterans Affairs, the New Jersey Department of Human Services, or other appropriate case management and mental health services that are available to veterans or persons with mental illness. A Veterans Diversion Resource entity, or an agency to which an eligible servicemember is referred to by the Veterans Diversion entity, shall be capable of providing screening, counseling, treatment and case management for mental health issues and other co-occurring health disorders to eligible servicemembers who are veterans, or coordinating such services through the appropriate federal, State, and local government agencies that offer assistance to veterans. To the extent feasible, a Veterans Diversion Resource entity, or an agency to which an eligible servicemember is referred to by the entity, shall be capable of accepting emergent referrals of eligible servicemembers who are veterans and are being diverted from the criminal justice system. A Veterans Diversion Resource entity, or an agency to which a eligible servicemember is referred to by the Veterans Diversion Resource entity, that accepts the referral of an eligible servicemember who is a veteran shall be capable of providing law enforcement officials with periodic status reports regarding the participation and recovery progress of an eligible servicemember, when the servicemember consents to the release of such information, as a condition of diversion from prosecution. The department shall also prepare a similar resource directory to facilitate the law enforcement diversion and referral of non-veteran eligible servicemembers from the criminal justice system. The department shall provide the Attorney General, the Administrative Director of the Courts, the Commissioner of the Department of Corrections, and the Chairman of the State Parole Board with a directory of Veterans Diversion Resource entities available within the State or shall publish the directory on its departmental Internet web site.

C.2C:43-25 Determination of eligibility.

3. a. When a person is taken into custody for an eligible offense, the responding law enforcement officer shall inquire as to whether the person is a servicemember or has ever served in the military services of the United States. If the law enforcement officer determines that the person is a servicemember and exhibits behavior or symptoms that may be related to a mental illness, the law enforcement officer may proceed in accordance with P.L.2017, c.42 (C.2C:43-23 et al.), but with a preference for diversion of an eligible servicemember to a Veterans Diversion Resource entity or other community-based mental health services in lieu of filing a criminal complaint. If the alleged offense is not an eligible offense or the servicemember is resistant to diversion, the officer may file a criminal complaint. Regardless of whether an offense qualifies for diversion under P.L.2017, c.42 (C.2C:43-23 et al.), the officer shall inquire whether the person is a servicemember and indicate if the person claims to be a servicemember on the complaint-summons or complaint-warrant at the time it is prepared.

b. Law enforcement officers may divert an eligible servicemember who appears to have a mental illness to a Veterans Diversion Resource entity or other community-based mental health services in lieu of filing a criminal complaint against the servicemember. A law

enforcement officer shall not divert an eligible servicemember prior to the filing of a criminal complaint if the crime or offense involves restitution for damages, if the crime or offense involves violence or the threat of violence, if the crime or offense involves the violation of any restraining order or protective order involving another person, or where a victim of the offense objects to the diversion. For the purposes of this paragraph, a crime or offense involves violence or the threat of violence if the victim sustains a 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 a bodily injury. If an eligible servicemember is not diverted, the officer may proceed with the filing of a complaint-summons or complaint-warrant pursuant to law, the Rules of Court, and the directives of the Attorney General. The form of complaint shall clearly indicate the person's status as a servicemember to facilitate future efforts to divert eligible servicemembers from prosecution into case management and mental health services or the assignment of the servicemember to appropriate post-adjudication supervisory and therapeutic services, where needed to support the servicemember's recovery.

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

d. Prior to the commencement of court proceedings to adjudicate a crime or offense, the court shall notify all defendants present in the courtroom of the eligibility for prosecutorial diversion for eligible servicemembers pursuant to P.L.2017, c.42 (C.2C:43-23 et al.).

C.2C:43-26 Application to participate in Veterans Diversion Program.

4. a. At any time after the filing of a criminal complaint, but prior to the disposition of such complaint, an eligible servicemember, the public defender assigned to the eligible servicemember, or the servicemember's own legal counsel may make an application to the prosecutor to participate in the Veterans Diversion Program. The prosecutor may approve or conditionally approve an eligible servicemember's admission into the Veterans Diversion Program. An eligible servicemember may be conditionally approved for admission into the program pending verification of the person's veteran or servicemember status, review of the person's criminal history, and consideration of the findings of a clinical assessment of the person's mental health. Once admitted to the program, the prosecutor may move before the court to postpone proceedings while an eligible servicemember obtains a mental health assessment or participates in case management and mental health services. The court may grant the postponement of proceedings and release the servicemember on the persons' own recognizance subject to compliance with the conditions specified in the prosecutor's diversion agreement. If the prosecutor's review of the person's records and the clinical assessment reveals that the person does not qualify for the program or if the servicemember does not comply with the requirements of the diversion agreement, the prosecutor may notify the court that the State is prepared to proceed with the prosecution of the offense and the court shall schedule court proceedings as appropriate.

b. (1) Except as provided in paragraph (2) of this subsection, the prosecutor shall have the sole discretion to determine if an eligible servicemember qualifies for and is admitted to the Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.) after consideration of the nature of the eligible offense, the causative relationship between the

person's diagnosed or apparent mental illness and the commission of the offense, the amenability of the servicemember 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, and the probability that diversion will promote the servicemember's recovery, prevent future criminal behavior, and protect public safety. A prosecutor may also consider and approve other diversion alternatives for servicemembers in lieu of the Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.).

(2) No eligible servicemember shall be admitted to the Veterans Diversion Program if the person has criminal charges pending for a crime of the second degree or higher, if the crime or offense involved violence or the threat of violence, or 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). There shall be a presumption against admission into the Veterans Diversion Program, subject to the discretion of the prosecutor after consulting with any victim, for a servicemember 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.). For purposes of this paragraph, a crime or offense involves violence or the threat of violence if the victim sustains a 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 a bodily injury.

(3) The prosecutor shall consult with victims of an eligible offense prior to approving an eligible servicemember's admission into the Veterans Diversion Program. Nothing in this subsection shall be construed to alter or limit the authority or discretion of the prosecutor to admit an eligible servicemember into the Veterans Diversion Program which the prosecutor deems appropriate.

c. The prosecutor's approval of an application for admission into the Veterans Diversion Program pursuant to this section shall not be conditioned on an admission or plea of guilt by an eligible servicemember.

d. To qualify for prosecutorial diversion under this section, an eligible servicemember shall 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 Veterans Diversion Resource entity or other similar services and to cooperate with any recommended course of treatment, including the use of medications as prescribed and participation in counseling;

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

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

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

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

(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;

(9) Cooperate with a mentor, where assigned, and the United States Department of Veterans Affairs Justice Outreach Specialist;

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

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

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

e. The prosecutor shall determine the duration of the servicemember's participation in the Veterans Diversion Program, except that the servicemember's participation in the program shall not exceed two years from the date of the diversion agreement. The term of the servicemember's participation shall be based on the initial clinical evaluation and recommendations, status reports of the servicemember's participation, and progress reports from the case management and mental health service providers, and, where assigned, the servicemember's mentor.

f. The servicemember shall be responsible for coordinating with the Veterans Diversion Resource entity or other case management and mental health service provider to ensure that the prosecutor receives periodic reports on the servicemember's participation, cooperation and recovery progress. The servicemember shall contact the Veterans Diversion Resource entity or other case management and mental health service provider within seven days of the date of the diversion agreement.

g. The court shall review the status of the deferred prosecution of the servicemember no later than six months from the date on which the court approved the prosecutor's initial request for a postponement of the proceedings, and, thereafter, every six months from the most recent review, to consider, based on information provided by the prosecutor, whether the postponement of court proceedings as requested by the prosecutor should continue.

h. To the extent that a sufficient number of mentors are available, the prosecutor or the case management provider on behalf of the prosecutor, shall assign a mentor to the eligible servicemember from the registry of mentors provided by the Department of Military and Veterans' Affairs, except that an insufficient number of mentors available for assignment shall not in itself prevent a prosecutor from diverting an eligible servicemember pursuant to P.L.2017, c.42 (C.2C:43-23 et al.).

i. The prosecutor shall notify the United States Department of Veterans Affairs Justice Outreach Specialist assigned to represent New Jersey when an eligible servicemember who is a veteran has been admitted into the Veterans Diversion Program to facilitate outreach to the servicemember.

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

k. If, at any time, the prosecutor finds that the servicemember has failed to comply with any term or condition of the diversion agreement, the prosecutor may notify the court that the

State is prepared to proceed with the prosecution of the offense and the court shall schedule court proceedings as appropriate.

l. No fee shall be assessed to a servicemember for participation in the Veterans Diversion Program.

m. An eligible servicemember may be admitted to the Veterans Diversion Program one or more times at the discretion of the prosecutor, subject to the restrictions in this section, if such diversion promotes the servicemember's recovery, prevents the commission of future offenses, and protects the safety of the public. Nothing in P.L.2017, c.42 (C.2C:43-23 et al.) shall preclude an eligible servicemember 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 Veterans Diversion Program to the extent that the servicemember meets the eligibility criteria and qualifies for those programs. A dismissal of a criminal complaint resulting from successful participation in a Veterans Diversion Program pursuant to this section shall bar a servicemember'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 servicemember may seek subsequent admission to the Veterans Diversion Program and may be admitted at the sole discretion of the prosecutor.

n. The dismissal of charges based on a servicemember's successful participation in the Veterans 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, 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.

C.2C:43-27 Construction of act.

5. Nothing in P.L.2017, c.42 (C.2C:43-23 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 a servicemember as defined within P.L.2017, c.42 (C.2C:43-23 et al.). When considering the diversion of a servicemember from the criminal justice system, a prosecutor may use the Veterans Diversion Program established pursuant to P.L.2017, c.42 (C.2C:43-23 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 servicemember, and the safety of any victim and the public.

C.2C:43-28 Development of differentiated mental health supervision case type.

6. 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 servicemembers 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 specifically targeted to military culture and shall coordinate with mentors as well as federal

and State case management and health care providers available to servicemembers to promote their recovery, compliance with the terms of probation and re-integration into the community, and adjustment to civilian life. Eligible servicemembers 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 servicemember 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 and the court periodic status reports regarding the servicemember's participation, cooperation, and recovery progress.

7. 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, upon receipt of an application from the person, order the expungement of all records and information relating to the arrest or charge.

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

(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 and no fee shall be charged to the person making such application.

(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 Superior Court shall forward a copy of the expungement order to the appropriate court and to the prosecutor. The 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 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 or charge 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. No fee shall be charged to the person for applying for an expungement of an arrest or charge not resulting in a conviction pursuant to this subsection.

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.

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.

8. 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 and 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.), or a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 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.

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

Conditional discharge for certain first offenses.

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.), or a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 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. If a person is placed under supervisory treatment under this section after a plea of guilty or finding of guilt, the court as a term and condition of supervisory treatment shall suspend the person's driving privileges for a period

to be fixed by the court at not less than six months or more than two years unless the court finds compelling circumstances warranting an exception. For the purposes of this subsection, compelling circumstances warranting an exception exist if the suspension of the person's driving privileges will result in extreme hardship and alternative means of transportation are not available. In the case of a person who at the time of placement under supervisory treatment under this section is less than 17 years of age, the period of suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the person is placed on supervisory treatment and shall run for a period as fixed by the court of not less than six months or more than two years after the day the person reaches the age of 17 years.

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

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

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

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

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

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

d. A person seeking conditional discharge pursuant to this section shall pay to the court a fee of \$75 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).

10. 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.) 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).

11. N.J.S.38A:3-6 is amended to read as follows:

Powers, duties.

38A:3-6. Under the direction of the Governor, the Adjutant General shall:

(a) Exercise control over the affairs of the Department of Military and Veterans' Affairs and in connection therewith make and issue such regulations governing the work of the Department of Military and Veterans' Affairs and the conduct of its employees as may, in his judgment, be necessary or desirable.

(b) Be the request officer of the Department of Military and Veterans' Affairs within the meaning of such term as defined in section 1 of P.L.1944, c.112 (C.52:27B-1).

(c) (Deleted by amendment, P.L.1988, c.138.)

(d) Command the organized militia of the State, with responsibility for recruiting, mobilization, administration, training, discipline, equipping, supply and general efficiency thereof. He may issue such regulations and delegate such command functions as he shall deem necessary. The regulations so issued shall, insofar as possible, conform to the federal laws and regulations concerning the same.

(e) Maintain the archives and be the custodian of the records and papers required, by laws or regulations, to be filed with the Department of Military and Veterans' Affairs.

(f) Supervise, administer and coordinate those activities of the selective service system for which the Governor is responsible.

(g) Acquire by gift, grant, purchase, exchange, eminent domain, or in any other lawful manner, in the name of and for the use of the State of New Jersey, all those parcels of land as shall be necessary for armories and other militia facilities, and supervise the design, construction, alteration, maintenance and repair of said property.

(h) Establish and maintain such headquarters as may be required for the militia.

(i) Exercise the powers vested in him and perform such other duties and functions as required of him by the Governor and by federal and State laws and regulations.

(j) Exercise all of the functions, powers and duties heretofore vested in the Director of the Division on Veterans' Programs and Special Services.

(k) Appoint and remove officers and other personnel employed within the department, subject to the provisions of N.J.S.38A:3-8 and Title 11A of the New Jersey Statutes and other applicable statutes, except as herein otherwise specifically provided.

(l) Have authority to organize and maintain an administrative division and to assign to employment therein secretarial, clerical and other assistants in the department or the Adjutant General's Office for the purpose of providing centralized support to all segments of the department, including budgeting, personnel administration and oversight of equal opportunity programs.

(m) Perform, exercise and discharge the functions, powers and duties of the department through such divisions as may be established by this act or otherwise by law.

(n) Organize the work of the department in divisions not inconsistent with the provisions of this act and in bureaus and other organizational units as the Adjutant General may determine to be necessary for efficient and effective operation.

(o) Adopt, issue and promulgate, in the name of the department, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as may be authorized by law.

(p) Institute, or cause to be instituted, legal proceedings or processes as necessary to properly enforce and give effect to any of the Adjutant General's powers or duties.

(q) Make an annual report to the Governor and to the Legislature of the department's operations, and render other reports as the Governor shall from time to time request or as may be required by law.

(r) Coordinate the activities of the department, and the several divisions and other agencies therein, in a manner designed to eliminate overlapping and duplicative functions.

(s) Integrate within the department, so far as practicable, all staff services of the department and of several divisions and other agencies therein.

(t) Request access to all relevant files and records of other State agencies, which may be made available to the Adjutant General by the head of a State agency, and request, subject to the permission of the head of the State agency, any officer or employee therein to provide information as necessary to assist in the performance of the functions of the department.

(u) Supervise and operate the New Jersey Veterans' Memorial Home-Menlo Park, the New Jersey Veterans' Memorial Home-Vineland, the New Jersey Veterans' Memorial Home-Paramus and the New Jersey Veterans' Memorial Cemetery-Arneytown.

(v) Supervise and operate the liaison office and the field offices which serve the federal Veterans' Affairs Medical Centers.

(w) Make application for federal grants and programs, other than education grants or funds.

(x) Administer the federally-funded training and rehabilitation programs, except for the administration of federally-funded education and training programs set forth in 38 U.S.C. s.36 et seq.

(y) Provide current information to the general public on State and federal veterans' programs and benefits; create a comprehensive public webpage for women veterans that includes, but is not limited to, the following information: veterans' legal rights, benefits, medical and insurance issues, education, the transition from active service to civilian life, and other resources available to veterans.

(z) Develop and administer the New Jersey Homeless Veterans Grant Program established pursuant to section 3 of P.L.2013, c.239 (C.38A:3-6.2b).

(aa) Encourage and facilitate the registration of each service member residing in New Jersey with the United States Department of Veterans Affairs, or its successor agency. Registration shall take place, as appropriate, when the service member returns from deployment on federal active duty or is discharged or as soon as possible thereafter. The term "service member" shall mean members of the New Jersey National Guard and members of the United States Armed Forces, or a Reserve component thereof, when the information on each member is made available to the department.

(bb) Develop and coordinate a volunteer-based program comprised of former servicemembers to assist and mentor veterans who become involved with the criminal justice system, while criminal proceedings are pending and afterward, in accessing assistance to resolve the underlying problems that led or contributed to the veteran's involvement with the criminal justice system including, but not limited to, offering support and guidance, securing

housing, employment linkages, job training, education, transportation, disability compensation claims, discharge status, health care and other linkages available at the local State and federal level that can ease the challenge of reentry into civilian life. In addition, the Adjutant General shall develop a registry of volunteer mentors and make the registry available pursuant to P.L.2017, c.42 (C.2C:43-23 et al.).

(cc) Prepare and disseminate a directory of Veterans Diversion Resource Program entities currently available within New Jersey pursuant to P.L.2017, c.42 (C.2C:43-23 et al.).

C.2C:43-29 Annual report to Governor, Legislature.

12. The Attorney General, in cooperation with the Administrative Director of the Courts, shall prepare an annual 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 Veterans Diversion Program and other statutory and county-based law enforcement programs used to divert veterans from the criminal justice system. The report shall assist policymakers in determining whether these diversion programs should be modified or expanded to achieve the goals of recovery for servicemembers and public safety. The report shall include statistics regarding the number of arrests where the person indicates servicemember status; the number of servicemembers accepted into the Veterans Diversion Program or other diversion programs; the number of servicemembers who successfully completed these programs; the number of servicemembers who were found guilty at court proceedings; the number of servicemembers who, subsequent to admission in the Veterans Diversion Program or other diversion programs, were sentenced to a term of incarceration or probation; and other relevant information and recommendations at the discretion of the Attorney General.

C.38A:3-6.20 Provision of registry of volunteer mentors, Veterans Diversion Resource Program entities.

13. a. The Adjutant General of the Department of Military and Veterans' Affairs shall provide county prosecutors with a registry of volunteer mentors developed pursuant to subsection (bb) of N.J.S.38A:3-6 to facilitate the assignment of mentors to eligible servicemembers who have been admitted by the prosecutor into the Veterans Diversion Program established pursuant to P.L.2017, c.42 (C.2C:43-23 et al.). A copy of the registry shall also be provided to the Administrative Director of the Courts to facilitate the assignment of mentors to eligible servicemembers who have been sentenced to a term of probation supervision. The registry of mentors shall be periodically updated by the Department of Military and Veterans' Affairs.

b. The Adjutant General of the Department of Military and Veterans' Affairs shall also prepare and disseminate a directory of Veterans Diversion Resource Program entities currently available within New Jersey pursuant to P.L.2017, c.42 (C.2C:43-23 et al.).

C.2C:43-30 Collaboration with the United States Department of Veterans Affairs.

14. The Attorney General, the Administrative Director of the Courts, the Commissioner of the Department of Corrections, and the Chairman of the State Parole Board shall collaborate with representatives of the United States Department of Veterans Affairs to identify the most efficient and practical means of sharing information regarding servicemembers who have been arrested, diverted, imprisoned, or placed on probation or parole to assist the Department of Veterans' Affairs in identifying veterans in that population to facilitate its outreach and services to justice-involved veterans.

C.2C:43-31 Information published on websites.

15. The Attorney General, the Administrative Director of the Courts, and the Adjutant General of the Department of Military and Veterans' Affairs shall publish on their respective websites information regarding diversion programs and government-based resources available to assist justice-involved veterans and servicemembers.

16. This act shall take effect on the first day of the seventh month next following enactment, except that the Attorney General, the Administrative Director of the Courts, and the Adjutant General of the Department of Military and Veterans' Affairs may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved May 1, 2017.