

BRIMAGE GUIDELINES 2 (2004 REVISIONS)

APPLICATION NOTE #2

Ineligibility for Standardized Waiver Offer Where the Defendant at the Time of the Present Offense Was Participating in a Pretrial Intervention (PTI) or Conditional Discharge Program (See Section 6.4.1(5))

(ISSUED: November 18, 2004)

Section 6.4.1(5) of the Revised Brimage Guidelines provides that a defendant is not eligible for a standardized waiver offer unless the prosecutor is satisfied that the “defendant at the time of the present offense was not subject to official supervision (i.e., e.g., parole, probation, ISP, etc.) . . .”¹ A question has been raised whether a defendant would be eligible for a standardized “flat” offer if at the time of the present offense he or she was participating in a Pretrial Intervention (PTI) Program. The above-quoted parenthetical was intended only to provide a non-exhaustive list of various types of “official supervision.” Pretrial Intervention is clearly a form of official supervision within the meaning of the Guidelines. So too, conditional discharge under N.J.S.A. 2C:36A-1 represents a type of supervisory treatment that constitutes official supervision for purposes of the revised Brimage Guidelines.

Accordingly, any defendant who has abused the opportunity of Pretrial Intervention or conditional discharge by committing a Brimage-eligible offense while participating in such a diversion program shall be ineligible to receive a standardized waiver offer. A defendant shall be deemed to be participating in a Pretrial Intervention or conditional discharge program for purposes of Sections 6.4.1 and 11.5 of the revised Guidelines if he or she has been admitted to Pretrial Intervention or conditional discharge and at the time of the present Brimage-eligible offense has not successfully completed the program by having the relevant charges dismissed pursuant to R. 3:28 or N.J.S.A. 2C:36A-1.

¹ It should be noted that Section 11.5 already *expressly* provides that Special Application and Enhancement Feature E (Offenses Committed While Under Supervision) must be applied if the present Brimage-eligible offense was committed while the defendant was on PTI or conditional discharge.