

[First Reprint]

ASSEMBLY, No. 1771

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

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SYNOPSIS

Revises eligibility for expungement of criminal and juvenile delinquency records.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on January 28, 2008, with amendments.

(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning expungement of criminal and juvenile
2 delinquency records and amending N.J.S.2C:52-2, P.L.1980,
3 c.163, and N.J.S.2C:52-14.
4

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

7
8 1. N.J.S.2C:52-2 is amended to read as follows:
9 2C:52-2. Indictable Offenses.

10 a. In all cases, except as herein provided, wherein a person has
11 been convicted of a crime under the laws of this State and who has
12 not been convicted of any prior or subsequent crime, whether within
13 this State or any other jurisdiction, and has not been adjudged a
14 disorderly person or petty disorderly person on more than two
15 occasions may, after the expiration of a period of 10 years from the
16 date of his conviction, payment of fine, satisfactory completion of
17 probation or parole, or release from incarceration, whichever is
18 later, present a duly verified petition as provided in section 2C:52-7
19 to the Superior Court in the county in which the conviction was
20 entered praying that such conviction and all records and information
21 pertaining thereto be expunged.

22 Notwithstanding the provisions of the preceding paragraph, **[**on
23 motion of the petitioner, the court shall allow¹ a petition **[**to
24 may¹ be filed and presented, **[**which may be granted¹ and the
25 court may grant an expungement¹ pursuant to this section, although
26 less than 10 years has expired in accordance with the requirements
27 of the preceding paragraph where the court finds:

28 (1) less than 10 years has expired from the satisfaction of a fine,
29 but the 10-year time requirement is otherwise satisfied, and the
30 court finds that the person substantially complied with any payment
31 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so
32 due to compelling circumstances affecting his ability to satisfy the
33 fine; or

34 (2) at least five years has expired from the date of his conviction,
35 payment of fine, satisfactory completion of probation or parole, or
36 release from incarceration, whichever is later; the person has not
37 been convicted of a crime, disorderly persons offense, or petty
38 disorderly persons offense since the time of the conviction; and the
39 court finds in its discretion that expungement is in the public
40 interest, giving due consideration to the nature of the offense, and
41 the applicant's character and conduct since conviction.

42 In determining whether compelling circumstances exist for the
43 purposes of paragraph (1) of this subsection, a court may consider

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted January 28, 2008.

1 the amount of the fine or fines imposed, the person's age at the time
2 of the offense, the person's financial condition and other relevant
3 circumstances regarding the person's ability to pay.

4 Although subsequent convictions for no more than two
5 disorderly or petty disorderly offenses shall not be an absolute bar
6 to relief, the nature of those conviction or convictions and the
7 circumstances surrounding them shall be considered by the court
8 and may be a basis for denial of relief if they or either of them
9 constitute a continuation of the type of unlawful activity embodied
10 in the criminal conviction for which expungement is sought.

11 b. Records of conviction pursuant to statutes repealed by this
12 Code for the crimes of murder, manslaughter, treason, anarchy,
13 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
14 robbery, embracery, or a conspiracy or any attempt to commit any
15 of the foregoing, or aiding, assisting or concealing persons accused
16 of the foregoing crimes, shall not be expunged.

17 Records of conviction for the following crimes specified in the
18 New Jersey Code of Criminal Justice shall not be subject to
19 expungement: Section 2C:11-1 et seq. (Criminal Homicide), except
20 death by auto as specified in section 2C:11-5; section 2C:13-1
21 (Kidnapping); section 2C:13-6 (Luring or Enticing); section 1 of
22 P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); section 2C:14-2
23 (Aggravated Sexual Assault); section 2C:14-3a (Aggravated
24 Criminal Sexual Contact); if the victim is a minor, section 2C:14-3b
25 (Criminal Sexual Contact); if the victim is a minor and the offender
26 is not the parent of the victim, section 2C:13-2 (Criminal Restraint)
27 or section 2C:13-3 (False Imprisonment); section 2C:15-1
28 (Robbery); section 2C:17-1 (Arson and Related Offenses); section
29 2C:24-4a. (Endangering the welfare of a child by engaging in
30 sexual conduct which would impair or debauch the morals of the
31 child); section 2C:24-4b(4) (Endangering the welfare of a child);
32 section 2C:24-4b. (3) (Causing or permitting a child to engage in a
33 prohibited sexual act); section 2C:24-4b.(5)(a) (Selling or
34 manufacturing child pornography); section 2C:28-1 (Perjury);
35 section 2C:28-2 (False Swearing); section 2C:34-1b.(4) (Knowingly
36 promoting the prostitution of the actor's child); section 2 of
37 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
38 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
39 Weapons, Biological Agents or Nuclear or Radiological Devices);
40 and conspiracies or attempts to commit such crimes.

41 Records of conviction for any crime committed by a person
42 holding any public office, position or employment, elective or
43 appointive, under the government of this State or any agency or
44 political subdivision thereof and any conspiracy or attempt to
45 commit such a crime shall not be subject to expungement if the
46 crime involved or touched such office, position or employment.

1 c. In the case of conviction for the sale or distribution of a
2 controlled dangerous substance or possession thereof with intent to
3 sell, expungement shall be denied except where the crimes [relate
4 to] involve:

5 (1) Marijuana, where the total quantity sold, distributed or
6 possessed with intent to sell was 25 grams or less [, or] ;

7 (2) Hashish, where the total quantity sold, distributed or
8 possessed with intent to sell was five grams or less; or

9 (3) Any controlled dangerous substance provided that the
10 conviction is of the third or fourth degree, where the court finds that
11 expungement is consistent with the public interest, giving due
12 consideration to the nature of the offense and the petitioner's
13 character and conduct since conviction.

14 d. In the case of a State licensed physician or podiatrist
15 convicted of an offense involving drugs or alcohol or pursuant to
16 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
17 court shall notify the State Board of Medical Examiners upon
18 receipt of a petition for expungement of the conviction and records
19 and information pertaining thereto.

20 (cf: P.L.1994, c.133, s.6)

21

22 2. Section 1 of P.L.1980, c.163 (C.2C:52-4.1) is amended to
23 read as follows:

24 1. a. Any person adjudged a juvenile delinquent may have such
25 adjudication expunged as follows:

26 (1) Pursuant to N.J.S.2C:52-2, if the act committed by the
27 juvenile would have constituted a crime if committed by an adult;

28 (2) Pursuant to N.J.S.2C:52-3, if the act committed by the
29 juvenile would have constituted a disorderly or petty disorderly
30 persons offense if committed by an adult; or

31 (3) Pursuant to N.J.S.2C:52-4, if the act committed by the
32 juvenile would have constituted an ordinance violation if committed
33 by an adult.

34 For purposes of expungement, any act which resulted in a
35 juvenile being adjudged a delinquent shall be classified as if that act
36 had been committed by an adult.

37 b. Additionally, any person who has been adjudged a juvenile
38 delinquent may have his entire record of delinquency adjudications
39 expunged if:

40 (1) Five years have elapsed since the final discharge of the
41 person from legal custody or supervision or 5 years have elapsed
42 after the entry of any other court order not involving custody or
43 supervision, except that periods of post-incarceration supervision
44 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
45 considered in calculating the five-year period for purposes of this
46 paragraph;

1 (2) He has not been convicted of a crime, or a disorderly or petty
2 disorderly persons offense, or adjudged a delinquent, or in need of
3 supervision, during the 5 years prior to the filing the petition, and
4 no proceeding or complaint is pending seeking such a conviction or
5 adjudication, except that periods of post-incarceration supervision
6 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
7 considered in calculating the five-year period for purposes of this
8 paragraph;

9 (3) He was never adjudged a juvenile delinquent on the basis of
10 an act which if committed by an adult would constitute a crime not
11 subject to expungement under N.J.S.2C:52-2;

12 (4) He has never had an adult conviction expunged; and

13 (5) He has never had adult criminal charges dismissed following
14 completion of a supervisory treatment or other diversion program.

15 c. Any person who has been charged with an act of delinquency
16 and against whom proceedings were dismissed may have the filing
17 of those charges expunged pursuant to the provisions of
18 N.J.S.2C:52-6.

19 (cf: P.L.1981, c.290, s.44)

20
21 3. N.J.S.2C:52-14 is amended to read as follows:

22 2C:52-14. A petition for expungement filed pursuant to this
23 chapter shall be denied when:

24 a. Any statutory prerequisite, including any provision of this
25 chapter, is not fulfilled or there is any other statutory basis for
26 denying relief.

27 b. The need for the availability of the records outweighs the
28 desirability of having a person freed from any disabilities as
29 otherwise provided in this chapter. An application may be denied
30 under this subsection only following objection of a party given
31 notice pursuant to 2C:52-10 and the burden of asserting such
32 grounds shall be on the objector, except that in regard to
33 expungement sought for third or fourth degree drug offenses
34 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
35 court shall consider whether this factor applies regardless of
36 whether any party objects on this basis.

37 c. In connection with a petition under section 2C:52-6, the
38 acquittal, discharge or dismissal of charges resulted from a plea
39 bargaining agreement involving the conviction of other charges.
40 This bar, however, shall not apply once the conviction is itself
41 expunged.

42 d. The arrest or conviction sought to be expunged is, at the time
43 of hearing, the subject matter of civil litigation between the
44 petitioner or his legal representative and the State, any
45 governmental entity thereof or any State agency and the
46 representatives or employees of any such body.

- 1 e. A person has had a previous criminal conviction expunged
2 regardless of the lapse of time between the prior expungement, or
3 sealing under prior law, and the present petition. This provision
4 shall not apply:
- 5 (1) When the person is seeking the expungement of a municipal
6 ordinance violation or,
- 7 (2) When the person is seeking the expungement of records
8 pursuant to section 2C:52-6.
- 9 f. The person seeking the relief of expungement of a conviction
10 for a disorderly persons, petty disorderly persons, or criminal
11 offense has prior to or subsequent to said conviction been granted
12 the dismissal of criminal charges following completion of a
13 supervisory treatment or other diversion program.
14 (cf: N.J.S.2C:52-14)
15
- 16 4. This act shall take effect on the 60th day after enactment.