ASSEMBLY, No. 799

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman ANTHONY S. VERRELLI
District 15 (Hunterdon and Mercer)

SYNOPSIS

Permits applicant for expungement to file one, duly verified petition for multiple convictions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning expungement and amending N.J.S.2C:52-2 and N.J.S.2C:52-3.

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

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

2C:52-2. Indictable Offenses.

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

the person has been convicted of one crime under the laws of this State, and does not otherwise have any prior or subsequent conviction for another crime, whether within this State or any other jurisdiction; or

the person has been convicted of one crime and less than four disorderly persons or petty disorderly persons offenses under the laws of this State, and does not otherwise have any prior or subsequent conviction for another crime, or any prior or subsequent conviction for another disorderly persons or petty disorderly persons offense such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed three, whether any such crime or offense conviction was within this State or any other jurisdiction; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, all of which are listed in a single judgment of conviction, and does not otherwise have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction.

The person, if eligible, may present the expungement application

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 <u>thus</u> is new matter.

after the expiration of a period of six years from the date of his most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "fine" as used herein and throughout this section means and includes any fine, restitution, and other court-ordered financial assessment imposed by the court as part of the sentence for the conviction, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the conviction for the crime was adjudged, which contains **[**a separate,**]** one duly verified petition as provided in N.J.S.2C:52-7 for **[**each conviction**]** the one or more convictions sought to be expunged, praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition for **[**each**]** the conviction or convictions appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

Notwithstanding the provisions concerning the six-year time requirement, if a fine which is currently subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of six years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement, provided, however, that if expungement is granted under this paragraph, the court shall provide for the continued collection of any outstanding amount owed that is necessary to satisfy the fine or the entry of civil judgment for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1).

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than six years have expired in accordance with the time requirements when the court finds:

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

(2) at least five but less than six years have expired from the date of the most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that expungement is in the public interest, giving due

consideration to the nature of the offense or offenses, and the applicant's character and conduct since the conviction or convictions.

In determining whether compelling circumstances exist for the purposes of paragraph (1) of this subsection, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

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

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in N.J.S.2C:11-5 and strict liability vehicular homicide as specified in section 1 of P.L.2017, c.165 (C.2C:11-5.3); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal Sexual Contact); if the victim is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm); paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or filming a child in a prohibited sexual act or for portrayal in a sexually suggestive manner); paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to engage in a prohibited sexual act or the simulation of an act, or to be portrayed in a sexually suggestive manner); subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child); section 8 of P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing

or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices); and conspiracies or attempts to commit such crimes.

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

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

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was less than one ounce;

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

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

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

(cf: P.L.2017, c.244, s.1)

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

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses.

a. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application to the Superior Court pursuant to this section. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has also been convicted of one or more crimes shall not be eligible to apply for an expungement pursuant to this section, but may present an expungement application to the Superior Court pursuant to N.J.S.2C:52-2.

b. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an

expungement application to the Superior Court pursuant to this section if:

the person has been convicted, under the laws of this State, on the same or separate occasions of no more than four disorderly persons offenses, no more than four petty disorderly persons offenses, or a combination of no more than four disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any prior or subsequent conviction for a disorderly persons or petty disorderly persons offense, whether within this State or any other jurisdiction, such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed four; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which convictions were entered on the same day, and does not otherwise have any prior or subsequent conviction for another offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which offenses or combination of offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual offense, and the person does not otherwise have any prior or subsequent conviction for another offense in addition to those convictions included in the expungement application, whether within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later. The term "fine" as used herein and throughout this section means and includes any fine, restitution, and other court-ordered financial assessment imposed by the court as part of the sentence for the conviction, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the most recent conviction for a disorderly persons or petty disorderly persons offense was adjudged, which contains **[**a separate,**]** <u>one</u> duly verified petition as provided in N.J.S.2C:52-7 for **[**each conviction**]** <u>the one or more convictions</u> sought to be expunged, praying that the conviction, or

convictions if applicable, and all records and information pertaining thereto be expunged. The petition for [each] the conviction or convictions appended to an application shall comply with the requirements of N.J.S.2C:52-1 et seq.

Notwithstanding the provisions of the five-year time requirement, an application may be filed and presented, and the court may grant an expungement pursuant to this section, when the court finds:

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

(2) at least three but less than five years have expired from the date of the most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense or offenses, and the applicant's character and conduct since the conviction or convictions.

In determining whether compelling circumstances exist for the purposes of paragraph (1) of this subsection, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

(cf: P.L.2017, c.244, s.2)

3. This act shall take effect immediately.

STATEMENT

This bill would permit an applicant to submit one, single duly verified petition when seeking the expungement of one or more convictions.

Under current law, an applicant seeking expungement of one or more convictions would submit one application, with one separate, duly verified petition as provided in N.J.S.A.2C:52-7 for each conviction sought to be expunged. This bill would permit the applicant to submit only one duly verified petition for all convictions sought to be expunged. This petition would comply with the requirements set forth in N.J.S.A.2C:52-1 et seq.

This bill would take effect immediately.