

ASSEMBLY, No. 1903

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

SYNOPSIS

Expands expungement eligibility; eliminates cap on number of convictions person may expunge; eliminates limitation on number of times person may be granted expungement.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/15/2020)

1 AN ACT expanding expungement eligibility, and revising various
2 sections of the statutory law.

3

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

6

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

8 2C:52-2. Indictable Offenses.

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

12 the person has been convicted of one **[crime]** or more crimes
13 under the laws of this State, **[and does not otherwise have]**
14 notwithstanding any prior or subsequent conviction for another
15 crime in addition to the one or more convictions included in the
16 expungement application, whether any such conviction was within
17 this State or any other jurisdiction; or

18 **[the person has been convicted of one crime and less than four**
19 **disorderly persons or petty disorderly persons offenses under the**
20 **laws of this State, and does not otherwise have any prior or**
21 **subsequent conviction for another crime, or any prior or subsequent**
22 **conviction for another disorderly persons or petty disorderly**
23 **persons offense such that the total number of convictions for**
24 **disorderly persons and petty disorderly persons offenses would**
25 **exceed three, whether any such crime or offense conviction was**
26 **within this State or any other jurisdiction; or]**

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

36 the person has been convicted of multiple crimes or a
37 combination of one or more crimes and one or more disorderly
38 persons or petty disorderly persons offenses under the laws of this
39 State, which crimes or combination of crimes and offenses were
40 interdependent or closely related in circumstances and were
41 committed as part of a sequence of events that took place within a
42 comparatively short period of time, regardless of the date of
43 conviction or sentencing for each individual crime or offense, and
44 the person does not otherwise have any prior or subsequent

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 conviction for another crime or offense in addition to those
2 convictions included in the expungement application, whether any
3 such conviction was within this State or any other jurisdiction】.

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

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

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

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

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

1 the person has not been otherwise convicted of a crime,
2 disorderly persons offense, or petty disorderly persons offense since
3 the time of the most recent conviction; and the court finds in its
4 discretion that expungement is in the public interest, giving due
5 consideration to the nature of the offense or offenses, and the
6 applicant's character and conduct since the conviction or
7 convictions. In determining whether compelling circumstances
8 exist for the purposes of paragraph (1) of this subsection, a court
9 may consider the amount of the fine or fines imposed, the person's
10 age at the time of the offense or offenses, the person's financial
11 condition and other relevant circumstances regarding the person's
12 ability to pay.

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

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

1 N.J.S.2C:28-2 (False Swearing); paragraph (4) of subsection b. of
2 N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's
3 child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism);
4 subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing
5 or Possessing Chemical Weapons, Biological Agents or Nuclear or
6 Radiological Devices); and conspiracies or attempts to commit such
7 crimes.

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

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

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

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

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

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

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

33
34 2. N.J.S.2C:52-3 is amended to read as follows:

35 2C:52-3. Disorderly persons offenses and petty disorderly
36 persons offenses.

37 a. **【Any person who has been convicted of one or more**
38 **disorderly persons or petty disorderly persons offenses under the**
39 **laws of this State who has not been convicted of any crime, whether**
40 **within this State or any other jurisdiction, may present an**
41 **expungement application to the Superior Court pursuant to this**
42 **section. Any person who has been convicted of one or more**
43 **disorderly persons or petty disorderly persons offenses under the**
44 **laws of this State who has also been convicted of one or more**
45 **crimes shall not be eligible to apply for an expungement pursuant to**
46 **this section, but may present an expungement application to the**
47 **Superior Court pursuant to N.J.S.2C:52-2.】** (Deleted by

1 amendment, P.L. , c.) (pending before the Legislature as this
2 bill)

3 b. **【Any】** In all cases, except as provided in N.J.S.2C:52-2, a
4 person 【who has been convicted of one or more disorderly persons
5 or petty disorderly persons offenses under the laws of this State
6 who has not been convicted of any crime, whether within this State
7 or any other jurisdiction,】 may present an expungement application
8 to the Superior Court pursuant to this section if: the person has
9 been convicted 【, under the laws of this State, on the same or
10 separate occasions】 of 【no】 one or more 【than four】 disorderly
11 persons offenses, 【no more than four】 one or more petty disorderly
12 persons offenses, or a combination of 【no more than four】 one or
13 more disorderly persons and petty disorderly persons offenses, 【and
14 the person does not otherwise have】 notwithstanding any prior or
15 subsequent conviction for 【a】 another disorderly persons or petty
16 disorderly persons offense in addition to the one or more
17 convictions included in the expungement application, whether any
18 such conviction was within this State or any other jurisdiction 【,
19 such that the total number of convictions for disorderly persons and
20 petty disorderly persons offenses would exceed four; or

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

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

42 The person, if eligible, may present the expungement application
43 after the expiration of a period of five years from the date of his
44 most recent conviction, payment of fine, satisfactory completion of
45 probation or release from incarceration, whichever is later. The
46 term "fine" as used herein and throughout this section means and
47 includes any fine, restitution, and other court-ordered financial

1 assessment imposed by the court as part of the sentence for the
2 conviction, for which payment of restitution takes precedence in
3 accordance with chapter 46 of Title 2C of the New Jersey Statutes.
4 The person shall submit the expungement application to the
5 Superior Court in the county in which the most recent conviction
6 for a disorderly persons or petty disorderly persons offense was
7 adjudged, which contains a separate, duly verified petition as
8 provided in N.J.S.2C:52-7 for each conviction sought to be
9 expunged, praying that the conviction, or convictions if applicable,
10 and all records and information pertaining thereto be expunged.
11 The petition for each conviction appended to an application shall
12 comply with the requirements of N.J.S.2C:52-1 et seq.
13 Notwithstanding the provisions of the five-year time
14 requirement, an application may be filed and presented, and the
15 court may grant an expungement pursuant to this section, when the
16 court finds:

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

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

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

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

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

40

41 3. N.J.S.2C:52-4 is amended to read as follows:

42 2C:52-4. Ordinances. In all cases wherein a person has been
43 found guilty of violating a municipal ordinance of any
44 governmental entity of this State [and who has not been convicted
45 of] notwithstanding any prior or subsequent conviction for a crime,
46 disorderly persons offense, or petty disorderly persons offense,
47 whether within this State or any other jurisdiction, [and who has
48 not been adjudged a disorderly person or petty disorderly person on

1 more than two occasions,】 may, after the expiration of a period of
2 【2】 two years from the date of his conviction, payment of fine,
3 satisfactory completion of probation or release from incarceration,
4 whichever is later, present a duly verified petition as provided in
5 【section】 N.J.S.2C:52-7 【herein】 to the Superior Court in the
6 county in which the violation occurred praying that such conviction
7 and all records and information pertaining thereto be expunged.
8 (cf: N.J.S.2C:52-4)

9
10 4. N.J.S.2C:52-5 is amended to read as follows:

11 2C:52-5. Expungement of Records of Young Drug Offenders.
12 Notwithstanding the provisions of N.J.S.2C:52-2 and N.J.S.2C:52-
13 3, after a period of not less than one year following conviction,
14 termination of probation or parole or discharge from custody,
15 whichever is later, any person convicted of an offense under chapter
16 35 or 36 of this title for the possession or use of a controlled
17 dangerous substance, convicted of violating P.L.1955, c.77, s.3
18 (C.2A:170-77.5), or convicted of violating P.L.1962, c.113, s.1
19 (C.2A:170-77.8), and who at the time of the offense was 21 years of
20 age or younger, may apply to the Superior Court in the county
21 wherein the matter was disposed of for the expungement of such
22 person's conviction and all records pertaining thereto. 【The relief
23 of expungement under this section shall be granted only if said
24 person has not, prior to the time of hearing, violated any of the
25 conditions of his probation or parole, albeit subsequent to discharge
26 from probation or parole, has not been convicted of any previous or
27 subsequent criminal act or any subsequent or previous violation of
28 chapter 35 or 36 of this title or of P.L.1955, c.277, s.3 (C.2A:170-
29 77.5) or of P.L.1962, c.113, s.1 (C.2A:170-77.8), or who has not
30 had a prior or subsequent criminal matter dismissed because of
31 acceptance into a supervisory treatment or other diversion
32 program.】

33 This section shall not apply to any person who has been
34 convicted of the sale or distribution of a controlled dangerous
35 substance or possession with the intent to sell any controlled
36 dangerous substance except:

37 (1) Marihuana, where the total sold, distributed or possessed
38 with intent to sell was less than one ounce, or

39 (2) Hashish, where the total amount sold, distributed or
40 possessed with intent to sell was less than five grams.

41 (cf: P.L.2017, c.244, s.3)

42
43 5. N.J.S.2C:52-8 is amended to read as follows:

44 2C:52-8. Statements to accompany petition. There shall be
45 attached to a petition for expungement:

46 a. A statement with the affidavit or verification that there are
47 no disorderly persons, petty disorderly persons or criminal charges

1 pending against the petitioner at the time of filing of the petition for
2 expungement.

3 b. **【**In those instances where the petitioner is seeking the
4 expungement of a criminal conviction, or the expungement of
5 convictions pursuant to N.J.S.2C:52-3 for multiple disorderly
6 persons or petty disorderly persons offenses, all of which were
7 entered the same day, or which were interdependent or closely
8 related in circumstances and were committed as part of a sequence
9 of events that took place within a comparatively short period of
10 time, a statement with affidavit or verification that he has never
11 been granted expungement, sealing or similar relief regarding a
12 criminal conviction or convictions for multiple disorderly persons
13 or petty disorderly persons offenses, all of which were entered the
14 same day, or which were interdependent or closely related in
15 circumstances and were committed as part of a sequence of events
16 that took place within a comparatively short period of time by any
17 court in this State or other state or by any Federal court. "Sealing"
18 refers to the relief previously granted pursuant to P.L.1973, c.191
19 (C.2A:85-15 et seq.).**】** (Deleted by amendment, P.L. , c.)
20 (pending before the Legislature as this bill)

21 c. In those instances where a person has received a dismissal of
22 a criminal charge because of acceptance into a supervisory
23 treatment or any other diversion program, a statement with affidavit
24 or verification setting forth the nature of the original charge, the
25 court of disposition and date of disposition.
26 (cf: P.L.2017, c.244, s.4)

27

28 6. N.J.S.2C:52-14 is amended to read as follows:

29 2C:52-14. A petition for expungement filed pursuant to this
30 chapter shall be denied when:

31 a. Any statutory prerequisite, including any provision of this
32 chapter, is not fulfilled or there is any other statutory basis for
33 denying relief.

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

44 c. In connection with a petition under N.J.S.2C:52-6, the
45 acquittal, discharge or dismissal of charges resulted from a plea
46 bargaining agreement involving the conviction of other charges.
47 This bar, however, shall not apply once the conviction is itself
48 expunged.

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

e. **【**A person has had a previous criminal conviction expunged regardless of the lapse of time between the prior expungement, or sealing under prior law, and the present petition. This provision shall not apply:

(1) When the person is seeking the expungement of a municipal ordinance violation or,

(2) When the person is seeking the expungement of records pursuant to N.J.S.2C:52-6.】 (Deleted by amendment, P.L. , c.)
(pending before the Legislature as this bill)

f. (Deleted by amendment, P.L.2017, c.244)
(cf: P.L.2017, c.244, s.5)

7. N.J.S.2C:52-32 is repealed.

8. This act shall take effect immediately, and apply to any expungement relief granted to any person thereafter, regardless of whether that person was previously granted an expungement.

STATEMENT

This bill would expand, in several ways, expungement eligibility to allow more persons to petition the Superior Court for expungement relief:

- It would eliminate the cap on the number of convictions for crimes, disorderly persons offenses, and petty disorderly persons offenses that a person could expunge;

- It would eliminate the limitation on the number of times a person could be granted expungement relief based on convictions for crimes, disorderly persons offenses, and petty disorderly persons offenses;

- It would allow for convictions of first degree and second degree crimes for the sale or distribution of any form of controlled dangerous substance to be expunged, if the court found that the expungement “is consistent with the public interest” (such expungements are only currently permitted for convictions of either the third degree or fourth degree crime);

- It would allow a so-called “young drug offender” (a person who is 21 years of age or younger at the time of committing the offense), who is eligible for expedited expungement relief under current law (see N.J.S.2C:52-5), to be granted such expedited relief even if that offender had violated a condition of probation or parole, has on record a conviction for another crime or violation of the

1 State's drug laws, or had a previous criminal matter dismissed
2 because of acceptance into a supervisory treatment or other
3 diversion program; and
4 - It would repeal N.J.S.2C:52-32, which expresses the current
5 State policy favoring limitations on the availability of expungement
6 relief based on the number of convictions a person has or the
7 number of times expungement relief was previously sought.