

ASSEMBLY, No. 2515

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Provides affirmative defense to and permits expungement of certain trespass offenses committed as result of person's homelessness; provides for police training.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the defense of and expungement of certain
 2 offenses, amending N.J.S.2C:18-3 and N.J.S.2C:52-3 and
 3 supplementing Title 52 of the Revised Statutes.

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:18-3 is amended to read as follows:

9 2C:18-3. a. Unlicensed entry of structures. A person commits
 10 an offense if, knowing that he is not licensed or privileged to do so,
 11 he enters or surreptitiously remains in any research facility,
 12 structure, or separately secured or occupied portion thereof, or in or
 13 upon utility company property, or in the sterile area or operational
 14 area of an airport. An offense under this subsection is a crime of the
 15 fourth degree if it is committed in a school or on school property.
 16 The offense is a crime of the fourth degree if it is committed in a
 17 dwelling. An offense under this section is a crime of the fourth
 18 degree if it is committed in a research facility, power generation
 19 facility, waste treatment facility, public sewage facility, water
 20 treatment facility, public water facility, nuclear electric generating
 21 plant or any facility which stores, generates or handles any
 22 hazardous chemical or chemical compounds. An offense under this
 23 subsection is a crime of the fourth degree if it is committed in or
 24 upon utility company property. An offense under this subsection is
 25 a crime of the fourth degree if it is committed in the sterile area or
 26 operational area of an airport. Otherwise it is a disorderly persons
 27 offense.

28 b. Defiant trespasser. A person commits a petty disorderly
 29 persons offense if, knowing that he is not licensed or privileged to
 30 do so, he enters or remains in any place as to which notice against
 31 trespass is given by:

32 (1) Actual communication to the actor; or

33 (2) Posting in a manner prescribed by law or reasonably likely
 34 to come to the attention of intruders; or

35 (3) Fencing or other enclosure manifestly designed to exclude
 36 intruders.

37 c. Peering into windows or other openings of dwelling places.
 38 A person commits a crime of the fourth degree if, knowing that he
 39 is not licensed or privileged to do so, he peers into a window or
 40 other opening of a dwelling or other structure adapted for overnight
 41 accommodation for the purpose of invading the privacy of another
 42 person and under circumstances in which a reasonable person in the
 43 dwelling or other structure would not expect to be observed.

44 d. Defenses. It is an affirmative defense to prosecution under
 45 this section that:

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 (1) A structure involved in an offense under subsection a. was
2 abandoned;

3 (2) The structure was at the time open to members of the public
4 and the actor complied with all lawful conditions imposed on access
5 to or remaining in the structure; **[or]**

6 (3) The actor reasonably believed that the owner of the
7 structure, or other person empowered to license access thereto,
8 would have licensed him to enter or remain, or, in the case of
9 subsection c. of this section, to peer; or

10 (4) For purposes of a disorderly persons offense under
11 subsection a. or a petty disorderly persons offense under subsection
12 b., the person was: homeless at the time of the offense; the offense
13 was committed as a result of the person having been homeless; the
14 person faced a clear and imminent danger, including, but not
15 limited to, exposure to extreme outdoor temperatures; the person
16 reasonably expected that entering or remaining in or upon the
17 facility, structure, property, area, or place would abate the clear and
18 imminent danger; and, the person had no legal alternative that
19 would have abated the clear and imminent danger.

20 (cf: P.L.2013, c.138, s.2)

21

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

23 2C:52-3. Disorderly persons offenses and petty disorderly
24 persons offenses.

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

36 b. Any person who has been convicted of one or more
37 disorderly persons or petty disorderly persons offenses under the
38 laws of this State who has not been convicted of any crime, whether
39 within this State or any other jurisdiction, may present an
40 expungement application pursuant to this section to any court
41 designated by the Rules of Court if:

42 the person has been convicted, under the laws of this State, on
43 the same or separate occasions of no more than five disorderly
44 persons offenses, no more than five petty disorderly persons
45 offenses, or a combination of no more than five disorderly persons
46 and petty disorderly persons offenses, and the person does not
47 otherwise have any subsequent conviction for a disorderly persons
48 or petty disorderly persons offense, whether within this State or any

1 other jurisdiction, such that the total number of convictions for
2 disorderly persons and petty disorderly persons offenses would
3 exceed five. Subject to the provision of subsection e. of
4 N.J.S.2C:52-14 requiring denial of an expungement petition when a
5 person has had a previous criminal conviction expunged, a prior
6 conviction for another disorderly persons offense or petty disorderly
7 persons offense shall not bar presenting an application seeking
8 expungement relief for the convictions that are the subject of the
9 application, which may include convictions for no more than five
10 disorderly persons or petty disorderly persons offenses, or
11 combination thereof; or

12 the person has been convicted of multiple disorderly persons
13 offenses or multiple petty disorderly persons offenses under the
14 laws of this State, or a combination of multiple disorderly persons
15 and petty disorderly persons offenses under the laws of this State,
16 which convictions were entered on the same day, and does not
17 otherwise have any subsequent conviction for another offense in
18 addition to those convictions included in the expungement
19 application, whether any such conviction was within this State or
20 any other jurisdiction. Subject to the provision of subsection e. of
21 N.J.S.2C:52-14 requiring denial of an expungement petition when a
22 person has had a previous criminal conviction expunged, a prior
23 conviction for another disorderly persons or petty disorderly
24 persons offense that was not entered on the same day shall not bar
25 presenting an application seeking expungement relief for the
26 convictions entered on the same day that are the subject of the
27 application; or

28 the person has been convicted of multiple disorderly persons
29 offenses or multiple petty disorderly persons offenses under the
30 laws of this State, or a combination of multiple disorderly persons
31 and petty disorderly persons offenses under the laws of this State,
32 which offenses or combination of offenses were interdependent or
33 closely related in circumstances and were committed as part of a
34 sequence of events that took place within a comparatively short
35 period of time, regardless of the date of conviction or sentencing for
36 each individual offense, and the person does not otherwise have any
37 subsequent conviction for another offense in addition to those
38 convictions included in the expungement application, whether
39 within this State or any other jurisdiction. Subject to the provision
40 of subsection e. of N.J.S.2C:52-14 requiring denial of an
41 expungement petition when a person has had a previous criminal
42 conviction expunged, a prior conviction for another disorderly
43 persons offense or petty disorderly persons offense that was not
44 interdependent or closely related in circumstances and was not
45 committed within a comparatively short period of time as described
46 above shall not bar presenting an application seeking expungement
47 relief for the convictions of offenses that were interdependent or

1 closely related and committed within a comparatively short period
2 of time, and that are the subject of the application.

3 For purposes of determining eligibility to present an
4 expungement application to the court pursuant to this section, a
5 conviction for unlawful distribution of, or possessing or having
6 under control with intent to distribute, marijuana or hashish in
7 violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
8 lesser amount of marijuana or hashish in violation of paragraph (12)
9 of subsection b. of that section, or a violation of either of those
10 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
11 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
12 (C.2C:35-7.1), for distributing, or possessing or having under
13 control with intent to distribute, on or within 1,000 feet of any
14 school property, or on or within 500 feet of the real property
15 comprising a public housing facility, public park, or public
16 building, or for obtaining or possessing marijuana or hashish in
17 violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for
18 an equivalent crime in another jurisdiction, regardless of when the
19 conviction occurred, shall not be considered a conviction of a crime
20 within this State or any other jurisdiction but shall instead be
21 considered a conviction of a disorderly persons offense within this
22 State or an equivalent category of offense within the other
23 jurisdiction, and a conviction for obtaining, possessing, using, being
24 under the influence of, or failing to make lawful disposition of
25 marijuana or hashish in violation of paragraph (4) of subsection a.,
26 or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation
27 involving marijuana or hashish as described herein and using or
28 possessing with intent to use drug paraphernalia with that marijuana
29 or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime
30 or offense in another jurisdiction, regardless of when the conviction
31 occurred, shall not be considered a conviction within this State or
32 any other jurisdiction.

33 The person, if eligible, may present the expungement application
34 after the expiration of a period of five years from the date of his
35 most recent conviction, payment of any court-ordered financial
36 assessment, satisfactory completion of probation or parole, or
37 release from incarceration, whichever is later. The term "court-
38 ordered financial assessment" as used herein and throughout this
39 section means and includes any fine, fee, penalty, restitution, and
40 other form of financial assessment imposed by the court as part of
41 the sentence for the conviction or convictions that are the subject of
42 the application, for which payment of restitution takes precedence
43 in accordance with chapter 46 of Title 2C of the New Jersey
44 Statutes. The person shall submit the expungement application to a
45 court in the county in which the most recent conviction for a
46 disorderly persons or petty disorderly persons offense was
47 adjudged, which includes a duly verified petition as provided in
48 N.J.S.2C:52-7 praying that the conviction, or convictions if

1 applicable, and all records and information pertaining thereto be
2 expunged. The petition appended to an application shall comply
3 with the requirements of N.J.S.2C:52-1 et seq.

4 Notwithstanding the provisions of the five-year time
5 requirement, if, at the time of application, a court-ordered financial
6 assessment subject to collection under the comprehensive
7 enforcement program established pursuant to P.L.1995, c.9
8 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than
9 willful noncompliance, but the time requirement of five years is
10 otherwise satisfied, the person may submit the expungement
11 application and the court may grant an expungement; provided,
12 however, that the court shall enter a civil judgment for the unpaid
13 portion of the court-ordered financial assessment in the name of the
14 Treasurer, State of New Jersey and transfer collections and
15 disbursement responsibility to the State Treasurer for the
16 outstanding amount in accordance with section 8 of P.L.2017, c.244
17 (C.2C:52-23.1). The Treasurer may specify, and the Administrative
18 Office of the Courts shall collaborate with, the technical and
19 informational standards required to effectuate the transfer of the
20 collection and disbursement responsibilities. Notwithstanding any
21 provision in this law or any other law to the contrary, the court shall
22 have sole discretion to amend the judgment. Additionally, an
23 application may be filed and presented, and the court may grant an
24 expungement pursuant to this section, although less than five years
25 have expired in accordance with the time requirements when the
26 court finds:

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

34 (2) at least three but less than five years have expired from the
35 date of the most recent conviction, payment of any court-ordered
36 financial assessment, satisfactory completion of probation or parole,
37 or release from incarceration, whichever is later; or

38 (3) the person had been previously convicted of a petty
39 disorderly persons offense or a disorderly persons offense under
40 subsections a. or b. of N.J.S.2C:18-3, and the court finds by a
41 preponderance of the evidence that the person was homeless at the
42 time of the offense, and that the offense was committed as a result
43 of the person having been homeless; and

44 the person has not been otherwise convicted of a crime,
45 disorderly persons offense, or petty disorderly persons offense since
46 the time of the most recent conviction; and the court finds in its
47 discretion that compelling circumstances exist to grant the
48 expungement. The prosecutor may object pursuant to section 11 of

1 P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14,
2 orN.J.S.2C:52-24.

3 In determining whether compelling circumstances exist for the
4 purposes of paragraph (1) of this subsection, a court may consider
5 the amount of any court-ordered financial assessment imposed, the
6 person's age at the time of the offense or offenses, the person's
7 financial condition and other relevant circumstances regarding the
8 person's ability to pay.

9 (cf: P.L. 2019, c.269, s.3)

10

11 3. (New section) The Attorney General, in consultation with
12 the Director of the Division of Criminal Justice in the Department
13 of Law and Public Safety and the Police Training Commission,
14 shall develop and approve, as part of the police training courses
15 required pursuant to P.L.1961 c.56 (C.52:17B-66 et seq.), training
16 on the challenges faced by homeless persons, access to community-
17 based assistance programs by homeless persons, the handling,
18 response procedures, and investigation of cases concerning
19 homelessness and trespass for the purpose of diverting these cases
20 away from prosecution. This training shall be reviewed at least
21 every two years and modified from time to time as need may
22 require.

23

24 4. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill permits the expungement of a previous conviction of,
30 certain trespass offenses committed by a person who was homeless
31 at the time of the offense, and committed the offense as a result of
32 their homelessness. The bill also provides an affirmative defense to
33 a prosecution for certain trespass offenses committed by a person
34 who was homeless at the time of the offense under certain specified
35 circumstances.

36 Pursuant to subsection a. of N.J.S.2C:18-3, a person who enters a
37 structure without a license or privilege to do so, is guilty of a
38 disorderly persons offense, unless that structure was a dwelling,
39 research facility, power generation facility, waste treatment facility,
40 public sewage facility, water treatment facility, public water
41 facility, nuclear electric generating plant, school or school property,
42 utility company property, or sterile area or operational area of an
43 airport, and other similar structures. A disorderly persons offense is
44 punishable by up to six months imprisonment, a fine of up to
45 \$1,000, or both.

46 Under subsection b. of N.J.S.2C:18-3, a person commits a petty
47 disorderly persons offense if, knowing that he is not licensed or
48 privileged to do so, he enters or remains in a place as to which

1 notice against trespass is given by: actual communication to the
2 actor; posting in a manner prescribed by law or reasonably likely to
3 come to the attention of intruders; or fencing or other enclosure
4 manifestly designed to exclude intruders. A petty disorderly offense
5 if punishable by up to 30 days imprisonment, a fine of up to \$500
6 fine, or both.

7 The bill provides that it is an affirmative defense to prosecution
8 for a petty disorderly persons offense and a disorderly persons
9 offense of trespass pursuant to subsections a. and b. of N.J.S.2C:18-
10 3, if the person: was homeless at the time of the offense; committed
11 the offense as a result of their homelessness; faced a clear and
12 imminent danger, including, but not limited to, exposure to extreme
13 outdoor temperatures; reasonably expected that entering or remaining
14 in or upon the facility, structure, property, area, or place would abate
15 the clear and imminent danger; and, the person had no legal alternative
16 that would have abated the clear and imminent danger.

17 The bill also provides that a previous conviction of a petty
18 disorderly persons offense or disorderly persons offense of trespass,
19 pursuant to subsections a. or b. of N.J.S.2C:18-3, may be vacated
20 under N.J.S.2C:52-3 if the court finds by a preponderance of the
21 evidence that the person was homeless at the time of the offense,
22 and the offense was committed as a result of their homelessness.

23 The bill also directs the Attorney General, in consultation with
24 the Director of the Division of Criminal Justice in the Department
25 of Law and Public Safety and the Police Training Commission, to
26 develop and approve, as part of the police training courses required
27 pursuant to P.L.1961 c.56 (C.52:17B-66 et seq.), training on the
28 challenges faced by homeless persons, access to community-based
29 assistance programs by homeless persons, the handling, response
30 procedures, and investigation of cases concerning homelessness and
31 trespass for the purpose of diverting these cases away from
32 prosecution. This training will be reviewed at least every two years
33 and modified from time to time as need may require.