[First Reprint]

ASSEMBLY, No. 5458

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 15, 2021

Sponsored by:
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)
Assemblyman RAJ MUKHERJI
District 33 (Hudson)
Assemblywoman ANGELA V. MCKNIGHT
District 31 (Hudson)

Co-Sponsored by:
Assemblyman Verrelli and Assemblywoman Jasey

SYNOPSIS

Permits expungement of possession or distribution of hypodermic syringe or needle offense in cases of previous expungement; repeals criminal offense of possession of syringe.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on December 9, 2021, with amendments.

(Sponsorship Updated As Of: 1/10/2022)

AN ACT concerning certain expungements and amending [1]N.J.S.2C:52-3,[1] N.J.S.2C:52-14 [1], N.J.S.2C:36-1[1] and repealing N.J.S.2C:36-6.

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

[1]1. 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 a 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 pursuant to this section to any court designated by the Rules of Court if:

the person has been convicted, under the laws of this State, on the same or separate occasions of no more than five disorderly persons offenses, no more than five petty disorderly persons offenses, or a combination of no more than five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any 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 five. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the convictions that are the subject of the application, which may include convictions for no more than five disorderly persons or petty disorderly persons offenses, or combination thereof; or

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:
[1]Assembly AJU committee amendments adopted December 9, 2021.

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 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. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons or petty disorderly persons offense that was not entered on the same day shall not bar presenting an application seeking expungement relief for the convictions entered on the same day that are the subject of the application; 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 subsequent conviction for another offense in addition to those convictions included in the expungement application, whether within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5,or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under

control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation ofN.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

Additionally, for purposes of determining eligibility to present an expungement application to the court pursuant to this section, a conviction for unlawful distribution or dispensing of, possession with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia in violation of N.J.S.2C:36-3 when the paraphernalia is a hypodermic syringe or needle, or for an equivalent crime involving a hypodermic syringe or needle in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for using or possessing with intent to use drug paraphernalia in violation of N.J.S.2C:36-2 when the paraphernalia is a hypodermic syringe or needle, or possession with intent to use or to distribute a hypodermic syringe or needle in violation of N.J.S.2C:36-6, of for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction 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 any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of

the sentence for the conviction or convictions that are the subject of the application, 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 a court in the county in which the most recent conviction for a disorderly persons or petty disorderly persons offense was adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition 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, if, at the time of application, a court-ordered financial assessment 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 five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

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

(1) the court-ordered financial assessment 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 assessment; or

(2) at least three but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, 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 compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of paragraph (1) of this subsection, a court may consider the amount of any court-ordered financial assessment 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.[1]

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

[1]**[**1.**]** 2.[1] N.J.S.2C:52-14 is amended to read as follows:

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

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

b. The need for the availability of the records outweighs the desirability of having a person freed from any disabilities as otherwise provided in this chapter. An application may be denied under this subsection only following objection of a party given notice pursuant to N.J.S.2C:52-10 and the burden of asserting such grounds shall be on the objector.

c. In connection with a petition under N.J.S.2C:52-6, the acquittal, discharge or dismissal of charges resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself 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. Except as set forth in subsection a. of section 7 of P.L.2019, c.269 (C.2C:52-5.3) concerning a "clean slate" expungement petition, the 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,**]** [1],[1]

(2) When the person is seeking the expungement of records pursuant to N.J.S.2C:52-6, or

(3) When the person is seeking the expungement of records [1]of conviction for possession with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2, when same is a hypodermic syringe or needle; possession with the intent to distribute drug paraphernalia

pursuant to N.J.S.2C:36-3, when same is a hypodermic syringe or needle; or possession or distribution of hypodermic syringe or needle[1] pursuant to N.J.S.2C:36-6 [1]**[**for possession or distribution of hypodermic syringe or needle**]**[1].

f. (Deleted by amendment, P.L.2017, c.244)

(cf: P.L. 2019, c.269, s.12)

[1]3. N.J.S.2C:36-1 is amended to read as follows:

2C:36-1. Drug paraphernalia, defined; determination.

a. As used in this act, "drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing into the human body a controlled dangerous substance, controlled substance analog or toxic chemical, other than marijuana or hashish, in violation of the provisions of chapter 35 of this title. It shall include, but not be limited to:

(1) kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant, other than the plant Cannabis sativa L., which is a controlled dangerous substance or from which a controlled dangerous substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled dangerous substances or controlled substance analogs;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant, other than the plant Cannabis sativa L., which is a controlled dangerous substance;

(4) testing equipment other than fentanyl test strips, used or intended for use identifying, or in analyzing the strength, effectiveness or purity of controlled dangerous substances or controlled substance analogs;

(5) scales and balances used or intended for use in weighing or measuring controlled dangerous substances or controlled substance analogs;

(6) dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting controlled dangerous substances or controlled substance analogs;

(7) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled dangerous substances or controlled substance analogs;

(8) capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled dangerous substances or controlled substance analogs;

(9) containers and other objects used or intended for use in storing or concealing controlled dangerous substances, controlled substance analogs or toxic chemicals;

(10) objects used or intended for use in ingesting, inhaling, or otherwise introducing cocaine, nitrous oxide or the fumes of a toxic chemical into the human body, such as (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls; (b) water pipes; (c)carburetion tubes and devices; (d) smoking and carburetion masks; (e) roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand; (f) miniature cocaine spoons, and cocaine vials; (g) chamber pipes; (h) carburetor pipes; (i) electric pipes; (j) air-driven pipes; (k) chillums; (l) bongs; (m) ice pipes or chillers; (n) compressed gas containers, such as tanks, cartridges or canisters, that contain food grade or pharmaceutical grade nitrous oxide as a principal ingredient; (o) chargers or charging bottles, meaning metal, ceramic or plastic devices that contain an interior pin that may be used to expel compressed gas from a cartridge or canister; and (p) tubes, balloons, bags, fabrics, bottles or other containers used to concentrate or hold in suspension a toxic chemical or the fumes of a toxic chemical.

b. In determining whether or not an object is drug paraphernalia, the trier of fact, in addition to or as part of the proofs, may consider the following factors:

(1) (a) statements by an owner or by anyone in control of the object concerning its use;

(b) the proximity of the object to illegally possessed controlled dangerous substances, controlled substance analogs or toxic chemicals;

(c) the existence of any residue of illegally possessed controlled dangerous substances, controlled substance analogs or toxic chemicals on the object;

(d) direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of this act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use as drug paraphernalia;

(e) instructions, oral or written, provided with the object concerning its use;

(f) descriptive materials accompanying the object which explain or depict its use;

(g) national or local advertising whose purpose the person knows or should know is to promote the sale of objects intended for use as drug paraphernalia;

(h) the manner in which the object is displayed for sale;

(i) the existence and scope of legitimate uses for the object in the community; and

(j) expert testimony concerning its use.

(2) If an object appears to be for use, intended for use, or designed for use with cannabis or cannabis items in accordance with the "New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act," P.L.2021, c.16 (C.24:6I-31 et al.), the object is presumed to be a lawful cannabis paraphernalia as defined in section 3 of that act (C.24:6I-33), and does not alone constitute reasonable articulable suspicion that the object is a drug paraphernalia, notwithstanding that the object could also be used with an illegal controlled substance or controlled substance analog, unless the owner or any other person in proximity to or in control of the object was in possession of an illegal controlled dangerous substance or controlled substance analog, or the object was in proximity of an illegally possessed controlled dangerous substance or controlled substance analog to indicate its use, intended use, or design for use with that controlled dangerous substance or controlled substance analog.

c. Notwithstanding subsection a. of this section, it shall not be unlawful for a person to use, or possess with the intent to use, a hypodermic needle or syringe for the personal use of a controlled substance. This provision shall extend to a hypodermic syringe or needle that contains a residual amount of a controlled dangerous substance or controlled substance analog.[1]

(cf: P.L.2021, c.16, s.57)

[1]**[**2.**]** 4.[1] N.J.S.2C:36-6 is repealed.

[1]**[**3.**]** 5.[1] This act shall take effect immediately.