

SENATE, No. 1167

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Senator NILSA CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS

Provides that records of convictions for carjacking and promoting prostitution of child shall not be expunged.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain expungements and amending
2 N.J.S.2C:52-2.

3

4 BE IT ENACTED by the Senate and General Assembly of the
5 State 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 under the laws of this
13 State, and does not otherwise have any subsequent conviction for
14 another crime, whether within this State or any other jurisdiction.
15 Subject to the provision of subsection e. of N.J.S.2C:52-14
16 requiring denial of an expungement petition when a person has had
17 a previous criminal conviction expunged, a prior conviction for
18 another crime shall not bar presenting an application seeking
19 expungement relief for the criminal conviction that is the subject of
20 the application; or

21 the person has been convicted of one crime and no more than
22 three disorderly persons or petty disorderly persons offenses under
23 the laws of this State, and does not otherwise have any subsequent
24 conviction for another crime, or any subsequent conviction for
25 another disorderly persons or petty disorderly persons offense such
26 that the total number of convictions for disorderly persons and petty
27 disorderly persons offenses would exceed three, whether any such
28 crime or offense conviction was within this State or any other
29 jurisdiction. Subject to the provision of subsection e. of
30 N.J.S.2C:52-14 requiring denial of an expungement petition when a
31 person has had a previous criminal conviction expunged, a prior
32 conviction for another crime, disorderly persons offense, or petty
33 disorderly persons offense shall not bar presenting an application
34 seeking expungement relief for the one criminal conviction and no
35 more than three convictions for disorderly persons or petty
36 disorderly persons offenses that are the subject of the application;
37 or

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

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 subsection e. of N.J.S.2C:52-14 requiring denial of an expungement
2 petition when a person has had a previous criminal conviction
3 expunged, a prior conviction for another crime, disorderly persons
4 offense, or petty disorderly persons offense that is not listed in a
5 single judgment of conviction shall not bar presenting an
6 application seeking expungement relief for the convictions listed in
7 a single judgment of conviction that are the subject of the
8 application; or

9 the person has been convicted of multiple crimes or a
10 combination of one or more crimes and one or more disorderly
11 persons or petty disorderly persons offenses under the laws of this
12 State, which crimes or combination of crimes and offenses were
13 interdependent or closely related in circumstances and were
14 committed as part of a sequence of events that took place within a
15 comparatively short period of time, regardless of the date of
16 conviction or sentencing for each individual crime or offense, and
17 the person does not otherwise have any subsequent conviction for
18 another crime or offense in addition to those convictions included in
19 the expungement application, whether any such conviction was
20 within this State or any other jurisdiction. Subject to the provision
21 of subsection e. of N.J.S.2C:52-14 requiring denial of an
22 expungement petition when a person has had a previous criminal
23 conviction expunged, a prior conviction for another crime,
24 disorderly persons offense, or petty disorderly persons offense that
25 was not interdependent or closely related in circumstances and was
26 not committed within a comparatively short period of time as
27 described above shall not bar presenting an application seeking
28 expungement relief for the convictions of crimes or crimes and
29 offenses that were interdependent or closely related and committed
30 within a comparatively short period of time, and that are the subject
31 of the application.

32 For purposes of determining eligibility to present an
33 expungement application to the Superior Court pursuant to this
34 section, a conviction for unlawful distribution of, or possessing or
35 having under control with intent to distribute, marijuana or hashish
36 in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a
37 lesser amount of marijuana or hashish in violation of paragraph (12)
38 of subsection b. of that section, or a violation of either of those
39 paragraphs and a violation of subsection a. of section 1 of P.L.1987,
40 c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327
41 (C.2C:35-7.1), for distributing, or possessing or having under
42 control with intent to distribute, on or within 1,000 feet of any
43 school property, or on or within 500 feet of the real property
44 comprising a public housing facility, public park, or public
45 building, or for obtaining or possessing marijuana or hashish in
46 violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for
47 an equivalent crime in another jurisdiction, regardless of when the
48 conviction occurred, shall not be considered a conviction of a crime

1 within this State or any other jurisdiction but shall instead be
2 considered a conviction of a disorderly persons offense within this
3 State or an equivalent category of offense within the other
4 jurisdiction, and a conviction for obtaining, possessing, using, being
5 under the influence of, or failing to make lawful disposition of
6 marijuana or hashish in violation of paragraph (4) of subsection a.,
7 or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation
8 involving marijuana or hashish as described herein and using or
9 possessing with intent to use drug paraphernalia with that marijuana
10 or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime
11 or offense in another jurisdiction, regardless of when the conviction
12 occurred, shall not be considered a conviction within this State or
13 any other jurisdiction. The person, if eligible, may present the
14 expungement application after the expiration of a period of five
15 years from the date of his most recent conviction, payment of any
16 court-ordered financial assessment, satisfactory completion of
17 probation or parole, or release from incarceration, whichever is
18 later. The term "court-ordered financial assessment" as used herein
19 and throughout this section means and includes any fine, fee,
20 penalty, restitution, and other form of financial assessment imposed
21 by the court as part of the sentence for the conviction or convictions
22 that are the subject of the application, for which payment of
23 restitution takes precedence in accordance with chapter 46 of Title
24 2C of the New Jersey Statutes. The person shall submit the
25 expungement application to the Superior Court in the county in
26 which the most recent conviction for a crime was adjudged, which
27 includes a duly verified petition as provided in N.J.S.2C:52-7
28 praying that the conviction, or convictions if applicable, and all
29 records and information pertaining thereto be expunged. The
30 petition appended to an application shall comply with the
31 requirements set forth in N.J.S.2C:52-1 et seq.

32 Notwithstanding the provisions concerning the five-year time
33 requirement, if, at the time of application, a court-ordered financial
34 assessment subject to collection under the comprehensive
35 enforcement program established pursuant to P.L.1995, c.9
36 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than
37 willful noncompliance, but the time requirement of five years is
38 otherwise satisfied, the person may submit the expungement
39 application and the court may grant an expungement; provided,
40 however, that if expungement is granted the court shall enter a civil
41 judgment for the unpaid portion of the court-ordered financial
42 assessment in the name of the Treasurer, State of New Jersey and
43 transfer collections and disbursement responsibility to the State
44 Treasurer for the outstanding amount in accordance with section 8
45 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and
46 the Administrative Office of the Courts shall collaborate with, the
47 technical and informational standards required to effectuate the
48 transfer of the collection and disbursement responsibilities.

1 Notwithstanding any provision in this law or any other law to the
2 contrary, the court shall have sole discretion to amend the
3 judgment. Additionally, an application may be filed and
4 presented, and the court may grant an expungement pursuant to this
5 section, although less than five years have expired in accordance
6 with the time requirements when the court finds:

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

14 (2) at least four but less than five years have expired from the
15 date of the most recent conviction, payment of any court-ordered
16 financial assessment, satisfactory completion of probation or parole,
17 or release from incarceration, whichever is later; and

18 the person has not been otherwise convicted of a crime,
19 disorderly persons offense, or petty disorderly persons offense since
20 the time of the most recent conviction; and the court finds in its
21 discretion that compelling circumstances exist to grant the
22 expungement. The prosecutor may object pursuant to section 11 of
23 P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14,
24 or N.J.S.2C:52-24.

25 In determining whether compelling circumstances exist for the
26 purposes of paragraph (1) of this subsection, a court may consider
27 the amount of any court-ordered financial assessment imposed, the
28 person's age at the time of the offense or offenses, the person's
29 financial condition and other relevant circumstances regarding the
30 person's ability to pay.

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

37 Records of conviction for the following crimes specified in the
38 New Jersey Code of Criminal Justice shall not be subject to
39 expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except
40 death by auto as specified in N.J.S.2C:11-5 and strict liability
41 vehicular homicide as specified in section 1 of P.L.2017, c.165
42 (C.2C:11-5.3); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993,
43 c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77
44 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or
45 Aggravated Sexual Assault); subsection a. of N.J.S.2C:14-3
46 (Aggravated Criminal Sexual Contact); if the victim is a minor,
47 subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact); if the
48 victim is a minor and the offender is not the parent of the victim,

1 N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3 (False
2 Imprisonment); N.J.S.2C:15-1 (Robbery); section 1 of P.L.1993,
3 c.221 (C.2C:15-2) (Carjacking); N.J.S.2C:17-1 (Arson and Related
4 Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare
5 of a child by engaging in sexual conduct which would impair or
6 debauch the morals of the child, or causing the child other harm);
7 paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or
8 filming a child in a prohibited sexual act or for portrayal in a
9 sexually suggestive manner); paragraph (3) of subsection b. of
10 N.J.S.2C:24-4 (Causing or permitting a child to engage in a
11 prohibited sexual act or the simulation of an act, or to be portrayed
12 in a sexually suggestive manner); subparagraph (a) of paragraph (5)
13 of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with
14 intent to distribute or using a file-sharing program to store items
15 depicting the sexual exploitation or abuse of a child); subparagraph
16 (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing
17 or viewing items depicting the sexual exploitation or abuse of a
18 child); section 8 of P.L.2017, c.141 (C.2C:24-4.1) (Leader of a
19 child pornography network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-
20 2 (False Swearing); paragraph (3) of subsection b. of N.J.S.2C:34-1
21 (Knowingly promoting the prostitution of a child); paragraph (4) of
22 subsection b. of N.J.S.2C:34-1 (Knowingly promoting the
23 prostitution of the actor's child); section 2 of P.L.2002, c.26
24 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002,
25 c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons,
26 Biological Agents or Nuclear or Radiological Devices); and
27 conspiracies or attempts to commit such crimes.

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

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

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

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

41 (3) Any controlled dangerous substance provided that the
42 conviction is of the third or fourth degree, where the court finds that
43 compelling circumstances exist to grant the expungement. The
44 prosecutor may object pursuant to section 11 of P.L.2019, c.269
45 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

46 d. In the case of a State licensed physician or podiatrist
47 convicted of an offense involving drugs or alcohol or pursuant to
48 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the

1 petitioner shall notify the State Board of Medical Examiners upon
2 filing an application for expungement and provide the board with a
3 copy thereof. The petitioner shall also provide to the court a
4 certification attesting that the requirements of this subsection were
5 satisfied. Failure to satisfy the requirements of this subsection shall
6 be grounds for denial of the expungement application and, if
7 applicable, administrative discipline by the board.
8 (cf: P.L.2019, c.269, s.2)

9
10 2. This act shall take effect immediately.
11
12

13 STATEMENT
14

15 Under current law, criminal records may be expunged after
16 certain periods of time have elapsed. However, the records of
17 certain serious offenses, such as criminal homicide, kidnapping, and
18 sexual assault, are not subject to expungement. This bill would add
19 two crimes to the list of those which may not be expunged:
20 carjacking and promoting prostitution of a child.

21 Carjacking, set out in N.J.S.2C:15-2, is a crime of the first
22 degree. Ordinarily a crime of the first degree is punishable by a
23 term of imprisonment of 10 to 20 years or a fine of up to \$200,000,
24 or both. However, a defendant convicted of carjacking is subject to
25 a term of imprisonment of 10 to 30 years with a mandatory
26 minimum term of five years during which the defendant is not
27 eligible for parole.

28 Knowingly promoting prostitution of a child, set out in
29 paragraph (3) of subsection b. of N.J.S.2C:34-1, is also a crime of
30 the first degree, punishable by the ordinary term of imprisonment
31 for this crime of 10 to 20 years or a fine of up to \$200,000, or both.