

SENATE, No. 1276

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Amends eligibility for expungement of criminal records.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning expungement of criminal records and amending
2 N.J.S.2C:52-2 and N.J.S.2C:52-7, and supplementing chapter 52
3 of Title 2C of the New Jersey 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:52-2 is amended to read as follows:
9 2C:52-2. Indictable Offenses.

10 a. In all cases, except as herein provided, or as provided in
11 section 3 of P.L. , c. (C.) (pending before the Legislature as
12 this bill), a person may present an expungement application to the
13 Superior Court pursuant to this section if:

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

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

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

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

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

34 For purposes of determining eligibility to present an
35 expungement application to the Superior Court pursuant to this
36 section, a conviction for unlawful distribution of, or possessing or
37 having under control with intent to distribute, marijuana or hashish
38 in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or
39 a lesser amount of marijuana or hashish in violation of paragraph
40 (12) of subsection b. of that section, or a violation of either of those
41 paragraphs and a violation of subsection a. of section 1 of
42 P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of
43 P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or
44 having under control with intent to distribute, on or within 1,000
45 feet of any school property, or on or within 500 feet of the real
46 property comprising a public housing facility, public park, or public
47 building, or for obtaining or possessing marijuana or hashish in
48 violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for

1 an equivalent crime in another jurisdiction, regardless of when the
2 conviction occurred, shall not be considered a conviction of a crime
3 within this State or any other jurisdiction but shall instead be
4 considered a conviction of a disorderly persons offense within this
5 State or an equivalent category of offense within the other
6 jurisdiction, and a conviction for obtaining, possessing, using, being
7 under the influence of, or failing to make lawful disposition of
8 marijuana or hashish in violation of paragraph (4) of subsection a.,
9 or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation
10 involving marijuana or hashish as described herein and using or
11 possessing with intent to use drug paraphernalia with that marijuana
12 or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime
13 or offense in another jurisdiction, regardless of when the conviction
14 occurred, shall not be considered a conviction within this State or
15 any other jurisdiction.

16 The person, if eligible, may present the expungement application
17 after the expiration of a period of five years from the date of his
18 most recent conviction, payment of any court-ordered financial
19 assessment, satisfactory completion of probation or parole, or
20 release from incarceration, whichever is later. The term "court-
21 ordered financial assessment" as used herein and throughout this
22 section means and includes any fine, fee, penalty, restitution, and
23 other form of financial assessment imposed by the court as part of
24 the sentence for the conviction or convictions that are the subject of
25 the application, for which payment of restitution takes precedence
26 in accordance with chapter 46 of Title 2C of the New Jersey
27 Statutes. The person shall submit the expungement application to
28 the Superior Court in the county in which the most recent
29 conviction for a crime was adjudged, which includes a duly verified
30 petition as provided in N.J.S.2C:52-7 praying that the conviction, or
31 convictions if applicable, and all records and information pertaining
32 thereto be expunged. The petition appended to an application shall
33 comply with the requirements set forth in N.J.S.2C:52-1 et seq.

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

1 technical and informational standards required to effectuate the
2 transfer of the collection and disbursement responsibilities.
3 Notwithstanding any provision in this law or any other law to the
4 contrary, the court shall have sole discretion to amend the
5 judgment.

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

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

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

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

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

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

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

1 (Sexual Assault or Aggravated Sexual Assault); subsection a. of
2 N.J.S.2C:14-3 (Aggravated Criminal Sexual Contact); if the victim
3 is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual
4 Contact); if the victim is a minor and the offender is not the parent
5 of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3
6 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1
7 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4
8 (Endangering the welfare of a child by engaging in sexual conduct
9 which would impair or debauch the morals of the child, or causing
10 the child other harm); paragraph (4) of subsection b. of
11 N.J.S.2C:24-4 (Photographing or filming a child in a prohibited
12 sexual act or for portrayal in a sexually suggestive manner);
13 paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or
14 permitting a child to engage in a prohibited sexual act or the
15 simulation of an act, or to be portrayed in a sexually suggestive
16 manner); subparagraph (a) of paragraph (5) of subsection b. of
17 N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or
18 using a file-sharing program to store items depicting the sexual
19 exploitation or abuse of a child); subparagraph (b) of paragraph (5)
20 of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items
21 depicting the sexual exploitation or abuse of a child); section 8 of
22 P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography
23 network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing);
24 paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly
25 promoting the prostitution of the actor's child); section 2 of
26 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
27 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
28 Weapons, Biological Agents or Nuclear or Radiological Devices);
29 and conspiracies or attempts to commit such crimes.

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

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

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

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

43 (3) Any controlled dangerous substance provided that the
44 conviction is of the third or fourth degree, where the court finds that
45 compelling circumstances exist to grant the expungement. The
46 prosecutor may object pursuant to section 11 of P.L.2019, c.269
47 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-
48 24.

1 d. In the case of a State licensed physician or podiatrist
2 convicted of an offense involving drugs or alcohol or pursuant to
3 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
4 petitioner shall notify the State Board of Medical Examiners upon
5 filing an application for expungement and provide the board with a
6 copy thereof. The petitioner shall also provide to the court a
7 certification attesting that the requirements of this subsection were
8 satisfied. Failure to satisfy the requirements of this subsection shall
9 be grounds for denial of the expungement application and, if
10 applicable, administrative discipline by the board.

11 (cf: P.L.2019, c.269, s.2)

12

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

14 2C:52-7. Petition for Expungement. Every petition for
15 expungement filed pursuant to this chapter shall be verified and
16 include:

17 a. Petitioner's date of birth.

18 b. Petitioner's date of arrest.

19 c. The statute or statutes and offense or offenses for which
20 petitioner was arrested and of which petitioner was convicted.

21 d. The original indictment, summons or complaint number.

22 e. Petitioner's date of conviction, or date of disposition of the
23 matter if no conviction resulted.

24 f. The court's disposition of the matter and the punishment
25 imposed, if any.

26 If a petition is for the expungement of more than one conviction
27 pursuant to section 3 of P.L. , c. (C.) (pending before the
28 Legislature as this bill), the petition shall include the information
29 set forth in this section for each conviction.

30 (cf: N.J.S.2C:52-7)

31

32 3. (New section) a. Notwithstanding the provisions of
33 N.J.S.2C:52-2 to the contrary, pursuant to this section a person
34 convicted of more than one crime of the third or fourth degree
35 under the laws of this State may present a duly verified petition as
36 provided in N.J.S.2C:52-7 and the court may grant an expungement
37 for each conviction if the person has not been adjudged a disorderly
38 person or petty disorderly person on more than two occasions, and
39 has affirmatively demonstrated to the court clear and convincing
40 evidence of rehabilitation. In determining whether clear and
41 convincing evidence of rehabilitation has been demonstrated, the
42 court may consider the following factors:

43 (1) the nature and seriousness of the crimes;

44 (2) the circumstances under which the crimes occurred;

45 (3) the date of the crimes;

46 (4) the age of the person when the crimes were committed;

47 (5) the social conditions which may have contributed to the
48 crimes; and

1 (6) Any evidence of rehabilitation, including good conduct in
2 prison or the community, counseling or psychiatric treatment
3 received, acquisition of additional academic or vocational
4 schooling, successful participation in correctional work-release
5 programs, or the recommendation of persons who have or have had
6 the applicant under their supervision.

7 Although subsequent convictions for no more than two
8 disorderly or petty disorderly offenses shall not be an absolute bar
9 to relief, the nature of the convictions and the circumstances
10 surrounding them shall be considered by the court and may be a
11 basis for denial of relief if they or either of them constitute a
12 continuation of the type of unlawful activity embodied in the
13 criminal convictions for which expungement is sought.

14 b. The provisions of this section shall not apply to a person
15 convicted of a crime of the first or second degree, or a sex offense
16 as defined in subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-
17 2).

18
19 4. This act shall take effect immediately.
20
21

22 STATEMENT

23
24 This bill provides courts with the authority to grant an
25 expungement in certain circumstances where an individual would
26 otherwise be disqualified under current law.

27 As provided in N.J.S.2C:52-2, a person who has been convicted
28 of a crime, or a combination of one crime and less than four
29 disorderly persons or petty disorderly persons offenses which were
30 not closely related in circumstances or in time would be eligible to
31 seek expungement relief. Alternatively, the person could seek
32 expungement relief if convicted of more than one crime or a
33 combination of crimes and disorderly persons or petty disorderly
34 persons offenses which were closely related in circumstances or in
35 time.

36 This bill grants individuals who have been convicted of more
37 than one crime of the third or fourth degree the opportunity for
38 expungement relief, if it can be demonstrated by clear and
39 convincing evidence that the individual has been rehabilitated. In
40 determining whether clear and convincing evidence of rehabilitation
41 has been demonstrated, the court may consider the following
42 factors:

- 43 (1) the nature and seriousness of the crimes;
44 (2) the circumstances under which the crimes occurred;
45 (3) the date of the crimes;
46 (4) the age of the person when the crimes were committed;

1 (5) the social conditions which may have contributed to the
2 crimes; and

3 (6) any evidence of rehabilitation, including good conduct in
4 prison or the community, counseling or psychiatric treatment
5 received, acquisition of additional academic or vocational
6 schooling, successful participation in correctional work-release
7 programs, or the recommendation of persons who have or have had
8 the applicant under their supervision.

9 This bill would not apply to an individual who has been
10 convicted of a crime of the first or second degree, or a sex offense
11 as defined in subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-
12 2).