

[First Reprint]

SENATE, No. 3493

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 4, 2021

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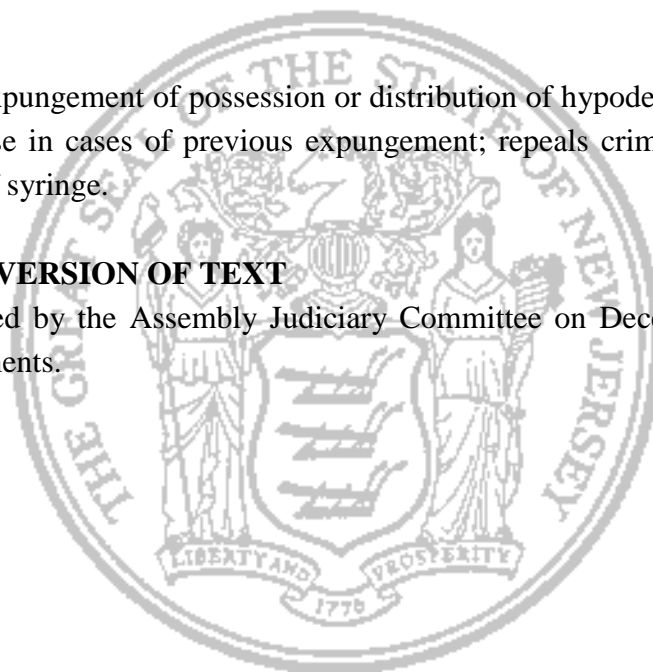
Senator Lagana, Assemblyman Verrelli and Assemblywoman Jasey

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)

1 AN ACT concerning certain expungements and amending
2 ¹N.J.S.2C:52-3,¹ N.J.S.2C:52-14 ¹, N.J.S.2C:36-1¹ and repealing
3 N.J.S.2C:36-6.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

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

9 2C:52-3. Disorderly persons offenses and petty disorderly
10 persons offenses.

11 a. Any person who has been convicted of one or more
12 disorderly persons or petty disorderly persons offenses under the
13 laws of this State who has not been convicted of any crime, whether
14 within this State or any other jurisdiction, may present an
15 expungement application to a court pursuant to this section. Any
16 person who has been convicted of one or more disorderly persons or
17 petty disorderly persons offenses under the laws of this State who
18 has also been convicted of one or more crimes shall not be eligible
19 to apply for an expungement pursuant to this section, but may
20 present an expungement application to the Superior Court pursuant
21 to N.J.S.2C:52-2.

22 b. Any person who has been convicted of one or more
23 disorderly persons or petty disorderly persons offenses under the
24 laws of this State who has not been convicted of any crime, whether
25 within this State or any other jurisdiction, may present an
26 expungement application pursuant to this section to any court
27 designated by the Rules of Court if:

28 the person has been convicted, under the laws of this State, on
29 the same or separate occasions of no more than five disorderly
30 persons offenses, no more than five petty disorderly persons
31 offenses, or a combination of no more than five disorderly persons
32 and petty disorderly persons offenses, and the person does not
33 otherwise have any subsequent conviction for a disorderly persons
34 or petty disorderly persons offense, whether within this State or any
35 other jurisdiction, such that the total number of convictions for
36 disorderly persons and petty disorderly persons offenses would
37 exceed five. Subject to the provision of subsection e. of
38 N.J.S.2C:52-14 requiring denial of an expungement petition when a
39 person has had a previous criminal conviction expunged, a prior
40 conviction for another disorderly persons offense or petty disorderly
41 persons offense shall not bar presenting an application seeking
42 expungement relief for the convictions that are the subject of the
43 application, which may include convictions for no more than five
44 disorderly persons or petty disorderly persons offenses, or
45 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:

¹Assembly AJU committee amendments adopted December 9, 2021.

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

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

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

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

21 Additionally, for purposes of determining eligibility to present
22 an expungement application to the court pursuant to this section, a
23 conviction for unlawful distribution or dispensing of, possession
24 with intent to distribute or dispense, or manufacture with intent to
25 distribute or dispense, drug paraphernalia in violation of
26 N.J.S.2C:36-3 when the paraphernalia is a hypodermic syringe or
27 needle, or for an equivalent crime involving a hypodermic syringe
28 or needle in another jurisdiction, regardless of when the conviction
29 occurred, shall not be considered a conviction of a crime within this
30 State or any other jurisdiction but shall instead be considered a
31 conviction of a disorderly persons offense within this State or an
32 equivalent category of offense within the other jurisdiction, and a
33 conviction for using or possessing with intent to use drug
34 paraphernalia in violation of N.J.S.2C:36-2 when the paraphernalia
35 is a hypodermic syringe or needle, or possession with intent to use
36 or to distribute a hypodermic syringe or needle in violation of
37 N.J.S.2C:36-6, of for an equivalent crime or offense in another
38 jurisdiction, regardless of when the conviction occurred, shall not
39 be considered a conviction within this State or any other
40 jurisdiction.

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

1 the sentence for the conviction or convictions that are the subject of
2 the application, for which payment of restitution takes precedence
3 in accordance with chapter 46 of Title 2C of the New Jersey
4 Statutes. The person shall submit the expungement application to a
5 court in the county in which the most recent conviction for a
6 disorderly persons or petty disorderly persons offense was
7 adjudged, which includes a duly verified petition as provided in
8 N.J.S.2C:52-7 praying that the conviction, or convictions if
9 applicable, and all records and information pertaining thereto be
10 expunged. The petition appended to an application shall comply
11 with the requirements of N.J.S.2C:52-1 et seq.

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

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

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

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

46 the person has not been otherwise convicted of a crime,
47 disorderly persons offense, or petty disorderly persons offense since
48 the time of the most recent conviction; and the court finds in its

1 discretion that compelling circumstances exist to grant the
2 expungement. The prosecutor may object pursuant to section 11 of
3 P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14,
4 or N.J.S.2C:52-24.

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

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

12

13 ¹**[1.]** 2.¹ N.J.S.2C:52-14 is amended to read as follows:

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

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

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

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

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

35 e. Except as set forth in subsection a. of section 7 of P.L.2019,
36 c.269 (C.2C:52-5.3) concerning a "clean slate" expungement
37 petition, the person has had a previous criminal conviction
38 expunged regardless of the lapse of time between the prior
39 expungement, or sealing under prior law, and the present petition.
40 This provision shall not apply:

41 (1) When the person is seeking the expungement of a municipal
42 ordinance violation **[or,]** ^{1,1}

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

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

1 pursuant to N.J.S.2C:36-3, when same is a hypodermic syringe or
2 needle; or possession or distribution of hypodermic syringe or
3 needle¹ pursuant to N.J.S.2C:36-6 ¹【for possession or distribution
4 of hypodermic syringe or needle】¹.

5 f. (Deleted by amendment, P.L.2017, c.244)
6 (cf: P.L. 2019, c.269, s.12)

7

8 ¹3. N.J.S.2C:36-1 is amended to read as follows:

9 2C:36-1. Drug paraphernalia, defined; determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (j) expert testimony concerning its use.

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

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

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

27

28 ¹[2.] 4.¹ N.J.S.2C:36-6 is repealed.

29

30 ¹[3.] 5.¹ This act shall take effect immediately.