

# SENATE, No. 1589

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 14, 2022

**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  
46 expungement application, whether any such conviction was within

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual  
2 Contact); if the victim is a minor and the offender is not the parent  
3 of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3  
4 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1  
5 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4  
6 (Endangering the welfare of a child by engaging in sexual conduct  
7 which would impair or debauch the morals of the child, or causing  
8 the child other harm); paragraph (4) of subsection b. of  
9 N.J.S.2C:24-4 (Photographing or filming a child in a prohibited  
10 sexual act or for portrayal in a sexually suggestive manner);  
11 paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or  
12 permitting a child to engage in a prohibited sexual act or the  
13 simulation of an act, or to be portrayed in a sexually suggestive  
14 manner); subparagraph (a) of paragraph (5) of subsection b. of  
15 N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or  
16 using a file-sharing program to store items depicting the sexual  
17 exploitation or abuse of a child); subparagraph (b) of paragraph (5)  
18 of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items  
19 depicting the sexual exploitation or abuse of a child); section 8 of  
20 P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography  
21 network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing);  
22 paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly  
23 promoting the prostitution of the actor's child); section 2 of  
24 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3  
25 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical  
26 Weapons, Biological Agents or Nuclear or Radiological Devices);  
27 and 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-  
46 24.

47 d. In the case of a State licensed physician or podiatrist  
48 convicted of an offense involving drugs or alcohol or pursuant to

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

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

10  
11 2. N.J.S.2C:52-7 is amended to read as follows:

12 2C:52-7. Petition for Expungement. Every petition for  
13 expungement filed pursuant to this chapter shall be verified and  
14 include:

- 15 a. Petitioner's date of birth.
- 16 b. Petitioner's date of arrest.
- 17 c. The statute or statutes and offense or offenses for which  
18 petitioner was arrested and of which petitioner was convicted.
- 19 d. The original indictment, summons or complaint number.
- 20 e. Petitioner's date of conviction, or date of disposition of the  
21 matter if no conviction resulted.
- 22 f. The court's disposition of the matter and the punishment  
23 imposed, if any.

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

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

29  
30 3. (New section) a. Notwithstanding the provisions of  
31 N.J.S.2C:52-2 to the contrary, pursuant to this section a person  
32 convicted of more than one crime of the third or fourth degree  
33 under the laws of this State may present a duly verified petition as  
34 provided in N.J.S.2C:52-7 and the court may grant an expungement  
35 for each conviction if the person has not been adjudged a disorderly  
36 person or petty disorderly person on more than two occasions, and  
37 has affirmatively demonstrated to the court clear and convincing  
38 evidence of rehabilitation. In determining whether clear and  
39 convincing evidence of rehabilitation has been demonstrated, the  
40 court may consider the following factors:

- 41 (1) the nature and seriousness of the crimes;
- 42 (2) the circumstances under which the crimes occurred;
- 43 (3) the date of the crimes;
- 44 (4) the age of the person when the crimes were committed;
- 45 (5) the social conditions which may have contributed to the  
46 crimes; and
- 47 (6) Any evidence of rehabilitation, including good conduct in  
48 prison or the community, counseling or psychiatric treatment

1 received, acquisition of additional academic or vocational  
2 schooling, successful participation in correctional work-release  
3 programs, or the recommendation of persons who have or have had  
4 the applicant under their supervision.

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

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

16  
17 4. This act shall take effect immediately.  
18  
19

#### 20 STATEMENT

21  
22 This bill provides courts with the authority to grant an  
23 expungement in certain circumstances where an individual would  
24 otherwise be disqualified under current law.

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

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

- 41 (1) the nature and seriousness of the crimes;
- 42 (2) the circumstances under which the crimes occurred;
- 43 (3) the date of the crimes;
- 44 (4) the age of the person when the crimes were committed;
- 45 (5) the social conditions which may have contributed to the  
46 crimes; and
- 47 (6) any evidence of rehabilitation, including good conduct in  
48 prison or the community, counseling or psychiatric treatment



1 received, acquisition of additional academic or vocational  
2 schooling, successful participation in correctional work-release  
3 programs, or the recommendation of persons who have or have had  
4 the applicant under their supervision.

5 This bill would not apply to an individual who has been  
6 convicted of a crime of the first or second degree, or a sex offense  
7 as defined in subsection b. of section 2 of P.L.1994, c.133 (C.2C:7-  
8 2).