

ASSEMBLY, No. 3684

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED NOVEMBER 20, 2006

Sponsored by:

Assemblyman LOUIS M. MANZO

District 31 (Hudson)

SYNOPSIS

Revises the expungement statute by reducing the waiting period and eliminating cost for certain offenders.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning expungements, amending various sections of
2 the New Jersey Statutes and supplementing Chapter 52 of Title
3 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. This act shall be known and may be cited as the
9 “Expungement Reform Act.”

10
11 2. The Legislature finds and declares that persons with criminal
12 records suffer from discrimination in employment and other areas.
13 This act is for the purpose of reducing the time period required to
14 obtain an expungement of criminal records for eligible offenders
15 who have been convicted of certain non-violent offenses, and
16 providing for the automatic expungement of the offenses at no cost
17 to an eligible offender.

18 For the purposes of this act:

19 “Eligible person” means any person who has been convicted of
20 one or more non-violent crimes of the third or fourth degree, or one
21 or more disorderly persons or petty disorderly persons offenses, and
22 any person who has a record of arrest not resulting in conviction
23 except that the record of convictions for offenses enumerated in
24 subsection b. of N.J.S. 2C:52-2 shall not be subject to expungement.

25
26 3. N.J.S. 2C:52-2 is amended to read as follows:

27 2C:52-2. Indictable Offenses.

28 a. In all cases, except as herein provided, wherein a person has
29 been convicted of a crime under the laws of this State and who has
30 not been convicted of any prior or subsequent crime, whether within
31 this State or any other jurisdiction, and has not been adjudged a
32 disorderly person or petty disorderly person on more than two
33 occasions **[may]** the person shall, after the expiration of a period of
34 **[10]** 5 years, or in the case of a crime of the third degree that is not
35 an offense excluded from expungement, a period of one year from
36 the date of his conviction, **[payment of fine, satisfactory completion**
37 **of probation or parole,]** or release from incarceration, whichever is
38 later, **[present]** have presented on his behalf a duly verified petition
39 as provided in **[section]** N.J.S. 2C:52-7 to the Superior Court in the
40 county in which the conviction was entered praying that such
41 conviction and all records and information pertaining thereto be
42 expunged.

43 Although subsequent convictions for no more than two
44 disorderly or petty disorderly offenses shall not be an absolute bar
45 to relief, the nature of those conviction or convictions and 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 circumstances surrounding them shall be considered by the court
2 and may be a basis for denial of relief if they or either of them
3 constitute a continuation of the type of unlawful activity embodied
4 in the criminal conviction for which expungement is sought.

5 b. Records of conviction pursuant to statutes repealed by this
6 Code for the crimes of murder, manslaughter, treason, anarchy,
7 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
8 robbery, embracery, or a conspiracy or any attempt to commit any
9 of the foregoing, or aiding, assisting or concealing persons accused
10 of the foregoing crimes, shall not be expunged.

11 Records of conviction for the following crimes specified in the
12 New Jersey Code of Criminal Justice shall not be subject to
13 expungement: **[Section]**N.J.S. 2C:11-1 et seq. (Criminal
14 Homicide), except death by auto as specified in **[section]** N.J.S.
15 2C:11-5; **[section]** N.J.S. 2C:13-1 (Kidnapping); **[section]** 2C:13-6
16 section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing);
17 **[section]** N.J.S. 2C:14-2 (Sexual Assault or Aggravated Sexual
18 Assault); **[section]** N.J.S. 2C:14-3a (Aggravated Criminal Sexual
19 Contact); if the victim is a minor, **[section]** N.J.S. 2C:14-3b
20 (Criminal Sexual Contact); if the victim is a minor and the offender
21 is not the parent of the victim, **[section]** N.J.S. 2C:13-2 (Criminal
22 Restraint) or **[section]** N.J.S. 2C:13-3 (False Imprisonment);
23 **[section]** N.J.S. 2C:15-1 (Robbery); **[section]** N.J.S. 2C:17-1
24 (Arson and Related Offenses); **[section]** N.J.S. 2C:24-4a.
25 (Endangering the welfare of a child by engaging in sexual conduct
26 which would impair or debauch the morals of the child); **[section]**
27 N.J.S. 2C:24-4b(4) (Endangering the welfare of a child); **[section]**
28 N.J.S. 2C:28-1 (Perjury); **[section]** N.J.S. 2C:28-2 (False
29 Swearing) 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 relate to:

- 39 (1) Marijuana, where the total quantity sold, distributed or
40 possessed with intent to sell was 25 grams or less, or
41 (2) Hashish, where the total quantity sold, distributed or
42 possessed with intent to sell was five grams or less.

43 d. In the case of a State licensed physician or podiatrist
44 convicted of an offense involving drugs or alcohol or pursuant to
45 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
46 court shall notify the State Board of Medical Examiners upon

1 receipt of a petition for expungement of the conviction and records
2 and information pertaining thereto.

3 (cf: P.L.1994,c.133,s.6)

4

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

6 2C:52-3. Disorderly persons offenses and petty disorderly
7 persons offenses.

8 Any person convicted of a disorderly persons offense or petty
9 disorderly persons offense under the laws of this State who has not
10 been convicted of any prior or subsequent crime, whether within
11 this State or any other jurisdiction, or of another three disorderly
12 persons or petty disorderly persons offenses, **[may]** shall, after the
13 expiration of a period of **[5 years]** six months from the date of his
14 conviction, **[payment of fine, satisfactory completion of probation**
15 **]or release** from incarceration, whichever is later, **[present]** have
16 presented on his behalf a duly verified petition as provided in
17 section 2C:52-7 hereof to the Superior Court in the county in which
18 the conviction was entered praying that such conviction and all
19 records and information pertaining thereto be expunged.

20 (cf: P.L.1981, c. 290, s. 43)

21

22 5. N.J.S. 2C:52-4 is amended to read as follows:

23 2C:52-4. Ordinances.

24 In all cases wherein a person has been found guilty of violating a
25 municipal ordinance of any governmental entity of this State and
26 who has not been convicted of any prior or subsequent crime,
27 whether within this State or any other jurisdiction, and who has not
28 been adjudged a disorderly person or petty disorderly person on
29 more than two occasions, **[may]** shall, after the expiration of a
30 period of **[2 years]** three months from the date of his conviction**[,**
31 **payment of fine, satisfactory completion of probation]** or release
32 from incarceration, whichever is later, **[present]** have presented on
33 his behalf a duly verified petition as provided in **[section]** N.J.S.
34 2C:52-7 herein to the Superior Court in the county in which the
35 violation occurred praying that such conviction and all records and
36 information pertaining thereto be expunged.

37 (cf: P.L.1979, c. 178, s. 111)

38

39 6. Section 1 of P.L. 1980, c.163 (C.2C:52-4.1) is amended to
40 read as follows:

41 1. a. Any person adjudged a juvenile delinquent **[may]** shall
42 have such adjudication expunged as follows:

43 (1) Pursuant to N.J.S. 2C:52-2, if the act committed by the
44 juvenile would have constituted a crime if committed by an adult;

45 (2) Pursuant to N.J.S. 2C:52-3, if the act committed by the
46 juvenile would have constituted a disorderly or petty disorderly
47 persons offense if committed by an adult; or

1 (3) Pursuant to N.J.S. 2C:52-4, if the act committed by the
2 juvenile would have constituted an ordinance violation if committed
3 by an adult.

4 For purposes of expungement, any act which resulted in a
5 juvenile being adjudged a delinquent shall be classified as if that act
6 had been committed by an adult.

7 b. Additionally, any person who has been adjudged a juvenile
8 delinquent may have his entire record of delinquency adjudications
9 expunged if:

10 (1) ~~Five years have~~ One year has elapsed since the final
11 discharge of the person from legal custody or supervision or ~~5~~
12 years have one year has elapsed after the entry of any other court
13 order not involving custody or supervision;

14 (2) He has not been convicted of a crime, or a disorderly or petty
15 disorderly persons offense, or adjudged a delinquent, or in need of
16 supervision, during the ~~5 years~~ one year prior to the filing the
17 petition, and no proceeding or complaint is pending seeking such a
18 conviction or adjudication;

19 (3) He was never adjudged a juvenile delinquent on the basis of
20 an act which if committed by an adult would constitute a crime not
21 subject to expungement under N.J.S. 2C:52-2;

22 (4) He has never had an adult conviction expunged; and

23 (5) He has never had adult criminal charges dismissed following
24 completion of a supervisory treatment or other diversion program.

25 c. Any person who has been charged with an act of delinquency
26 and against whom proceedings were dismissed may have the filing
27 of those charges expunged pursuant to the provisions of N.J.S.
28 2C:52-6.

29 (cf: P.L.1981, c. 290, s. 44)

30

31 7. N.J.S. 2C:52-5 is amended to read as follows:

32 2C:52-5. Expungement of Records of Young Drug Offenders.
33 Notwithstanding the provisions of ~~sections~~ N.J.S. 2C:52-2 and
34 N.J.S. 2C:52-3, after a period of not less than ~~one year~~ three
35 months following conviction, ~~termination of probation or parole~~
36 or discharge from custody, whichever is later, any person convicted
37 of an offense under chapters 35 or 36 of this title for the possession
38 or use of a controlled dangerous substance, convicted of violating
39 P.L. 1955, c. 277, s. 3 (C. 2A:170-77.5), or convicted of violating
40 P.L. 1962, c. 113, s. 1 (C. 2A:170-77.8), and who at the time of the
41 offense was 21 years of age or younger, may apply to the Superior
42 Court in the county wherein the matter was disposed of for the
43 expungement of such person's conviction and all records pertaining
44 thereto. The relief of expungement under this section shall be
45 granted only if said person has not, prior to the time of hearing,
46 violated any of the conditions of his probation or parole, albeit
47 subsequent to discharge from probation or parole, has not been

1 convicted of any previous or subsequent criminal act or any
2 subsequent or previous violation of chapters 35 or 36 of this title or
3 of P.L. 1955, c. 277, s. 3 (C. 2A:170-77.5) or of P.L. 1962, c. 113,
4 s. 1 (C. 2A:170-77.8), or who has not had a prior or subsequent
5 criminal matter dismissed because of acceptance into a supervisory
6 treatment or other diversion program.

7 This section shall not apply to any person who has been
8 convicted of the sale or distribution of a controlled dangerous
9 substance or possession with the intent to sell any controlled
10 dangerous substance except:

11 (1) Marihuana, where the total sold, distributed or possessed
12 with intent to sell was 25 grams or less, or

13 (2) Hashish, where the total amount sold, distributed or
14 possessed with intent to sell was 5 grams or less.

15 (cf: P. L. 1987, c. 106, s. 16)

16

17 8. N.J.S. 2C:52-6 is amended to read as follows:

18 2C:52-6. Arrests Not Resulting in Conviction.

19 a. In all cases, except as herein provided, wherein a person has
20 been arrested or held to answer for a crime, disorderly persons
21 offense, petty disorderly persons offense or municipal ordinance
22 violation under the laws of this State or of any governmental entity
23 thereof and against whom proceedings were dismissed, or who was
24 acquitted, or who was discharged without a conviction or finding of
25 guilt, **[may at any time following the disposition of proceedings,]**
26 **[present] shall within 30 days of the dismissal or acquittal or**
27 **discharge without conviction or finding of guilt, have presented on**
28 **his behalf by the county prosecutor of the county wherein the**
29 **disposition occurred** a duly verified petition as provided in
30 **[section] N.J.S. 2C:52-7** to the Superior Court in the county in
31 which the disposition occurred praying that records of such arrest
32 and all records and information pertaining thereto, including the
33 expungement of DNA records or profiles, be expunged.

34 b. Any person who has had charges dismissed against him
35 pursuant to P.L.1970, c. 226, s. 27 (C. 24:21-27) or pursuant to a
36 program of supervisory treatment, shall be barred from the relief
37 provided in this section until 6 months after the entry of the order of
38 dismissal.

39 c. Any person who has been arrested or held to answer for a
40 crime shall be barred from the relief provided in this section where
41 the dismissal, discharge, or acquittal resulted from a determination
42 that the person was insane or lacked the mental capacity to commit
43 the crime charged.

44 (cf: P.L.1979, c. 178, s. 113)

45

46 9. (New section). Processing Expedited Expungements.

47 a. Probation Division. Upon the expiration of any statutory time
48 period the chief probation officer of a county shall, on behalf of an

1 individual sentenced to a period of probation, file a petition in the
2 Superior Court for the relief of expungement.

3 b. Parole Board. Upon the expiration of any statutory time
4 period, the Parole Board shall, on behalf of an individual sentenced
5 to a period of incarceration in a facility under the jurisdiction of the
6 Department of Corrections, file a petition in the Superior Court for
7 the relief of expungement.

8
9 10. (New section). An employer who discharges or disciplines
10 an employee on the basis of a discovery of a record of conviction or
11 a prospective employer who discriminates in hiring on the basis of a
12 discovery of a record of conviction is a disorderly person.

13

14 11. N.J.S. 2C:52-27 is amended to read as follows:

15 2C:52-27. Effect of Expungement. Unless otherwise provided
16 by law, if an order of expungement is granted, the arrest,
17 conviction and any proceedings related thereto shall be deemed not
18 to have occurred, and the **[petitioner]** person who is the subject of
19 the expungement may answer any questions relating to their
20 occurrence accordingly, except as follows:

21 a. The fact of an expungement, sealing or similar relief shall be
22 disclosed as provided in section 2C:52-8b.

23 b. The fact of an expungement of prior charges which were
24 dismissed because of the person's acceptance into and successful
25 completion of a supervisory treatment or other diversion program
26 shall be disclosed by said person to any judge who is determining
27 the propriety of accepting said person into a supervisory treatment
28 or other diversion program for subsequent criminal charges; and

29 c. (1) [Information] Except as provided in paragraph (2),
30 information divulged on expunged records shall be revealed by a
31 **[petitioner]** person who is the subject of the expungement seeking
32 employment within the judicial branch or with a law enforcement or
33 corrections agency and such information shall continue to provide a
34 disability as otherwise provided by law.

35 (2) The provisions of paragraph (1) shall not apply in cases
36 involving arrests not resulting in convictions under N.J.S.A 2C:52-6
37 in which the person was arrested but against whom charges were
38 not filed, and questions asked concerning such arrests in connection
39 with seeking employment within the judicial branch or with a law
40 enforcement or corrections agency may be answered in the
41 negative.

42 d. Except as provided in paragraph (1) of subsection c. of this
43 section, questions asked in connection with seeking employment
44 concerning the existence of criminal records including records of
45 arrest may be answered in the negative.

46 (cf: P.L.1981, c. 290, s. 45)

1 12. N.J.S. 2C:52-30 is amended to read as follows:

2 2C:52-30. Disclosure of Expungement Order.

3 Except as otherwise provided in this chapter, any person,
4 including a person or entity acting on behalf of an employer in
5 connection with conducting a background search of an employee or
6 prospective employee, including but not limited to a criminal
7 history record background search and a credit search, who reveals
8 to another the existence of an arrest, conviction or related legal
9 proceeding with knowledge that the records and information
10 pertaining thereto have been expunged or sealed is a disorderly
11 person.

12 **【Notwithstanding the provisions of section 2C:43-3, the**
13 **maximum fine which can be imposed for violation of this section is**
14 **\$200.00.】**

15 (cf: P.L.1979, c. 178, s. 137)

16

17 13. This act shall take effect immediately.

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19

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STATEMENT

21

22 This bill, entitled the "Expungement Reform Act," revises
23 N.J.S.A. 2C:52-1 et seq., the expungement statute. The bill
24 reduces the waiting period for an expungement for certain
25 indictable offenses, disorderly persons and petty disorderly persons
26 offenses. Further, the bill requires the entity with supervision over
27 an individual to initiate the expungement petition process without
28 cost to the individual. In cases involving arrests which do not result
29 in convictions, the expungement petition process would be
30 undertaken by the county prosecutor.

31 The current provisions concerning those crimes which are an
32 absolute bar to expungement would not be amended and would
33 remain in effect. Those crimes are as follows: criminal homicide,
34 kidnapping, luring, aggravated sexual assault, aggravated criminal
35 sexual contact, criminal sexual contact, criminal restraint, false
36 imprisonment, robbery, arson, endangering the welfare of a child
37 and perjury.

38 With regard to indictable offenses, the person would be eligible
39 for an expungement after five years, or in the case of a crime of the
40 third degree, a period of one year.

41 With regard to disorderly persons and petty disorderly persons
42 offenses, the person would be eligible for an expungement after six
43 months. Currently a person may petition for expungement of a
44 record of a disorderly persons or petty disorderly persons offense
45 after the expiration of five years from the date of conviction.

46 With regard to the violation of municipal court ordinances the
47 person would be eligible for an expungement after three months.
48 Currently a person may petition for expungement of a record of a

1 municipal ordinance violations after the expiration of two years
2 from the date of conviction.

3 The same time frames that apply to expungement of adult
4 convictions would apply to juvenile records.

5 With regard to young drug offenders the person would be
6 eligible for an expungement after three months. The current statute
7 allows for a petition to be made not less than one year following
8 conviction.

9 With regard to arrests not resulting in conviction, the person
10 would be eligible for an immediate expungement. Under the bill,
11 within 30 days of the dismissal or acquittal or discharge without
12 conviction or finding of guilt, the county prosecutor of the county
13 wherein the disposition occurred shall present on behalf of the
14 person a petition for expungement. Currently a person may petition
15 for expungement of a record of a municipal ordinance violation
16 after the expiration of two years from the date of conviction.

17 Under the bill, for individuals under the supervision of the
18 Probation Division, upon the expiration of any statutory time period
19 the chief probation officer of a county shall, on behalf of an
20 individual sentenced to a period of probation, file a petition in the
21 Superior Court for the relief of expungement.

22 For individuals under the supervision of the Parole Board, upon
23 the expiration of any statutory time period, the Parole Board shall,
24 on behalf of an individual sentenced to a period of incarceration in a
25 facility under the jurisdiction of the Department of Corrections, file
26 a petition in the Superior Court for the relief of expungement.

27 The bill expressly clarifies that, except in circumstances
28 involving employment with the judicial branch or a law
29 enforcement or corrections agency, questions asked in connection
30 with seeking employment concerning the existence of criminal
31 records including records of arrest may be answered in the negative.
32 In cases involving arrests not resulting in convictions under N.J.S.A
33 2C:52-6 in which the person was arrested but against whom no
34 charges were filed, questions asked in connection with seeking
35 employment within the judicial branch or with a law enforcement or
36 corrections agency may be answered in the negative.

37 The bill amends N.J.S.A. 2C:52-30, concerning penalties for
38 disclosure of an expungement. Currently, a person who reveals to
39 another the existence of an arrest, conviction or related legal
40 proceeding with knowledge that the records and information
41 pertaining thereto have been expunged or sealed is a disorderly
42 person. The maximum penalty is a fine of \$200.

43 The bill amends this provision to include any person or entity
44 acting on behalf of an employer in connection with conducting a
45 background search of an employee or prospective employee of the
46 employer, including but not limited to a criminal history record
47 background check or a credit search. The bill would remove the
48 \$200 maximum penalty and provide that a violation of this section

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1 would result in a penalty ordinarily imposed for a disorderly
2 persons offense: up to six months imprisonment, a fine of up to
3 \$1,000, or both.

4 Finally, the bill would permit the expungement process to
5 proceed notwithstanding that the individual may have conditions
6 remaining under the sentence imposed, including a period of
7 probation or parole.