

2C:51-2

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:51-2

(Public Office-
forfeiture or
disqualification--waiver
for disorderly
persons ~~officer~~ *offenses*)

LAWS: 1987

CHAPTER: 427

Bill No: A4479

Sponsor(s): DiGaetano

Date Introduced: September 10, 1987

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks.

Date of Passage: Assembly: December 10, 1987 Re-enacted 1-11-88

Senate: December 21, 1987 Re-enacted 1-11-88

Date of Approval: January 14, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 4479

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 10, 1987

By Assemblyman DiGAETANO

**AN Act concerning the forfeiture of public office and amending
N. J. S. 2C:51-2 *and supplementing Title 2C of the New Jersey
Statutes*.**

1 **BE IT ENACTED** *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:51-2 is amended to read as follows:

2 2C:51-2. Forfeiture of Public Office. a. A person holding any
3 public office, position, or employment, elective or appointive, under
4 the government of this State or any agency or political subdivision
5 thereof, who is convicted of an offense shall forfeit such office or
6 position if:

7 (1) He is convicted under the laws of this State of an offense
8 involving dishonesty or of a crime of the third degree or above or
9 under the laws of another state or of the United States of an offense
10 or a crime which, if committed in this State, would be such an
11 offense or crime;

12 (2) He is convicted of an offense involving or touching such
13 office, position or employment; or

14 (3) The Constitution or a statute other than the code so provides.

15 b. The forfeiture set forth in subsection a. shall take effect:

16 (1) Upon finding of guilt by the trier of fact or a plea of guilty,
17 if the court so orders; or

18 (2) Upon sentencing unless the court for good cause shown,
19 orders a stay of such forfeiture. If the conviction be reversed, he
20 shall be restored, if feasible, to his office, position or employment

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted September 14, 1987.

**—Assembly amendment adopted in accordance with Governor's recom-
mendation January 11, 1988.

21 with all the rights, emoluments and salary thereof from the date
22 of forfeiture.

23 c. In addition to the punishment prescribed for the offense,
24 and the forfeiture set forth in 2C:51-2 a., any person convicted of
25 an offense involving or touching on his public office, position or
26 employment shall be forever disqualified from holding any office
27 or position of honor, trust or profit under this State or any of its
28 administrative or political subdivisions.

29 d. Any forfeiture or disqualification under subsection a., b. or c.
30 which is based upon a conviction of a disorderly persons or petty
31 disorderly persons offense may be waived by the court upon ap-
32 plication of the county ^{**}[^{*}or municipal^{*}]^{**} prosecutor or the
33 Attorney General and for good cause shown.

34 [d.] e. Except as may otherwise be ordered by the Attorney Gen-
35 eral as the public need may require, any person convicted of an
36 offense under sections 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7,
37 2C:29-4, 2C:30-2, or 2C:30-3 of this Title shall be ineligible, ei-
38 ther directly or indirectly, to submit a bid, enter into any con-
39 tract, or to conduct any business with any board, agency, au-
40 thority, department, commission, public corporation, or other
41 body of this State, of this or one or more other states, or of one
42 or more political subdivisions of this State for a period of, but
43 not more than, 10 years from the date of conviction for a crime
44 of the second degree, or five years from the date of conviction for
45 a crime of the third degree. It is the purpose of this subsection
46 to bar any individual convicted of any of the above enumerated
47 offenses and any business, including any corporation, partner-
48 ship, association or proprietorship in which such individual is a
49 principal, or with respect to which such individual owns, direct-
50 ly or indirectly, or controls 5% or more of the stock or other
51 equity interest of such business, from conducting business with
52 public entities.

53 The State Treasurer shall keep and maintain a list of all
54 corporations barred from conducting such business pursuant to
55 this section.

1 *2. (New section) Any person convicted of a disorderly persons
2 offense or a petty disorderly persons offense within the year pre-
3 ceding the effective date of this 1967 amendatory and supplementary
4 act may have application made on his behalf in accordance with
5 N. J. S. 2C:51-2 to the sentencing court to waive any disqualifica-
6 tion which may have resulted pursuant to N. J. S. 2C:51-2.*

1 * [2.] *3.* This act shall take effect immediately.

CRIMINAL JUSTICE

**Permits court to waive forfeiture or disqualification provisions
for public office if based on certain offenses.**

ASSEMBLY, No. 4479
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 10, 1987

By Assemblyman DiGAETANO

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N. J. S. 2C:51-2.

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6 position if:

7 (1) He is convicted under the laws of this State of an offense
8 involving dishonesty or of a crime of the third degree or above or
9 under the laws of another state or of the United States of an offense
10 or a crime which, if committed in this State, would be such an
11 offense or crime;

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13 office, position or employment; or

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17 if the court so orders; or

18 (2) Upon sentencing unless the court for good cause shown,
19 orders a stay of such forfeiture. If the conviction be reversed, he
20 shall be restored, if feasible, to his office, position or employment
21 with all the rights, emoluments and salary thereof from the date
22 of forfeiture.

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is not enacted and is intended to be omitted in the law.
Matter printed in italics thus is new matter.

23 c. In addition to the punishment prescribed for the offense,
 24 and the forfeiture set forth in 2C:51-2 a., any person convicted of
 25 an offense involving or touching on his public office, position or
 26 employment shall be forever disqualified from holding any office
 27 or position of honor, trust or profit under this State or any of its
 28 administrative or political subdivisions.

29 *d. Any forfeiture or disqualification under subsection a., b. or c.*
 30 *which is based upon a conviction of a disorderly persons or petty*
 31 *disorderly persons offense may be waived by the court upon ap-*
 32 *plication of the county prosecutor or the Attorney General and for*
 33 *good cause shown.*

34 **[d.]** e. Except as may otherwise be ordered by the Attorney Gen-
 35 eral as the public need may require, any person convicted of an
 36 offense under sections 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7,
 37 2C:29-4, 2C:30-2, or 2C:30-3 of this Title shall be ineligible, ei-
 38 ther directly or indirectly, to submit a bid, enter into any con-
 39 tract, or to conduct any business with any board, agency, au-
 40 thority, department, commission, public corporation, or other
 41 body of this State, of this or one or more other states, or of one
 42 or more political subdivisions of this State for a period of, but
 43 not more than, 10 years from the date of conviction for a crime
 44 of the second degree, or five years from the date of conviction for
 45 a crime of the third degree. It is the purpose of this subsection
 46 to bar any individual convicted of any of the above enumerated
 47 offenses and any business, including any corporation, partner-
 48 ship, association or proprietorship in which such individual is a
 49 principal, or with respect to which such individual owns, direct-
 50 ly or indirectly, or controls 5% or more of the stock or other
 51 equity interest of such business, from conducting business with
 52 public entities.

53 The State Treasurer shall keep and maintain a list of all
 54 corporations barred from conducting such business pursuant to
 55 this section.

1 2. This act shall take effect immediately.

STATEMENT

Chapter 51 of the New Jersey Code of Criminal Justice imposes various civil disabilities upon persons convicted of certain crimes. Among those are forfeiture of and lifetime disqualification from holding any public office or position, temporary loss of the voting franchise, and disqualification from jury service.

A4479 (1987)

This bill would soften the harshness of that portion of N. J. S. 2C :51-2 which mandates forfeiture and disqualification from public office or employment for even the most minor offense. While these civil disabilities would still apply in all cases, the sentencing court, upon application of the county prosecutor or Attorney General and for good cause, would have the discretion to waive their application in any case where the underlying offense is not an indictable crime.

CRIMINAL JUSTICE

Permits court to waive forfeiture or disqualification provisions for public office if based on certain offenses.

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ASSEMBLY JUDICIARY COMMITTEE
STATEMENT TO
ASSEMBLY, No. 4479
STATE OF NEW JERSEY

DATED: SEPTEMBER 14, 1987

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4479.

N. J. S. A. 2C:51-2 imposes various civil disabilities upon persons convicted of certain offenses including forfeiture of and lifetime disqualification from holding any public office or position.

This bill would soften the harshness of that portion of N. J. S. 2C:51-2 which mandates forfeiture and disqualification from public office or employment for even the most minor offense. While these civil disabilities would still apply in all cases, the sentencing court, upon application of the county prosecutor or Attorney General and for good cause, would have the discretion to waive their application in any case where the underlying offense is not an indictable crime, that is, petty disorderly persons or disorderly persons offenses.

Amendments were made to include application by the municipal prosecutor to the sentencing court since these types of offenses will commonly be heard in municipal court. The amendments also include a new section to provide that persons convicted of these offenses within the one year preceding this act may have application made on their behalf to the sentencing court to waive any disqualification which may have resulted from their conviction.

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 4479

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 10, 1987

By Assemblyman DiGAETANO

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8 involving dishonesty or of a crime of the third degree or above or
9 under the laws of another state or of the United States of an offense
10 or a crime which, if committed in this State, would be such an
11 offense or crime;

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13 office, position or employment; or

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21 with all the rights, emoluments and salary thereof from the date
22 of forfeiture.

23 c. In addition to the punishment prescribed for the offense,
24 and the forfeiture set forth in 2C:51-2 a., any person convicted of

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is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted September 14, 1987.**

25 an offense involving or touching on his public office, position or
 26 employment shall be forever disqualified from holding any office
 27 or position of honor, trust or profit under this State or any of its
 28 administrative or political subdivisions.

29 *d. Any forfeiture or disqualification under subsection a., b. or c.*
 30 *which is based upon a conviction of a disorderly persons or petty*
 31 *disorderly persons offense may be waived by the court upon ap-*
 32 *plication of the county *or municipal* prosecutor or the Attorney*
 33 *General and for good cause shown.*

34 **[d.] e.** Except as may otherwise be ordered by the Attorney Gen-
 35 eral as the public need may require, any person convicted of an
 36 offense under sections 2C:27-2, 2C:27-4, 2C:27-6, 2C:27-7,
 37 2C:29-4, 2C:30-2, or 2C:30-3 of this Title shall be ineligible, ei-
 38 ther directly or indirectly, to submit a bid, enter into any con-
 39 tract, or to conduct any business with any board, agency, au-
 40 thority, department, commission, public corporation, or other
 41 body of this State, of this or one or more other states, or of one
 42 or more political subdivisions of this State for a period of, but
 43 not more than, 10 years from the date of conviction for a crime
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 45 a crime of the third degree. It is the purpose of this subsection
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 47 offenses and any business, including any corporation, partner-
 48 ship, association or proprietorship in which such individual is a
 49 principal, or with respect to which such individual owns, direct-
 50 ly or indirectly, or controls 5% or more of the stock or other
 51 equity interest of such business, from conducting business with
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 54 corporations barred from conducting such business pursuant to
 55 this section.

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 2 *offense or a petty disorderly persons offense within the year pre-*
 3 *ceding the effective date of this 1987 amendatory and supplementary*
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CRIMINAL JUSTICE

Permits court to waive forfeiture or disqualification provisions
 for public office if based on certain offenses.

This bill would soften the harshness of that portion of N. J. S. 2C:51-2 which mandates forfeiture and disqualification from public office or employment for even the most minor offense. While these civil disabilities would still apply in all cases, the sentencing court, upon application of the county prosecutor or Attorney General and for good cause, would have the discretion to waive their application in any case where the underlying offense is not an indictable crime.

CRIMINAL JUSTICE

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4479

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: DECEMBER 17, 1987

The Senate Judiciary Committee reports favorably Assembly Bill No. 4479 OCR.

N. J. S. 2C:51-2 provides that any person holding any public office or position who is convicted of certain criminal offenses must forfeit that office or position. The person is also disqualified from ever again holding a public office or position. This bill attempts to ameliorate the harshness of 2C:51-2 as it applies to persons convicted of disorderly or petty disorderly persons offenses. The bill provides that while forfeiture and disqualification would still apply in all cases, the sentencing court, upon application of the municipal or county prosecutor or Attorney General and for good cause, would have the discretion to waive these disabilities in any case where the underlying offense was a disorderly or petty disorderly persons offense. Under the bill, any person convicted of a disorderly or petty disorderly persons offense within the one year proceeding this act may have an application made on their behalf to the sentencing court to waive any disqualification which may have resulted from their conviction.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 11, 1988

ASSEMBLY BILL NO. 4479 (OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 4479 (OCR) with my objections, for reconsideration.

This bill permits courts to waive forfeiture or disqualification of public office when based upon disorderly persons or petty disorderly persons offenses. The purpose of the bill is to lessen the harshness which occasionally arises pursuant to the present statute's forfeiture provision. While I endorse the concept of this bill, upon the advice of the Attorney General, I must return it for deletion of the reference to municipal prosecutors from the list of those who may move before the court for waiver of the statute's mandatory forfeiture provisions.

The Code of Criminal Justice currently requires a person holding any public office, position or employment, elective or appointive, in this State to forfeit that position if he is convicted of an offense involving dishonesty, a crime of the third degree or above, or an offense involving or touching that public position. Furthermore, a person convicted of an offense involving or touching his public office or employment is permanently disqualified from holding a position of honor, trust or profit in the State. N.J.S.A. 2C:51-2.

Although the Criminal Code generally grants the courts discretion as to sentencing options, the provisions of N.J.S.A. 2C:51-2 are mandatory. Pursuant to the present statute, an individual convicted of a disorderly persons or petty disorderly persons offense which involves dishonesty or which touches on his public office or employment is, in all instances, required to forfeit that office or employment. Furthermore, if the offense for which he is convicted involves or touches upon his public position, he must be permanently barred from holding public office. This legislation, as originally introduced, amended N.J.S.A. 2C:51-2 to give the sentencing court, upon application of the Attorney General or county prosecutor, the discretion to waive such forfeiture and disqualification if the underlying offense is a disorderly persons or petty disorderly persons offense and the Attorney General or the county prosecutor demonstrates good cause. It, therefore, acknowledges that requiring mandatory forfeiture of and permanent disqualification from public office may, under some circumstances, be too harsh a sanction for a minor infraction of our laws. For

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

instance, law enforcement officers are often placed in confrontational situations which may result in a complaint being filed against them for disorderly conduct, including offensive language, shoving, offensive touching, etc. While these disorderly persons offenses should be taken very seriously and dealt with sternly, they are not so serious in every case as to warrant the loss of position or the permanent, lifetime disqualification from holding such office.

The legislation, in its original form, was carefully drafted to ensure that the waiver provision would be utilized only in the extraordinary case where necessary to remedy an obvious inequity caused by the present requirement of mandatory forfeiture for even the most minor offense. Consequently, only the Attorney General and the 21 county prosecutors--the highest ranking law enforcement officers at the State and county levels, respectively--were given the authority to request these waivers.

The committee amendment, which adds municipal prosecutors to the list of those who may move for waiver of the mandatory forfeiture provisions, would wrest control of this sensitive procedure from a very limited number of individuals and diffuse it among the approximately 500 municipal prosecutors, who are not subject to law enforcement training or supervision, as are our county prosecutors. The power to request a waiver of mandatory forfeiture must be carefully circumscribed if it is to be wielded in a uniform and equitable manner.

Accordingly, I return Assembly Bill No. 4479 (OCR) and recommend that it be amended as follows:

Page 2, Section 1, Line 32: After "county" delete "or municipal"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel

The Governor conditionally vetoed A-4479, sponsored by Assemblyman Paul DiGaetano, R-Passaic, to permit courts to waive forfeiture or disqualification of public office based on disorderly persons or petty disorderly persons offenses.

Kean recommended that the bill be amended to confine the waiver move to county prosecutor, rather than including municipal prosecutors as well.

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