

February 27, 1967

LEGISLATIVE HISTORY OF R.S. 2A:164-28
(Suspended sentence - expunging record)

L. 1931, Chapter 345, §1,2,3 - S79
Introduced January 26 by Senator Leap.
Not amended during passage.
No statement.

~~COPY~~ ~~NO.~~

We searched the following without success:

New Jersey Law Journal, Jan.-June 1931.
N.J. Judicial Council Reports, 1930-1936.

L. 1936, Chapter 174, § 2 & 3 - A293
Introduced February 3 by Wilensky.
Not amended during passage.
Bill had statement (copy of original bill with statement enclosed).

Revision of 1937

Revision of 1951 (Title 2A)

Changed amount to \$1,000.

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NEW JERSEY STATE LIBRARY

185 W. State Street
Trenton, N. J.

Recent attempts to amend this statute:

1956 - A603 - Introduced Sept. 17 by Mr. Newton.
Nov. 29 Amended in Assembly - Passed Assembly.
Jan. 8 - Passed Senate.
March 1 - Filed in State Library by Governor
(copy of all forms of bill and veto message enclosed)

1959 - A480 - Introduced February 9 by Biber (and others).
Not amended during passage.
Vetoed by Governor (copy of bill and veto message enclosed).

RS/PC

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ASSEMBLY, No. 293

(P. L. 1931, Chap. 345)

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1936

By Mr. WILENSKY

Referred to Committee on Judiciary

AN ACT to amend the title and body of an act entitled "An act to remove any disabilities heretofore existing against any person by reason of a criminal conviction whereon sentence was suspended, or minor fine imposed, and where no subsequent conviction has been had against such person after a lapse of [twenty] ten years and to prescribe the procedure to obtain the benefits of this act," approved April twenty-eighth, one thousand nine hundred and thirty-one.

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

1 1. The title of an act entitled "An act to remove any disabilities here-
2 tofore existing against any person by reason of a criminal conviction
3 whereon sentence was suspended, or minor fine imposed, and where no
4 subsequent conviction has been had against such person after a lapse of
5 [twenty] ten years and to prescribe the procedure to obtain the benefits
6 of this act," approved April twenty-eighth, one thousand nine hundred and
7 thirty-one, is hereby amended to read as follows: "An act to remove any
8 disabilities heretofore existing against any person by reason of a criminal
9 conviction whereon sentence was suspended, or minor fine imposed, and
10 where no subsequent conviction has been had against such person after a
11 lapse of [twenty] ten years and to prescribe the procedure to obtain the
12 benefits of this act."

1 2. Section one of the act of which this act is amendatory be and the
2 same is hereby amended so that the same shall read as follows:

3 1. In all cases wherein a criminal conviction has been entered against
4 any person whereon sentence was suspended, or a fine imposed of not more
5 than five hundred dollars (\$500.00), and no subsequent conviction has been
6 entered against such person, it shall be lawful after the lapse of **[twenty]**
7 ten years from the date of said conviction for the person so convicted to
8 present a duly verified petition to the court wherein such conviction was
9 entered, setting forth all the facts in the matter and praying for the relief
10 provided for in this act.

1 3. Section two of the act of which this act is amendatory be and the
2 same is hereby amended so that the same shall read as follows:

3 2. Upon reading and filing such petition the said court may by order
4 fix a time, not less than ten nor more than thirty days thereafter for the
5 hearing of said matter, a copy of which order shall be served in the usual
6 manner upon the prosecutor of the pleas for the county wherein said court
7 is located, and upon the chief of police or other executive head of the
8 police department of the city or municipality wherein said offense was
9 committed, within five days from the date of said order, and at the time so
10 appointed the court shall hear the said matter and if no material objection
11 is made and no reason appears to the contrary, an order may be granted
12 directing the clerk of said court to expunge from the records all evidence
13 of said conviction that the person against whom such conviction was en-
14 tered shall be forthwith thereafter relieved from such disabilities as may
15 have heretofore existed by reason thereof, excepting convictions involving
16 the following crimes: treason, misprision of treason, anarchy, hostility to
17 government, all capital cases, perjury, carrying concealed weapons or
18 weapons of any deadly nature or type, rape, seduction, aiding, assisting or
19 concealing persons accused of high misdemeanors, or aiding the escape of
20 inmates of prisons, embracery, arson, robbery or burglary.

1 4. This act shall take effect immediately.

A273

STATEMENT

The purpose of this act is to assist only those persons who have one single conviction against them, and from the time of the conviction and for a period of ten years thereafter have lived exemplary lives during that time and are able to show by their petition that they have made a complete moral change. It will rest with the judge hearing the matter to decide by the exercise of his discretion whether the petitioning party would be entitled to this relief. This act reduces the period from twenty to ten years and provides notice to the chief of police of the municipality in addition to the prosecutor. Similar provision to chapter 160, laws of 1930.

ASSEMBLY, No. 603

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 17, 1956

By Mrs. NEWTON

Referred to Committee on Judiciary

AN ACT concerning criminal procedure, and supplementing chapter 164 of Title
2A of the New Jersey Statutes.

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

1 1. In all cases wherein a criminal complaint or accusation has been filed
2 in any court and such complaint or accusation has been dismissed or with-
3 drawn, or where no indictment has been found upon the charge therein con-
4 tained and no subsequent complaint or accusation has been made upon the
5 same charge, the court wherein the said complaint or accusation was filed
6 shall have jurisdiction to hear and determine an application by the person
7 charged in said complaint or accusation, to expunge from the records of the
8 court all evidence of said complaint or accusation and of the proceedings
9 thereon, provided 10 years shall have elapsed from the date of the filing of
10 the said complaint or accusation. Any such application shall be made upon
11 notice to the county prosecutor of the county wherein such court is located
12 and upon such other persons as the court may in its discretion direct. The
13 court shall hear any such application in a summary manner upon not less
14 than 10 nor more than 30 days' notice as aforesaid. Upon the hearing, if no
15 material objection is made and no reason appears to the contrary, an order
16 may be granted directing the clerk of such court to expunge from the rec-
17 ords all evidence of said complaint or accusation and the proceedings thereon.

18 For services performed under this act the same fees shall be taxed as are
19 usual for like services in other matters, which fees shall be payable by the
20 applicant.

1 2. This act shall take effect immediately.

ASSEMBLY AMENDMENT TO
ASSEMBLY, No. 603

STATE OF NEW JERSEY

ADOPTED NOVEMBER 29, 1956

Amend page 1, section 1, line 9, after "thereon," omit "provided 10 years shall have elapsed from the date of the filing of the said complaint or accusation.", insert "at any time thereafter."

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 603

STATE OF NEW JERSEY

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By Mrs. NEWTON

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AN ACT concerning criminal procedure, and supplementing chapter 164 of Title
2A of the New Jersey Statutes.

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

1 1. In all cases wherein a criminal complaint or accusation has been filed
2 in any court and such complaint or accusation has been dismissed or with-
3 drawn, or where no indictment has been found upon the charge therein con-
4 tained and no subsequent complaint or accusation has been made upon the
5 same charge, the court wherein the said complaint or accusation was filed
6 shall have jurisdiction to hear and determine an application by the person
7 charged in said complaint or accusation, to expunge from the records of the
8 court all evidence of said complaint or accusation and of the proceedings
9 thereon, [provided 10 years shall have elapsed from the date of the
10 filing of the said complaint or accusation.] *at any time there-*
10A *after.* Any such application shall be made upon notice to the
11 county prosecutor of the county wherein such court is located
12 and upon such other persons as the court may in its discretion direct. The
13 court shall hear any such application in a summary manner upon not less
14 than 10 nor more than 30 days' notice as aforesaid. Upon the hearing, if no
15 material objection is made and no reason appears to the contrary, an order

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted
and is intended to be omitted in the law.**

16 may be granted directing the clerk of such court to expunge from the rec-
17 ords all evidence of said complaint or accusation and the proceedings thereon.
18 For services performed under this act the same fees shall be taxed as are
19 usual for like services in other matters, which fees shall be payable by the
20 applicant.

1 2. This act shall take effect immediately.

STATE OF NEW JERSEY
Executive Department

ASSEMBLY BILL NO. 603

STATEMENT

I am filing Assembly Bill No. 603 in the State Library without my approval.

Assembly Bill No. 603 would authorize a court in which a criminal complaint or accusation has been made to expunge from the records of the court all evidence of the complaint or accusation and of the proceedings thereon if the complaint or accusation has been dismissed or withdrawn or no indictment has been found upon the charge and no subsequent complaint or accusation has been made on the same charge. The application is to be made on notice to the county prosecutor and may be made at any time after the happening of the events authorizing such order.

The Legislature adjourned sine die on January 8, 1957, at which time this bill was delivered to me. Under the Constitution, Article V, Section I, paragraph 14(b), the Governor has 45 days, Sundays excepted, after such adjournment within which to sign this measure if he shall approve it. Failing such approval the bill does not become law. In such a situation the Constitution does not provide for a veto, but since I have determined not to approve this bill in its present form, I deem it to be in the public interest to state the reasons for my decision.

I am advised by the Attorney General and the County Prosecutors that the bill in its present form would hamper their law enforcement activities. It is recognized among law enforcement officials that in many criminal investigations information obtained from records of arrests and complaints is of great value. Court records thereof often contain details which the bare record of arrests maintained by local police authorities, the State Police and the Federal Bureau of Identification would not reveal. The records of the last mentioned groups would be unaffected by this bill.

The bill's reference to situations "where no indictment has been found upon the charge therein contained and no subsequent complaint or accusation has been made upon the same charge" is ambiguous. How long is to be allowed for an indictment to be found? Moreover, the statute of limitations in criminal cases is 5 years and complaints can be filed within that statutory period even though a prior complaint based on the alleged offense has not resulted in an indictment. The record of the prior proceeding may become important if a new complaint is filed.

The reference in the bill to complaints or accusations which have been "withdrawn" might be construed as effecting legislative authorization for a radical change in our criminal procedure which would not be justified.

Under our law, complainants may not withdraw criminal complaints at will. A criminal complaint once made may be disposed of only by dismissal after hearing in accordance with the rules, action by the Grand Jury in returning an indictment or voting no bill or on motions to dismiss the indictment or accusation,

As originally introduced, the bill permitted the application to be made after 10 years had elapsed from the date of the filing of the complaint or accusation. That provision was deleted before final passage and the provision inserted allowing the application to be made at any time after the disposal of the complaint.

I am informed that the primary interest of the sponsor of this legislation is to provide the remedy suggested in cases of complaints more than 10 years old. I would be willing to approve the bill in the form in which it was originally introduced if reference to withdrawal of complaints were deleted therefrom.

I, therefore, am filing Assembly Bill No. 603 without my signature.

Robert B. Meyner
Governor

VETOED JAN 12 '60

ASSEMBLY, No. 480

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 9, 1959

By Assemblymen BIBER, KEEGAN, SWICK, WEGNER
and Assemblywoman KORDJA

Referred to Committee on Judiciary

AN ACT concerning criminal procedure, and supplementing chapter 164 of Title
2A of the New Jersey Statutes.

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

1 1. In all cases wherein a criminal complaint or accusation has been filed
2 in any court and such complaint or accusation has been dismissed or with-
3 drawn, or where no indictment has been found upon the charge therein con-
4 tained and no subsequent complaint or accusation has been made upon the
5 same charge, the court wherein the said complaint or accusation was filed
6 shall have jurisdiction to hear and determine an application by the person
7 charged in said complaint or accusation, to expunge from the records of the
8 court all evidence of said complaint or accusation and of the proceedings
9 thereon, at any time thereafter. Any such application shall be made upon
10 notice to the county prosecutor of the county wherein such court is located
11 and upon such other persons as the court may in its discretion direct. The
12 court shall hear any such application in a summary manner upon not less
13 than 10 nor more than 30 days' notice as aforesaid. Upon the hearing, if no
14 material objection is made and no reason appears to the contrary, an order
15 may be granted directing the clerk of such court to expunge from the rec-

16 ords all evidence of said complaint or accusation and the proceedings thereon.

17 For services performed under this act the same fees shall be taxed as are

18 usual for like services in other matters, which fees shall be payable by the

19 applicant.

1 2. This act shall take effect immediately.

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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 12, 1960

Assembly Bill No. 480

To the General Assembly:

I return Assembly Bill No. 480 without my approval for the following reasons:

The bill provides that when a criminal complaint or accusation has been filed and has been dismissed or withdrawn, the court in which it was filed may order all evidence of the complaint and the proceedings expunged from the record. The same provision would apply when no indictment was found on the charge and no subsequent complaint was made on the same charge. The expungement order is limited to the court in which the complaint was filed. Notice of application by the accused is to be given to the county prosecutor and such others as the court may direct.

The concept of the bill is presumably patterned after N.J.S. 2A:164-28 which provides for expungement of the record of conviction in certain cases. Presumably, it is reasoned that a like amnesty from the record should be extended to persons against whom a charge was made but was dismissed or withdrawn, but the proposal suffers from a number of fatal defects.

In the first place, the record of dismissal is the very means by which the accused can prove that the charge was not proved; he would be ill-advised to expunge it. Second, the order would only expunge records in the court where the complaint was filed; a criminal complaint can and does generate a host of records in other places, and these would remain in existence but robbed of the official record to sustain them. Some of these records are beyond the power of the state to expunge, such as those which are sent to federal law enforcement agencies. Nor is it clear just how the expungement would be accomplished. Would the jacket with the original papers be destroyed? How would the record be expunged from the bound volumes in which the court minutes are written? What would be done if the complaint were filed in the municipal court and transferred to the county court for grand jury consideration? Suppose there had been a conviction, and a reversal on appeal followed by a dismissal on the new trial; how would the printed record on appeal in our casebooks be expunged? In what way would any newspaper accounts of the charge, or the personal recollections of those involved, be expunged? Suppose one with personal knowledge of the event were to declare its occurrence, and be sued for defamation; where would he get proof of the truth if the record were gone?

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 480

- 2 -

It may be argued that some of these troublesome considerations apply with equal force to N.J.S. 2A:164-28 but that merely raises the question whether the present statute is a wise one. At least under the present act, a period of 10 years must elapse before any application may be made, and the accused's conduct over that period may provide a sound basis for judging whether rehabilitation is complete. In addition, the language of the present act indicates that there is an intention to limit it to cases where the record shows but a single conviction. In the present bill, there is no required waiting period, and the only restriction is that there be no subsequent complaint on the same charge; presumably an expungement would be permitted in the face of a string of complaints and even convictions so long as they were on different charges.

It is difficult to justify the expungement of official records on any ground. Expungement runs counter to the very purpose for which official records are kept, and mere expungement of the record does not serve to erase the fact itself. The kind of record involved in this bill is often of great value to law enforcement officers and to the public. If these records result in the creation of a problem to the persons involved, some device or routine other than expungement should be sought as the solution.

Respectfully,

ROBERT B. MEYNER

GOVERNOR

[SEAL]

Attest:

H. CURTIS MEANOR

Acting Secretary to the Governor

Vetoed 1/13/70
ASSEMBLY No. 986

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1969

By Assemblyman MORAITES

(Without Reference)

AN ACT concerning expunging records of arrest under certain circumstances, and amending section 2A:164-28 of the New Jersey Statutes.

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

1 1. Section 2A:164-28 of the New Jersey Statutes is amended to
2 read as follows:

3 2A:164-28. *a. In all cases wherein a criminal conviction has*
4 *been entered against any person whereon sentence was suspended,*
5 *or a fine imposed of not more than \$1,000.00 and no subsequent con-*
6 *viction has been entered against such person, it shall be lawful*
7 *after the lapse of 10 years from the date of such conviction for the*
8 *person so convicted to present a duly verified petition to the court*
9 *wherein such conviction was entered, setting forth all the facts in*
10 *the matter and praying for the relief provided for in this section.*

11 *b. In all cases wherein a person is accused of and arrested for a*
12 *violation of the disorderly persons law, misdemeanor or high mis-*
13 *demeanor, but acquitted or otherwise not convicted, it shall be law-*
14 *ful for such person to present a duly verified petition to the court*
15 *setting forth all the facts in the matter and praying for the relief*
16 *provided for in this section.*

17 Upon reading and filing such petition such court may by order
18 fix a time, not less than 10 nor more than 30 days thereafter, for the
19 hearing of the matter, a copy of which order shall be served in the
20 usual manner upon the prosecutor of the county wherein such court
21 is located, and upon the chief of police or other executive head of the
22 police department of the municipality wherein said offense was
23 committed, *or was alleged to have been committed*, within 5 days
24 from the date of such order, and at the time so appointed the court
25 shall hear the matter and if no material objection is made and no

26 reason appears to the contrary, an order may be granted directing
27 the clerk of such court to expunge from the records all evidence of
28 said *arrest or* conviction and that the person against whom such
29 *arrest or* conviction was entered shall be forthwith thereafter
30 relieved from such disabilities as may have heretofore existed by
31 reason thereof, excepting convictions involving the following
32 crimes: treason, misprision of treason, anarchy, all capital cases,
33 kidnapping, perjury, carrying concealed weapons or weapons of
34 any deadly nature or type, rape, seduction, aiding, assisting or con-
35 cealing persons accused of high misdemeanors, or aiding the escape
36 of inmates of prisons, embracery, arson, robbery or burglary.

37 For services performed under this section the same fees shall be
38 taxed as are usual for like services in other matters, which fees shall
39 be payable by the petitioner.

40 *For the purposes of subsection b. of this act, an arrest as*
41 *described herein shall not be considered an arrest for the purpose*
42 *of qualifying for employment or for any other position or advance-*
43 *ment.*

1 2. This act shall take effect immediately.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 13, 1970

ASSEMBLY BILL NO. 936

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(a) of the Constitution, I herewith return Assembly Bill No. A-936 without my approval.

Assembly Bill No. 936 would amend Section 2A:164-23 of the New Jersey Statutes by providing for the expungement of arrest records of individuals acquitted or otherwise not convicted of any crime upon presentation of a verified petition to the Court. Present law provides that, in those cases where sentence was suspended on a criminal conviction or a fine was imposed of less than \$1,000, individuals so convicted or fined may petition the Court 10 years after the date of such conviction for the expungement of all evidence relating to the conviction. Under this amendment which would extend the expungement process to arrest records, no time period must pass before a petition may be entertained by the court.

A-986 establishes no criteria for the exercise of the judge's discretion in granting or denying the petition but presumably is intended to permit expungement in the full range of situations which result in an individual's being acquitted or otherwise not convicted.

A similar bill which would have permitted the expungement of criminal complaints or accusations when they were dismissed or withdrawn was passed over ten years ago. The reasoning supporting the veto of this measure remains cogent in terms of A-986:

"...the record of dismissal is the very means by which the accused can prove that the charge was not proved; he would be ill-advised to expunge it. Second, the order would only expunge records in the court where the complaint was filed; a criminal complaint can and does generate a host of records in other places, and these would remain in existence but robbed of the official record to sustain them. Some of these records are beyond the power of the state to expunge, such as those which are sent to federal law enforcement agencies."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Assembly Bill No. 936

Page 2

Unfortunately, A-936 will only compound the difficulties already found in N. J. S. 2A:164-28. Basic to the weakness of the present statute, and unchanged in the amending bill, is the lack of adequate legislative direction as to the meaning of expungement and the scope of its practical application once granted. Although our present expungement statute originated in 1931, to this date, New Jersey courts have not rendered a judicial definition of that term in application to the statute. In Formal Opinion No. 44 by the Attorney General of New Jersey issued under date of October 28, 1953, it was opined that expungement, once accomplished by court order, does not have the attributes of a full pardon. Additionally, as interpreted, expungement would not appear to constitute a legal act so as to restore the essential status of the successful petitioner, notwithstanding the wording in the statute that such person shall be relieved from such disabilities as had existed by reason of the prior conviction. This provision thus clearly appears to warrant further study and clarification before the expungement statute is extended to even the most justified of petitions.

Any order granting a petition under the expungement process which would now be applied to arrests directs "...the clerk of such court to expunge from the records all evidence of said arrest or conviction..." In recognizing that the destruction of such court records alone provides limited relief to the petitioner, A-936 also provides that "For the purposes of subsection b (the petition process) an arrest as described herein shall not be considered an arrest for the purpose of qualifying for employment or for any other position or advancement." This language is objectionable and would fail to achieve its purpose as it seems to apply its vague relief to all petitioners under section b, even those whose petitions are denied.

In addition, A-936 is technically defective. The entire petition process is now placed under subsection b which merely relates to the arrest or non-conviction petitions. The original provision, that which dealt with conviction expungements under certain conditions, is left by A-936 with no court process to follow.

EXECUTIVE DEPARTMENT

Assembly Bill No. 985

Page 3

The provisions of A-985 afford no relief for the indigent where the burdens of past records is self-evident. The Public Defender is presently not empowered to represent the indigent in such petitions for relief. Until his powers are so extended, A-985 will remain a vehicle for those elements well able to pay for the destruction of any evidence against them.

I recognize that too often the stigma of once having been arrested remains with an individual even though he was falsely accused or has been demonstrably rehabilitated.

I urge therefore, as I disapprove this particular measure, that its worthy intent of protecting the innocent be preserved and that the entire expungement process be carefully studied and refined by the Criminal Law Revision Study Commission at its earliest opportunity.

I am returning Assembly Bill No. 985 to the General Assembly without my approval.

Respectfully,


GOVERNOR

Attest:

Acting Secretary to the Governor