

R.S. 2A: 85 - 15

Cy2

LEGISLATIVE HISTORY - R.S. 2A: 85-15
(Provides for expunging and sealing of records of arrest under certain circumstances)

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Previous bills introduced:

1969 - A986
Introduced by Moraites on May 5, 1969.
Passed in Assembly on May 8, 1969.
Passed in Senate on December 24.
Vetoed by Governor on January 13, 1970. (Copy of bill and veto enclosed).
✓ No statement.

1970 - A1273
Introduced on October 5, 1970 by Scancarella and referred to Committee on Judiciary. (Copy enclosed)
✓ No statement.
Died in Committee.

1971 - A2441
Introduced April 29, 1971 by Owens, Policastro, Woodson, Horn, Fenwick, Hirkala, Esposito, Conwell.
Referred to Committee on Law, Public Safety and Defense on April 29.
✓ No statement.
Died in Committee. (Copy of bill enclosed).

Similar bill in 1972-73 session.

1972 - A141
Prefiled by Deverin.
Referred to Judiciary Committee on January 24, 1972.
✓ No statement. (Copy of bill enclosed)
Died in Committee.

The bill which became law was:

VL. 1973 - chap. 191 - A227.
Prefiled.
✓ No statement. (Copy of original bill enclosed)
Referred to Law, Public Safety and Defense Committee on January 24, 1972
Reported with committee amendment on April 10, 1972 (Committee amendment enclosed).
2nd reading on April 10.
Passed in Assembly, amended (58-3) on April 20, 1972 (A227)CR enclosed).
Received in Senate and referred to Judiciary Committee on April 24.

Governor's veto message included.

C. 2

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Reported with Senate Committee Amendment and given 2nd reading on November 28. (Copy of Senate Committee Amendments to A227 enclosed).
Passed in Senate, amended (32-0) (Senate reprint of A227 OCR enclosed) on November 27.
Received in Assembly on November 27.
Senate amendment passed in Assembly (53-0) on December 14. (2nd OCR A227 enclosed).
Conditionally vetoed by Governor and returned with recommended amendment to Assembly on March 19, 1973. (Copy of veto enclosed).
Amended by Assembly as recommended by Governor on April 16, 1973. (Copy of Assembly Amendments to A227 2nd OCR enclosed)
Re-enacted in Assembly under emergency resolution (54-2) on April 16, 1973.
Re-enacted in Senate (31-0) on April 26, 1973.
Signed by Governor on June 28, 1973. (Copy of A227 3rd OCR encl).

Materials searched:

Hearings and Reports

974.90 New Jersey Criminal Law Revision Commission.
C929 Final Report.
1971 "The New Jersey Penal Code". vol.2
Commentary, §2c:51-4 pp.366-368
(copy enclosed)

974.90 New Jersey. Division of Criminal Justice -
C929 Appellate Section.
1972e Report on The Proposed New Jersey
Penal Code.

974.90 New Jersey. Legislature. Public hearing
C929 before Assembly, Judiciary Committee on
1972 Proposed Penal Code (AR13). June 20, 1972

Law Review Articles

4 Rutgers Camden Law Journal 378 (1971-1973)
"Expungement of Arrest Records"

Comparative Legislation/Model and Uniform Acts.

56 Cornell Law Review 470 (1971)
"Discrimination on the basis of arrest records"

Clippings

From vertical file-"N.J.-Police Records"

"Cahill puts veto on bill to purge arrest file."
3/20/73

"Governor Favors Retaining Records Despite Acquittal"
3/20/73 (copies enclosed)

JA/EH
Encl.

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.

January 13, 1970

ASSEMBLY BILL NO. 986

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(a) of the Constitution, I herewith return Assembly Bill No. A-986 without my approval.

Assembly Bill No. 936 would amend Section 2A:164-28 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-936:

"...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."

Veto Message, Assembly Bill No. 480, 1960

Unfortunately, A-986 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-986 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-986 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-986 with no court process to follow.

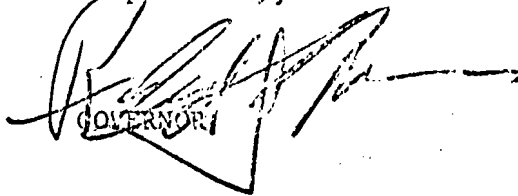
The provisions of A-986 afford no relief for the indigent where the burdens of past records is self-evident. The Public Defender is presently not empowered to represent the indigent in such petitions for relief. Until his powers are so extended, A-986 will remain a vehicle for those elements well able 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. 986 to the General Assembly without my approval.

Respectfully,



GOVERNOR

Attest:

Acting Secretary to the Governor

ASSEMBLY, No. 1273

STATE OF NEW JERSEY

INTRODUCED OCTOBER 5, 1970

By Assemblyman SCANCARELLA

Referred to Committee on Judiciary

AN ACT concerning expunging records of arrest under certain circumstances, and amending N. J. S. 2A:164-28.

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

1 1. N. J. S. 2A:164-28 is amended to read as follows:

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

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

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

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

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

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

1 2. This act shall take effect immediately.

1971
ASSEMBLY, No. 2441

STATE OF NEW JERSEY

INTRODUCED APRIL 29, 1971

By Assemblymen OWENS, POLICASTRO, WOODSON, HORN,
Assemblywoman FENWICK, Assemblymen HIRKALA,
ESPOSITO and CONWELL

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning expunging records of arrest under certain
circumstances.

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

1 1. Any person who has been arrested for a violation of the dis-
2 orderly persons law, a misdemeanor or a high misdemeanor and
3 against whom proceedings were dismissed, or who was discharged
4 without a conviction, or who was acquitted, may present a duly
5 verified petition to the court in which the proceedings occurred,
6 or, if there were no court proceedings, to the court in whose jurisdic-
7 tion the arrest occurred, setting forth all the facts in the matter
8 and praying for the relief provided by this section.

9 Upon reading and filing a petition pursuant to this act the court
10 may by order fix a time, not less than 10 nor more than 30 days
11 thereafter, for the hearing of the matter, a copy of which order
12 shall be served in the usual manner upon the prosecutor of the
13 county wherein the court is located, and upon the chief of police
14 or other executive head of the police department of the munici-
15 pality in which the arrest occurred, or if a State Police officer made
16 the arrest, upon the Superintendent of Police, within 5 days from
17 the date of the order. At the time so appointed the court shall
18 hear the matter and if no material objection is made and no reason
19 appears to the contrary, an order may be granted directing the
20 clerk of the court, and all other parties upon whom notice of the
21 hearing was served to expunge from the records all evidence of
22 said arrest including evidence of detention relating thereto, and
23 that the person against whom the arrest was entered shall be
24 forthwith thereafter relieved from any disabilities as may have
25 heretofore existed by reason thereof. Thereafter, the arrest and

26 any proceedings relating thereto shall be deemed not to have
27 occurred, and the petitioner may answer accordingly any question
28 relating to their occurrence.

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

1 2. This act shall take effect immediately.

ASSEMBLY, No. 141

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Assemblyman DEVERIN

AN ACT concerning expunging records of arrest under certain
circumstances, and amending N. J. S. 2A:164-28.

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

1 1. N. J. S. 2A:164-28 is amended to read as follows:

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

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

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

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

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

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

1 2. This act shall take effect immediately.

ASSEMBLY, No. 227

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Assemblyman OWENS

AN ACT concerning expunging records of arrest under certain circumstances.

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

1 1. Any person who has been arrested for a violation of the dis-
2 orderly persons law, a misdemeanor or a high misdemeanor and
3 against whom proceedings were dismissed, or who was discharged
4 without a conviction, or who was acquitted, may present a duly
5 verified petition to the court in which the proceedings occurred,
6 or, if there were no court proceedings, to the court in whose jurisdic-
7 tion the arrest occurred, setting forth all the facts in the matter
8 and praying for the relief provided by this section.

9 Upon reading and filing a petition pursuant to this act the court
10 may by order fix a time, not less than 10 nor more than 30 days
11 thereafter, for the hearing of the matter, a copy of which order
12 shall be served in the usual manner upon the prosecutor of the
13 county wherein the court is located, and upon the chief of police
14 or other executive head of the police department of the munici-
15 pality in which the arrest occurred, or if a State Police officer made
16 the arrest, upon the Superintendent of Police, within 5 days from
17 the date of the order. At the time so appointed the court shall
18 hear the matter and if no material objection is made and no reason
19 appears to the contrary, an order may be granted directing the
20 clerk of the court, and all other parties upon whom notice of the
21 hearing was served to expunge from the records all evidence of
22 said arrest including evidence of detention relating thereto, and
23 that the person against whom the arrest was entered shall be
24 forthwith thereafter relieved from any disabilities as may have
25 heretofore existed by reason thereof. Thereafter, the arrest and
26 any proceedings relating thereto shall be deemed not to have

27 occurred, and the petitioner may answer accordingly any question
28 relating to their occurrence.

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

1 2. This act shall take effect immediately.

ASSEMBLY COMMITTEE AMENDMENT TO
ASSEMBLY, No. 227

STATE OF NEW JERSEY

ADOPTED APRIL 10, 1972

Amend page 1, section 1, line 4, after "may", insert ", upon termination of a 5-year period commencing immediately following the dismissal of proceedings, or the discharge without a conviction, or the acquittal,".

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 227

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Assemblyman OWENS

AN ACT concerning expunging records of arrest under certain
circumstances.

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

1 1. Any person who has been arrested for a violation of the dis-
2 orderly persons law, a misdemeanor or a high misdemeanor and
3 against whom proceedings were dismissed, or who was discharged
4 without a conviction, or who was acquitted, may*, *upon termination*
5 *of a 5-year period commencing immediately following the dismissal*
6 *of proceedings, or the discharge without a conviction, or the*
7 *acquittal,** present a duly verified petition to the court in which the
8 proceedings occurred, or, if there were no court proceedings, to the
9 court in whose jurisdiction the arrest occurred, setting forth all the
9A facts in the matter and praying for the relief provided by this
9B section.

9c Upon reading and filing a petition pursuant to this act the court
10 may by order fix a time, not less than 10 nor more than 30 days
11 thereafter, for the hearing of the matter, a copy of which order
12 shall be served in the usual manner upon the prosecutor of the
13 county wherein the court is located, and upon the chief of police
14 or other executive head of the police department of the municipi-
15 pality in which the arrest occurred, or if a State Police officer made
16 the arrest, upon the Superintendent of Police, within 5 days from
17 the date of the order. At the time so appointed the court shall
18 hear the matter and if no material objection is made and no reason
19 appears to the contrary, an order may be granted directing the
20 clerk of the court, and all other parties upon whom notice of the
21 hearing was served to expunge from the records all evidence of
22 said arrest including evidence of detention relating thereto, and
23 that the person against whom the arrest was entered shall be
24 forthwith thereafter relieved from any disabilities as may have

25 heretofore existed by reason thereof. Thereafter, the arrest and
26 any proceedings relating thereto shall be deemed not to have
27 occurred, and the petitioner may answer accordingly any question
28 relating to their occurrence.

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

1 2. This act shall take effect immediately.

SENATE COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 227

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED NOVEMBER 20, 1972

Amend page 1, section 1, line 4, omit "upon termination".

Amend page 1, section 1, line 5, omit "of a 5-year period commencing".

[SENATE REPRINT]
ASSEMBLY, No. 227
[OFFICIAL COPY REPRINT]

With Senate Committee Amendments Adopted November 20, 1972

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION
By Assemblyman OWENS

AN ACT concerning expunging records of arrest under certain circumstances.

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

1 1. Any person who has been arrested for a violation of the dis-
2 orderly persons law, a misdemeanor or a high misdemeanor and
3 against whom proceedings were dismissed, or who was discharged
4 without a conviction, or who was acquitted, may****[***, upon termina-
5 tion of a 5-year period commencing]****** immediately following the
6 dismissal of proceedings, or the discharge without a conviction, or
7 the acquittal,* present a duly verified petition to the court in which
8 the proceedings occurred, or, if there were no court proceedings, to
9 the court in whose jurisdiction the arrest occurred, setting forth all
9A the facts in the matter and praying for the relief provided by this
9B section.

9C Upon reading and filing a petition pursuant to this act the court
10 may by order fix a time, not less than 10 nor more than 30 days
11 thereafter, for the hearing of the matter, a copy of which order
12 shall be served in the usual manner upon the prosecutor of the
13 county wherein the court is located, and upon the chief of police
14 or other executive head of the police department of the munici-
15 pality in which the arrest occurred, or if a State Police officer made
16 the arrest, upon the Superintendent of Police, within 5 days from
17 the date of the order. At the time so appointed the court shall
18 hear the matter and if no material objection is made and no reason
19 appears to the contrary, an order may be granted directing the
20 clerk of the court, and all other parties upon whom notice of the
21 hearing was served to expunge from the records all evidence of
22 said arrest including evidence of detention relating thereto, and

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

23 that the person against whom the arrest was entered shall be
24 forthwith thereafter relieved from any disabilities as may have
25 heretofore existed by reason thereof. Thereafter, the arrest and
26 any proceedings relating thereto shall be deemed not to have
27 occurred, and the petitioner may answer accordingly any question
28 relating to their occurrence.

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

1 2. This act shall take effect immediately.

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 227

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Assemblyman OWENS

AN ACT concerning expunging records of arrest under certain circumstances.

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

1 1. Any person who has been arrested for a violation of the dis-
2 orderly persons law, a misdemeanor or a high misdemeanor and
3 against whom proceedings were dismissed, or who was discharged
4 without a conviction, or who was acquitted, may****[***, upon termina-
5 tion of a 5-year period commencing]****** immediately following the
6 dismissal of proceedings, or the discharge without a conviction, or
7 the acquittal,* present a duly verified petition to the court in which
8 the proceedings occurred, or, if there were no court proceedings, to
9 the court in whose jurisdiction the arrest occurred, setting forth all
9A the facts in the matter and praying for the relief provided by this
9B section.

9c Upon reading and filing a petition pursuant to this act the court
10 may by order fix a time, not less than 10 nor more than 30 days
11 thereafter, for the hearing of the matter, a copy of which order
12 shall be served in the usual manner upon the prosecutor of the
13 county wherein the court is located, and upon the chief of police
14 or other executive head of the police department of the munici-
15 pality in which the arrest occurred, or if a State Police officer made
16 the arrest, upon the Superintendent of Police, within 5 days from
17 the date of the order. At the time so appointed the court shall
18 hear the matter and if no material objection is made and no reason
19 appears to the contrary, an order may be granted directing the
20 clerk of the court, and all other parties upon whom notice of the
21 hearing was served to expunge from the records all evidence of
22 said arrest including evidence of detention relating thereto, and

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

23 that the person against whom the arrest was entered shall be
24 forthwith thereafter relieved from any disabilities as may have
25 heretofore existed by reason thereof. Thereafter, the arrest and
26 any proceedings relating thereto shall be deemed not to have
27 occurred, and the petitioner may answer accordingly any question
28 relating to their occurrence.

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

1 2. This act shall take effect immediately.

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 227
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED APRIL 16, 1973

Amend page 1, title, line 1, after "expunging", insert "and sealing of".

Amend page 1, section 1, line 2, after "high misdemeanor", insert "under the laws of New Jersey".

Amend page 1, section 1, line 5, delete "immediately", insert "at any time".

Amend page 1, section 1, line 8, delete "proceedings occurred", and insert "judgment of acquittal, discharge or dismissal was entered".

Amend page 1, section 1, line 9B, delete "section", and insert "act".

Amend page 1, section 1, line 9c, before "Upon", insert "2."; delete "reading and", and insert "the"; after "filing", insert "of".

Amend page 1, section 1, line 10, delete "10", and insert "15"; delete "30", and insert "45".

Amend page 1, section 1, line 11, after "matter", delete ",", and insert "."; after "matter.", delete "a", and insert "A"; delete "which", and insert "this".

Amend page 1, section 1, line 12, delete "in the usual manner", and insert "pursuant to the Rules of Court"; after "upon", insert "the Attorney General, upon".

Amend page 1, section 1, line 13, delete "and".

Amend page 1, section 1, lines 15 and 16, delete "or if a State Police officer made the arrest, upon the Superintendent of Police", and insert "and upon the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest".

Amend page 1, section 1, line 17, delete "At the time so appointed the court shall".

Amend page 1, section 1, lines 18-22, delete in their entirety.

Amend page 2, section 1, lines 23-28, delete in their entirety.

Amend page 1, section 1, line 17, after "order.", insert new sections as follows:

“3. a. At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged.

b. If an order expunging the records is granted by the court, all the records specified in the order shall be removed from the files and placed in the control of a person who shall be designated to retain control over all expunged records and who shall ensure that the records or the information contained therein is not released for any reason. In response to requests for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

4. a. If an objection is made by any law enforcement agency upon which notice was served, the court shall determine whether there are grounds for denial. If the court determines there are no grounds for denial it may grant an order directing the clerk of the court and the parties upon whom notice was served to seal their records of said arrest, including evidence of detention related thereto, and specifying those records to be sealed.

b. If an order sealing the records of arrest is granted by the court, any law enforcement officers and departments who receive requests for information or records on the person against whom the arrest was entered shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. Such sealed records and information may be maintained by any law enforcement agency originally possessing such records and information, but such information shall be utilized only within the department and sufficient precautions shall be taken to insure that the sealed records and information are not revealed to anyone outside the law enforcement agency which continues to maintain the records or information.

Inspection of the files and records, or release of the information in the files and records, which are the subject of the sealing order, to anyone other than a person within the law enforcement agency in which the arrest records were sealed, may be permitted only by the court upon motion for good cause shown, and any such motion and any order granted pursuant to such motion shall specify the person or persons to whom the records and information are to be shown.

5. If the court determines there are grounds for denial, the court shall not grant an order to expunge or seal the records of the arrest or evidence of detention related thereto.

6. For the purpose of this act "grounds for denial" shall exist:

a. When the usefulness of the information of the arrest and the proceedings to law enforcement authorities and to anyone who might obtain such information outweighs the desirability of having a person, who has been acquitted or against whom charges have been dismissed or discharged, freed from any disabilities attached to the arrest which preceded that acquittal, dismissal or discharge.

b. When dismissal resulted from a plea bargaining agreement or when acquittal, discharge or dismissal occurred after exclusion of highly probative evidence upon invocation of an exclusionary rule not directed to the truth of the evidence excluded.

7. If an order expunging or sealing a record of arrest is granted, the arrest and any proceedings related thereto shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to their occurrence.

8. This act shall apply to arrests which occurred prior to and which occur after enactment of this act. No court order pursuant to this act shall prohibit the filing of reports required under the "Controlled Dangerous Substances Registry Act of 1970," P. L. 1970, c. 227 (C. 26:2G-17 et seq.)."

Amend page 2, section 1, line 29, before "For", insert "9", delete "section", insert "act".

Amend page 2, section 2, line 1, delete "2", and insert "10".

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 227

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1972 SESSION

By Assemblyman OWENS

AN ACT concerning expunging ****and sealing**** records of arrest
under certain circumstances.

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

1 1. Any person who has been arrested for a violation of the dis-
2 orderly persons law, a misdemeanor or a high misdemeanor
3 ****under the laws of New Jersey**** and against whom proceed-
4 ings were dismissed, or who was discharged without a conviction,
5 or who was acquitted, may ***[*], upon termination of a 5-year period*
6 *commencing]** ***[immediately]*** ***at any time*** following*
7 *the dismissal of proceedings, or the discharge without a conviction,*
8 *or the acquittal,** present a duly verified petition to the court in
9 which the ****[proceedings occurred]*** ***judgment of acquittal,*
10 *discharge or dismissal was entered****, or, if there were no court
11 proceedings, to the court in whose jurisdiction the arrest occurred,
12 setting forth all the facts in the matter and praying for the relief
13 provided by this ****[section]*** ***act***.*

1 ****2.*** Upon ****the*** ***[reading and]*** filing ****of*****
2 *a petition pursuant to this act the court may by*
3 *order fix a time, not less than ****[10]*** ***15*****
3A *nor more than ****[30]*** ***45**** days thereafter,*
4 *for the hearing of the matter***[, a]*** ***. A*** copy of*
5 ****[which]*** ****this**** order shall be served ****[in the usual*
6 *manner]*** ****pursuant to the Rules of Court**** upon ****the**
7 *Attorney General, upon*** the prosecutor of the county wherein*
8 *the court is located, ****[and]**** upon the chief of police or other*
9 *executive head of the police department of the municipality in*
10 *which the arrest occurred, ****[or if a State Police officer made the**
11 *arrest, upon the Superintendent of Police]***, ****and upon the**
12 *chief law enforcement officer of any other law enforcement agency*
13 *of this State which participated in the arrest***, within 5 days***

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

14 from the date of the order. ***[At the time so appointed the court
15 shall hear the matter and if no material objection is made and no
16 reason appears to the contrary, an order may be granted directing
17 the clerk of the court, and all other parties upon whom notice of
18 the hearing was served to expunge from the records all evidence
19 of said arrest including evidence of detention relating thereto, and
20 that the person against whom the arrest was entered shall be
21 forthwith thereafter relieved from any disabilities as may have
22 heretofore existed by reason thereof. Thereafter, the arrest and
23 any proceedings relating thereto shall be deemed not to have
24 occurred, and the petitioner may answer accordingly any question
25 relating to their occurrence.]***

1 ***3. a. *At the time appointed for the hearing, if there is no*
2 *objection from those law enforcement agencies notified of the hear-*
3 *ing, and no reason appears to the contrary, the court may grant an*
4 *order directing the clerk of the court and the parties upon whom*
5 *notice was served to expunge from their records all evidence of*
6 *said arrest including evidence of detention related thereto, and*
7 *specifying those records to be expunged.*

8 b. *If an order expunging the records is granted by the court, all*
9 *the records specified in the order shall be removed from the files*
10 *and placed in the control of a person who shall be designated to*
11 *retain control over all expunged records and who shall ensure that*
12 *the records or the information contained therein is not released for*
13 *any reason. In response to requests for information or records on*
14 *the person who was arrested, the law enforcement officers and de-*
15 *partments shall reply, with respect to the arrest and proceedings*
16 *which are the subject of the order, that there is no record.*

1 4. a. *If an objection is made by any law enforcement agency*
2 *upon which notice was served, the court shall determine whether*
3 *there are grounds for denial. If the court determines there are no*
4 *grounds for denial it may grant an order directing the clerk of the*
5 *court and the parties upon whom notice was served to seal their*
6 *records of said arrest, including evidence of detention related*
7 *thereto, and specifying those records to be sealed.*

8 b. *If an order sealing the records of arrest is granted by the*
9 *court, any law enforcement officers and departments who receive*
10 *requests for information or records on the person against whom*
11 *the arrest was entered shall reply, with respect to the arrest and*
12 *proceedings which are the subject of the order, that there is no*
13 *record. Such sealed records and information may be maintained*
14 *by any law enforcement agency originally possessing such records*
15 *and information, but such information shall be utilized only within*

16 *the department and sufficient precautions shall be taken to insure*
 17 *that the sealed records and information are not revealed to anyone*
 18 *outside the law enforcement agency which continues to maintain*
 19 *the records or information.*

20 *Inspection of the files and records, or release of the information*
 21 *in the files and records, which are the subject of the sealing order,*
 22 *to anyone other than a person within the law enforcement agency*
 23 *in which the arrest records were sealed, may be permitted only by*
 24 *the court upon motion for good cause shown, and any such motion*
 25 *and any order granted pursuant to such motion shall specify the*
 26 *person or persons to whom the records and information are to be*
 27 *shown.*

1 *5. If the court determines there are grounds for denial, the court*
 2 *shall not grant an order to expunge or seal the records of the arrest*
 3 *or evidence of detention related thereto.*

1 *6. For the purpose of this act "grounds for denial" shall exist:*

2 *a. When the usefulness of the information of the arrest and the*
 3 *proceedings to law enforcement authorities and to anyone who*
 4 *might obtain such information outweighs the desirability of having*
 5 *a person, who has been acquitted or against whom charges have*
 6 *been dismissed or discharged, freed from any disabilities attached*
 7 *to the arrest which preceded that acquittal, dismissal or discharge.*

8 *b. When dismissal resulted from a plea bargaining agreement or*
 9 *when acquittal, discharge or dismissal occurred after exclusion of*
 10 *highly probative evidence upon invocation of an exclusionary rule*
 11 *not directed to the truth of the evidence excluded.*

1 *7. If an order expunging or sealing a record of arrest is granted,*
 2 *the arrest and any proceedings related thereto shall be deemed not*
 3 *to have occurred and the petitioner may answer accordingly any*
 4 *question relating to their occurrence.*

1 *8. This act shall apply to arrests which occurred prior to and*
 2 *which occur after enactment of this act. No court order pursuant*
 3 *to this act shall prohibit the filing of reports required under the*
 4 *"Controlled Dangerous Substances Registry Act of 1970," c. 227*
 5 *(C. 26:2G-17 et seq.).****

1 ****9.*** For services performed under this ***[section]****
 2 ****act*** the same fees shall be taxed as are usual for like services*
 3 *in other matters, which fees shall be payable by the petitioner.*

1 ****[2.]*** ***10.*** This act shall take effect immediately.*

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

March 2, 1973

ASSEMBLY BILL NO. 227 (2nd OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Assembly Bill No. 227 (2nd OCR), with my objections for reconsideration.

This bill would permit a person who has been arrested for any offense in New Jersey to immediately petition the court for the expungement of his arrest records, of any evidence of detention related to that arrest and of any proceedings related to that arrest, when the arrest resulted in a dismissal of the proceedings, in an acquittal, or in a discharge of the proceedings without a conviction.

After expungement of the records, the arrest, and any proceedings related to the arrest, would be deemed not to have occurred and the arrested person would be entitled to answer in the negative when asked whether he had ever been arrested.

An expungement provision creates immediate conflict with the need of law enforcement authorities to maintain records necessary to fulfill their functions in the prevention and detection of crime. At issue are the tools law enforcement agencies need to exercise their powers of investigation. As Chief Justice Weintraub stated concerning the scope of record keeping by law enforcement authorities in Anderson v. Sills, 56 N.J. 220, 229 (1970):

"The basic approach must be that the executive branch may gather whatever information it reasonably believes to be necessary to enable it to perform the police roles, detectional and preventive."

The approach to retaining records must be equally as broad.

There may be situations where the police have no reason to retain an arrest record as when the arrest was an admitted mistake. In such a situation it may be appropriate to expunge the arrest record. However,

STATE OF NEW JERSEY
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ASSEMBLY BILL NO. 227 (2nd OCR)

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if the police legitimately believe that the record is necessary for law enforcement purposes, expungement would be inappropriate.

The primary objective of any expungement statute is to insulate the person from any disabilities or adverse effects resulting from the information sought to be expunged. The only danger in maintaining arrest records is the possible effects of dissemination of the fact of the arrest or the practical necessity that an arrested person must indicate that he has been arrested on employment applications.

The possible adverse effects of an arrest record can be prevented without physically destroying the information or removing it from police files. Police records can be sealed so that there will be no dissemination and provision can be made so that an arrested person, whose arrest record has been sealed, can answer in the negative when an application for employment requests information concerning that arrest. Sealing, therefore, achieves the purposes of both the police and the arrested person. It enables law enforcement agencies to retain the record for their needs and protects the arrested person from the possible adverse effects resulting from the arrest.

In some situations where an arrest does not result in a conviction, neither expungement nor sealing should be permitted. For example, if a plea bargaining agreement results in the dismissal of unrelated offenses involving separate arrests, those arrest records are, and will continue to be, extremely meaningful and useful to the police despite the dismissal of the offense. There is no justifiable reason why such information should not continue to be used as it is presently being used.

Assembly Bill No. 227 (2nd OCR) does not distinguish between those arrests which should not be expunged and those which should. Neither does it provide a procedure for sealing of records to protect the arrested person yet not deprive the police of the tools necessary to fulfill their functions.

Therefore, I respectfully return Assembly Bill No. 227 (2nd OCR) for reconsideration and recommend that it be amended as follows: . . .

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ASSEMBLY BILL NO. 227 (2nd OCR)

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Page 1, Title, Line 1: After "expunging" insert "and sealing of"

Page 1, Section 1, Line 2: After "high misdemeanor" insert
"under the laws of New Jersey"

Page 1, Section 1, Line 5: Delete "immediately" insert "at any time"

Page 1, Section 1, Line 8: Delete "proceedings occurred" and insert
"judgment of acquittal, discharge or dismissal was
entered"

Page 1, Section 1, Line 9B: Delete "section" and insert "act"

Page 1, Section 1, Line 9C: Before "Upon" insert "2."

Page 1, Section 1, Line 9C: Delete "reading and" and insert "the"

Page 1, Section 1, Line 9C: After "filing" insert "of"

Page 1, Section 1, Line 10: Delete "10" and insert "15"

Page 1, Section 1, Line 10: Delete "30" and insert "45"

Page 1, Section 1, Line 11: After "matter" delete "," and insert "."

Page 1, Section 1, Line 11: After "matter." delete "a" and insert "A"

Page 1, Section 1, Line 11: Delete "which" and insert "this"

Page 1, Section 1, Line 12: Delete "in the usual manner" and
insert "pursuant to the Rules of Court"

Page 1, Section 1, Line 12: After "upon" insert "the Attorney
General, upon"

Page 1, Section 1, Line 13: Delete "and"

Page 1, Section 1, Lines 15 and 16: Delete "or if a State Police
officer made the arrest, upon the Superintendent
of Police" and insert "and upon the chief law
enforcement officer of any other law enforcement
agency of this State which participated in the arrest"

Page 1, Section 1, Line 17: Delete "At the time so appointed the
court shall"

Page 1, Section 1, Lines 18-22: Delete in their entirety

STATE OF NEW JERSEY
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ASSEMBLY BILL NO. 227 (2nd OCR)

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Page 2, Section 1, Lines 23-28: Delete in their entirety

Page 1, Section 1, Line 17: After "order." insert new sections
as follows:

3(a) At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged.

(b) If an order expunging the records is granted by the court, all the records specified in the order shall be removed from the files and placed in the control of a person who shall be designated to retain control over all expunged records and who shall ensure that the records or the information contained therein is not released for any reason. In response to requests for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

4(a) If an objection is made by any law enforcement agency upon which notice was served, the court shall determine whether there are grounds for denial. If the court determines there are no grounds for denial it may grant an order directing the clerk of the court and the parties upon whom notice was served to seal their records of said arrest, including evidence of detention related thereto, and specifying those records to be sealed.

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(b) If an order sealing the records of arrest is granted by the court, any law enforcement officers and departments who receive requests for information or records on the person against whom the arrest was entered shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. Such sealed records and information may be maintained by any law enforcement agency originally possessing such records and information, but such information shall be utilized only within the department and sufficient precautions shall be taken to insure that the sealed records and information are not revealed to anyone outside the law enforcement agency which continues to maintain the records or information.

Inspection of the files and records, or release of the information in the files and records, which are the subject of the sealing order, to anyone other than a person within the law enforcement agency in which the arrest records were sealed, may be permitted only by the court upon motion for good cause shown, and any such motion and any order granted pursuant to such motion shall specify the person or persons to whom the records and information are to be shown.

5. If the court determines there are grounds for denial, the court shall not grant an order to expunge or seal the records of the arrest or evidence of detention related thereto.

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ASSEMBLY BILL NO. 227 (2nd OCR)

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6. For the purpose of this act "grounds for denial" shall exist:

a. when the usefulness of the information of the arrest and the proceedings to law enforcement authorities and to anyone who might obtain such information outweighs the desirability of having a person, who has been acquitted or against whom charges have been dismissed or discharged, freed from any disabilities attached to the arrest which preceded that acquittal, dismissal or discharge.

b. when dismissal resulted from a plea bargaining agreement or when acquittal, discharge or dismissal occurred after exclusion of highly probative evidence upon invocation of an exclusionary rule not directed to the truth of the evidence excluded.

7. If an order expunging or sealing a record of arrest is granted, the arrest and any proceedings related thereto shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to their occurrence.

8. This act shall apply to arrests which occurred prior to and which occur after enactment of this act. No court order pursuant to this act shall prohibit the filing of reports required under the Controlled Dangerous Substances Registry Act of 1970, P.L. 1970, c. 227 (C. 26:2G-17 et seq.).

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Page 2, Section 1, Line 29: Before "For" insert "9"

Page 2, Section 2, Line 1: Delete "2" and insert "10"; delete
"section" and insert "act"

Respectfully,

/s/ William T. Cahill

GOVERNOR

[seal]

Attest:

/s/ Jean E. Mulford

Acting Secretary to the Governor

L 1973, c. 191

In revising the substantive criminal law the Commission has sought to implement a rehabilitative approach. A continuation of automatic and indefinite disqualification or jury selection of all "criminals" is fundamentally inconsistent with this objective. We, therefore, take a two-step approach: first, we continue to disqualify all persons who have not yet "satisfied" their sentence. This includes a suspended sentence, a period of probation, actual incarceration, and a parole term. Once the citizen is no longer under a correctional sanction he is immediately eligible in the case of an offense less than a crime and is eligible after five years in the case of a crime. We believe this to be an appropriate line to draw and to allow sufficient time for persons convicted of crimes to allow public confidence.

§ 2C:51-4. COMMENTARY

1. This Section is new and represents an effort to reconcile the important competing interests involved in the question of expungement or vacation of a past criminal conviction. It is MPC § 306.6.

2. *Present New Jersey Law.* Two statutes now apply in this area: N.J.S. 2A:164-28 (Suspended sentence or fine of not more than \$1,000; expunging from record after 10 years; hearing; order and service thereof; fees; exceptions); N.J.S. 2A:169-11 (Expunging record of conviction as disorderly person; fee).

The expungement in either case would appear to be discretionary although the statutory language suggests that absent some reason the order should be granted: "if no material objection is made and no reason appears to the contrary, an order may be granted . . ." If the Court directs expungement, the clerk is directed to "expunge from the records all evidence of said conviction" and the person against whom such conviction was entered is "thereafter relieved from such disabilities as may have heretofore existed by reason thereof." There is no provision for affecting police or other enforcement agency records. Presumably the expungement would restore the offenders right to vote, to hold public office, to serve on juries, and enjoy other civil rights which his conviction deprived him of. Whether an order of expungement would relieve the person of his obligation to register as a narcotics offender under 2A:169A-2 was deemed not ripe for decision in *State v. Garland*, 99 N.J. Super. 383, 388 (1968).

The Attorney General has ruled that expungement does not have the attributes of a full pardon. Op. Atty. Gen., February 26, 1953, No. 5. Since a pardon has been interpreted not to permit the recipient to respond in the negative to questions about his conviction (1951-53 N.J. Ops. Att'y. Gen. 143), it would appear that the successful petitioner under the present expungement statutes would also be required to disclose his conviction. Once a record of conviction is expunged, however, it cannot be later introduced to prove the conviction. Op. Atty. Gen., October 28, 1953, No. 44. The failure of the statute to

describe more clearly the intended effects of expungement and the ten-year period required to clear a criminal conviction, leaves the efficacy of the provisions very doubtful. See *Gough, The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status*, 1966 Wash. U.L.Q. 147, 166.

The expungement provisions are not expressly limited to first offender. Our courts have ruled, however, that since expungement is lawful only if there has been no subsequent conviction during the required period, in the case of a multiple offender no record of conviction, except possibly the last, can be expunged. *State v. Chelson*, 104 N.J. Super. 508, 510, 250A.2d 445 (1969).

3. *The Need for Vacation of a Criminal Conviction.* The end goal of the criminal law today must be recognized as the successful reintegration of offenders into the free community. At a minimum this reintegration means that the ex-offender leads a law-abiding life and ideally it means that whatever talents and potential he possesses are given their fullest expression. A criminal conviction necessarily creates a powerful social stigma; the efficacy of the criminal sanction sometimes depends upon this stigma. At the same time, following the offender's discharge from correctional supervision, it is this stigma that very seriously interferes with his ability to find gainful and meaningful entry into the society as a responsible citizen. All of our states recognize this by providing some means for restoring civil and political rights. See *Rubin, The Law of Criminal Correction* 632-37 (1963). Our law permits the Governor to grant pardons and restore civil rights. See N.J.S. 2A:167-1 through 12. But even a pardon does not close the judicial eye to the fact that once the person pardoned had done an act which constituted an offense, and the pardon does not restore the person's character and does not obliterate the act itself. *Hosier v. State Department of Treasury*, 95 N.J. Super 196 (App. Div. 1967). This view of the pardon reflects the failure of our criminal justice system to have incorporated the fundamental moral imperative of forgiveness. See *Nussbaum, First Offenders, A Second Chance* 24 (1956). The convicted person forever labors under the handicap of his past error. His difficulty in finding employment of any kind is well-recognized and this difficulty apparently tends to increase directly with the skill level of the job sought. See *Gough, supra* at 153-154. The number of persons with some criminal record for a single, un-repeated offense is not known but is surely in the millions. A sound criminal justice system should provide a mechanism to forgive absolutely a reformed offender; to return to him if he deserves it an unstigmatized social status. We believe that the public policy expressed in this new provision should extend to any act of criminality which has been followed by a complete reformation of the individual. We also believe that absolute forgiveness should be available only for deserving citizens and that it should not be used as the means for initiating the possibility of successful reentry into the community.

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NY Criminal
Law Revision
Commission.
Final Report.

Thus, we believe that the previous Sections of this Chapter which eliminate certain disabilities immediately upon discharge from correctional authority and which require a rational relation between the past conviction and the exercise of official discretion in such areas as regulated employment, are needed to begin the reintegration process. An order of vacation for a period of law-abiding behavior with limited effect may also play an important role in this process. And, then finally at some point in the offender's new life the criminal justice system should formally and absolutely return to him the social status he had before his conviction. The proposed Section authorizing expungement for first offenders is the method we propose to achieve this result as best the law can.

INTRODUCTORY NOTE TO SUBTITLE 4

Throughout the existing New Jersey statutes in Title 2A, there are provisions which are solely administrative in nature. These include filing for gun permits, destruction of gaming apparatus, etc. Since these provisions are not definitions of substantive offenses, we collect them as a separate Part rather than having them dispersed throughout the Code.

§ 2C:53-1. COMMENTARY

1. See Section 2C:34-4 and Commentary thereto.

§ 2C:54-1. COMMENTARY

1. Subsection a was formerly N.J.S. 2A:156A-1. Subsection b was formerly N.J.S. 2A:156A-2. These have been carried forward without substantial changes.

§ 2C:54-2. COMMENTARY

1. This provision was formerly N.J.S. 2A:158A-7. It is carried forward without substantial change.

§ 2C:54-3. COMMENTARY

1. These Sections were previously N.J.S. 2A:156A-8 through 18 and 20. They are carried forward without substantial change.

§ 2C:54-4. COMMENTARY

1. This Section was formerly N.J.S. 2A:156A-21. It is carried forward without substantial change.