

2C:52-2

LEGISLATIVE HISTORY CHECKLIST
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(Expungement)

NJSA: 2C:52-2

LAWS OF: 1993 CHAPTER: 301

BILL NO: S1337

SPONSOR(S) Matheussen and LaRossa

DATE INTRODUCED: November 9, 1992

COMMITTEE: ASSEMBLY: ---

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: December 2, 1993

SENATE: June 10, 1993

DATE OF APPROVAL: December 23, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: Yes

HEARINGS: No

Report, mentioned in statement:

974.90 New Jersey. State Commission on Investigation.

I62 Local Government corruption...September, 1992.

1992a Trenton, 1992.

[see pages attached]

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1 AN ACT concerning the expungement of criminal records in
2 certain cases and amending N.J.S.2C:52-2.

3

4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

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

7 2C:52-2. Indictable Offenses. a. In all cases, except as herein
8 provided, wherein a person has been convicted of a crime under
9 the laws of this State and who has not been convicted of any prior
10 or subsequent crime, whether within this State or any other
11 jurisdiction, and has not been adjudged a disorderly person or
12 petty disorderly person on more than two occasions may, after
13 the expiration of a period of 10 years from the date of his
14 conviction, payment of fine, satisfactory completion of probation
15 or parole, or release from incarceration, whichever is later,
16 present a duly verified petition as provided in section 2C:52-7 to
17 the Superior Court in the county in which the conviction was
18 entered praying that such conviction and all records and
19 information pertaining thereto be expunged.

20 Although subsequent convictions for no more than two
21 disorderly or petty disorderly offenses shall not be an absolute
22 bar to relief, the nature of those conviction or convictions and
23 the circumstances surrounding them shall be considered by the
24 court and may be a basis for denial of relief if they or either of
25 them constitute a continuation of the type of unlawful activity
26 embodied in the criminal conviction for which expungement is
27 sought.

28 b. Records of conviction pursuant to statutes repealed by this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

34 Records of conviction for the following crimes specified in the
35 New Jersey Code of Criminal Justice shall not be subject to
36 expungement: Section 2C:11-1 et seq. (Criminal Homicide),
37 except death by auto as specified in section 2C:11-5; section
38 2C:13-1 (Kidnapping); section 2C:14-2 (Aggravated Sexual
39 Assault); section 2C:15-1 (Robbery); section 2C:17-1 (Arson and
40 Related Offenses); section 2C:28-1 (Perjury); section 2C:28-2
41 (False Swearing) and conspiracies or attempts to commit such
42 crimes.

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

Matter underlined thus is new matter.

1 Records of conviction for any crime committed by a person
2 holding any public office, position or employment, elective or
3 appointive, under the government of this State or any agency or
4 political subdivision thereof and any conspiracy or attempt to
5 commit such a crime shall not be subject to expungement if the
6 crime involved or touched such office, position or employment.

7 c. In the case of conviction for the sale or distribution of a
8 controlled dangerous substance or possession thereof with intent
9 to sell, expungement shall be denied except where the crimes
10 relate to:

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

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

15 d. In the case of a State licensed physician or podiatrist
16 convicted of an offense involving drugs or alcohol or pursuant to
17 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1),
18 the court shall notify the State Board of Medical Examiners upon
19 receipt of a petition for expungement of the conviction and
20 records and information pertaining thereto.

21 (cf: P.L.1989, c.300, s.23)

22 2. This act shall take effect immediately.

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25 **STATEMENT**

26
27 This bill would implement one of the recommendations
28 contained in the recent State Commission on Investigation report
29 on local government corruption. This bill would provide that if a
30 public official or employee is convicted of a crime and that crime
31 involves or touches the person's office or employment, the
32 record of that conviction is not subject to expungement.

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37 Provides that conviction records of crimes involving public
38 corruption are not subject to expungement.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE No. 1337

STATE OF NEW JERSEY

DATED: MARCH 18, 1993

The Senate Judiciary Committee reports favorably Senate Bill No. 1337.

This bill would provide that if a public official or employee is convicted of a crime and that crime involves or touches the person's office or employment, the record of that conviction is not subject to expungement. The bill would implement one of the recommendations contained in the 1992 State Commission on Investigation report on local government corruption.

A system should be established to guarantee that all public official and employee misconduct is reported and on file with the administrators of the pension systems. Effective reporting procedures should link public employee pension systems, prosecuting authorities and the Department of Personnel.

Reduce PTI for Breaches of the Public Trust

The criminal justice system provides many opportunities for those who participate in corrupt schemes to escape significant incarceration for their offenses. The so-called "war on drugs" has left little prison space to deter white-collar criminals, including corrupt officials or private parties who pay them off. U.S. Attorney Chertoff described the importance of keeping jail as a viable consequence of corrupt conduct:

I do not subscribe to the view that you sometimes hear that people are embarrassed, and that's enough. I think jail is a useful deterrent. I think we're operating in an area where people can be deterred because they are making cost-benefit analyses. And, finally, I think the public faith requires that white collar criminals face the same kinds of sanctions that non-white-collar criminals do. [If] someone steals your car, [he is] going to go to jail. [If] someone steals ten times that much using a fountain pen, as Woody Guthrie used to say, [he] also ought to go to jail.

In New Jersey an offender may gain admission into the Pretrial Intervention (PTI) Program, receive probation, be accepted into the courts' Intensive Supervision Program, participate in work release (spending evenings and weekends in jail), remain free while reporting to a weekend work program (Sheriff's Labor Assistance Program -- SLAP) or enjoy early parole. Regardless of their utility, in combination these procedures have seriously undermined the risk of incarceration as a deterrent to official corruption.

The increasing use of PTI in cases involving breach of the public trust is particularly disturbing to the Commission. PTI has allowed too many such transgressors to escape serious sanctions for their conduct. This has been especially apparent where conditions of PTI admission, such as restitution or disqualification from holding public office in the future, have not been imposed. When combined with the eventual outcome of expungement of criminal records, PTI sends the undesirable message that official corruption is a minor concern.

The Commission recognizes that PTI may seem attractive to a prosecutor where a case is weak. Nonetheless, we have the firm impression, after observing a number of cases, that prosecutors have consented to some PTI admissions, or agreed not to appeal them, too readily. The public could, regrettably, conclude that in too many instances a defendant's status or a prosecutor's tolerance has led to preferential or indulgent consequences.

Under present law, the nature of the offense is a factor to be considered in reviewing a PTI application. The fact that a crime involves a breach of public trust can support a program director's recommendation that defendant's admission into PTI be denied or a prosecutor's refusal to consent to the admission, but this fact does not automatically exclude the defendant from the Program. Prosecutors should be reluctant to consent to PTI for such crimes. Even in a difficult case it is better to attempt to obtain a conviction and fail or refrain from bringing the charge in the first place than to send the wrong message by voluntarily submitting to a procedure which has virtually the same effect as an acquittal.

Expungements

Expungement of criminal records of official corruption should not be allowed. U.S. Attorney Chertoff presented some insightful views on the general subject of expungement:

N.J. State Commission on Investigation

The idea that we can expunge a record in the sense of making it not exist is one that I've always had a lot of difficulty with. I think that perhaps it's appropriate in some cases to remove certain disabilities that attach to a prior conviction after a certain point in time, but I think evaporating a criminal record and trying to make it seem that the crime never happened is not in my view generally a sensible way to proceed.

I know this State does have expungement. Frankly, I'm aware of instances where it's been abused, and I think that what we need is a more focused, narrow rule about removing disabilities rather than a rule that after x-number of years with no crime we erase the conviction, and we have to pretend it never happened. That tends to create problems for law enforcement when they wind up facing the same individual again and they're trying to deal with the fact that there's an expunged record.

Current law excludes homicide, kidnapping, aggravated sexual assault, robbery, arson, perjury and false swearing, as well as conspiracies and attempts to commit such crimes, from eligibility for expungement. N.J.S.A. 2C:52-2. The law should also deny expungement for any crime committed by a public official or employee which was related to his public position. In the alternative, N.J.S.A. 2C:52-27c should be amended to require all those seeking public office or employment to reveal their criminal records. The current statute only requires those seeking employment with the judiciary, law enforcement or corrections to make such disclosure.

Education and Publicity

The Attorney General and Division of Local Government Services should prepare and distribute manuals alerting members of governing bodies, boards and authorities, as well as public purchasing, inspection and administrative employees, to legal

requirements and the need to avoid, detect and report illegal activities. Officials should be required to certify that they have read pertinent manuals, and classes should be scheduled to review and explain the material, as well as answer any questions.

As part of "core values" curricula being instituted in public schools, students should be alerted to the pitfalls of corruption and unethical behavior and the value of resisting and exposing such conduct. Corruption threatens fundamental decency in our society, and public schools should assist the process of instilling the basic virtues that make society work and life worth living.

This Commission intends to do its part to focus public attention on questionable situations that, while they may not implicate federal or state criminal laws, nonetheless amount to impropriety, raise the appearance of impropriety or create circumstances that lend themselves to corruption. As U.S. Attorney Chertoff testified, "We don't want to embarrass people, but at the same time when there are circumstances and patterns of behavior in municipalities that raise questions, there is no reason not to get the questions answered."

Challenging Restrictive Bid Specifications

The Commission agrees with U.S. Attorney Chertoff that there should be a statutory mechanism available to aggrieved potential competitors who wish to challenge restrictive bid specifications. A board in the Department of Community Affairs should be constituted to expeditiously review specifications alleged to be overly restrictive or tailored to give an unfair advantage to one competitor over another.

In order to avoid costly delays in projects, complainants should be allowed, and perhaps even required, to challenge specifications prior to the submission of bids. The Board should have access to experts competent to judge technical requirements. Complainants should be required to post a