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[First Reprint]

ASSEMBLY, No. 1771

STATE OF NEW JERSEY
213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblywoman ELEASE EVANS

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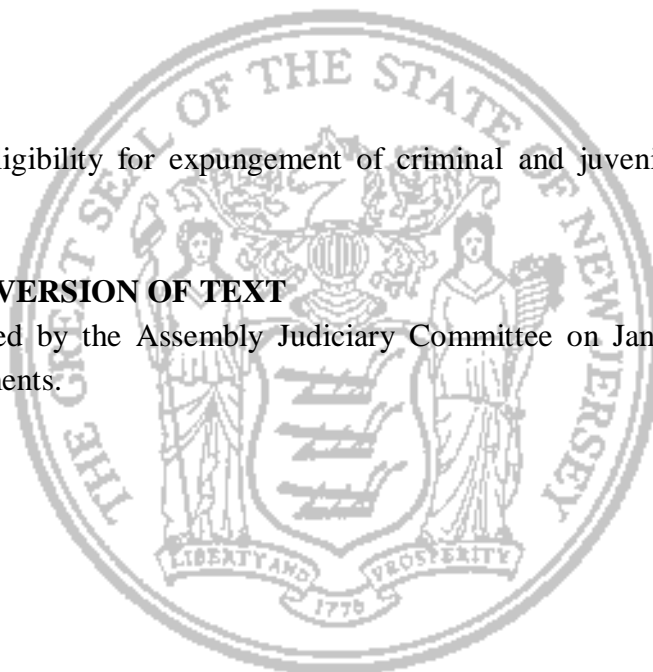
**Assemblymen L.Smith, Coutinho, Caputo, Assemblywoman Tucker,
Assemblymen Giblin, Schaer, Senators Rice and Ruiz**

SYNOPSIS

Revises eligibility for expungement of criminal and juvenile delinquency records.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on January 28, 2008, with amendments.



(Sponsorship Updated As Of: 1/8/2010)

1 AN ACT concerning expungement of criminal and juvenile
2 delinquency records and amending N.J.S.2C:52-2, P.L.1980,
3 c.163, and N.J.S.2C:52-14.
4

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

7
8 1. N.J.S.2C:52-2 is amended to read as follows:
9 2C:52-2. Indictable Offenses.

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

22 Notwithstanding the provisions of the preceding paragraph, ¹[on
23 motion of the petitioner, the court shall allow] ¹a petition ¹[to]
24 may¹ be filed and presented, ¹[which may be granted] and the
25 court may grant an expungement¹ pursuant to this section, although
26 less than 10 years has expired in accordance with the requirements
27 of the preceding paragraph where the court finds:

28 (1) less than 10 years has expired from the satisfaction of a fine,
29 but the 10-year time requirement is otherwise satisfied, and the
30 court finds that the person substantially complied with any payment
31 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so
32 due to compelling circumstances affecting his ability to satisfy the
33 fine; or

34 (2) at least five years has expired from the date of his conviction,
35 payment of fine, satisfactory completion of probation or parole, or
36 release from incarceration, whichever is later; the person has not
37 been convicted of a crime, disorderly persons offense, or petty
38 disorderly persons offense since the time of the conviction; and the
39 court finds in its discretion that expungement is in the public
40 interest, giving due consideration to the nature of the offense, and
41 the applicant's character and conduct since conviction.

42 In determining whether compelling circumstances exist for the
43 purposes of paragraph (1) of this subsection, a court may consider

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted January 28, 2008.

1 the amount of the fine or fines imposed, the person's age at the time
2 of the offense, the person's financial condition and other relevant
3 circumstances regarding the person's ability to pay.

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

11 b. Records of conviction pursuant to statutes repealed by this
12 Code for the crimes of murder, manslaughter, treason, anarchy,
13 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
14 robbery, embracery, or a conspiracy or any attempt to commit any
15 of the foregoing, or aiding, assisting or concealing persons accused
16 of the foregoing crimes, shall not be expunged.

17 Records of conviction for the following crimes specified in the
18 New Jersey Code of Criminal Justice shall not be subject to
19 expungement: Section 2C:11-1 et seq. (Criminal Homicide), except
20 death by auto as specified in section 2C:11-5; section 2C:13-1
21 (Kidnapping); section 2C:13-6 (Luring or Enticing); section 1 of
22 P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); section 2C:14-2
23 (Aggravated Sexual Assault); section 2C:14-3a (Aggravated
24 Criminal Sexual Contact); if the victim is a minor, section 2C:14-3b
25 (Criminal Sexual Contact); if the victim is a minor and the offender
26 is not the parent of the victim, section 2C:13-2 (Criminal Restraint)
27 or section 2C:13-3 (False Imprisonment); section 2C:15-1
28 (Robbery); section 2C:17-1 (Arson and Related Offenses); section
29 2C:24-4a. (Endangering the welfare of a child by engaging in
30 sexual conduct which would impair or debauch the morals of the
31 child); section 2C:24-4b(4) (Endangering the welfare of a child);
32 section 2C:24-4b. (3) (Causing or permitting a child to engage in a
33 prohibited sexual act); section 2C:24:4b.(5)(a) (Selling or
34 manufacturing child pornography); section 2C:28-1 (Perjury);
35 section 2C:28-2 (False Swearing); section 2C:34-1b.(4) (Knowingly
36 promoting the prostitution of the actor's child); section 2 of
37 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
38 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
39 Weapons, Biological Agents or Nuclear or Radiological Devices);
40 and conspiracies or attempts to commit such crimes.

41 Records of conviction for any crime committed by a person
42 holding any public office, position or employment, elective or
43 appointive, under the government of this State or any agency or
44 political subdivision thereof and any conspiracy or attempt to
45 commit such a crime shall not be subject to expungement if the
46 crime involved or touched such office, position or employment.

1 c. In the case of conviction for the sale or distribution of a
2 controlled dangerous substance or possession thereof with intent to
3 sell, expungement shall be denied except where the crimes [relate
4 to] involve:

5 (1) Marijuana, where the total quantity sold, distributed or
6 possessed with intent to sell was 25 grams or less [, or] ;

7 (2) Hashish, where the total quantity sold, distributed or
8 possessed with intent to sell was five grams or less; or

9 (3) Any controlled dangerous substance provided that the
10 conviction is of the third or fourth degree, where the court finds that
11 expungement is consistent with the public interest, giving due
12 consideration to the nature of the offense and the petitioner's
13 character and conduct since conviction.

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

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

21

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

24 1. a. Any person adjudged a juvenile delinquent may have such
25 adjudication expunged as follows:

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

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

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

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

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

40 (1) Five years have elapsed since the final discharge of the
41 person from legal custody or supervision or 5 years have elapsed
42 after the entry of any other court order not involving custody or
43 supervision, except that periods of post-incarceration supervision
44 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
45 considered in calculating the five-year period for purposes of this
46 paragraph;

1 (2) He has not been convicted of a crime, or a disorderly or petty
2 disorderly persons offense, or adjudged a delinquent, or in need of
3 supervision, during the 5 years prior to the filing the petition, and
4 no proceeding or complaint is pending seeking such a conviction or
5 adjudication, except that periods of post-incarceration supervision
6 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
7 considered in calculating the five-year period for purposes of this
8 paragraph;

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

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

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

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

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

20
21 3. N.J.S.2C:52-14 is amended to read as follows:

22 2C:52-14. A petition for expungement filed pursuant to this
23 chapter shall be denied when:

24 a. Any statutory prerequisite, including any provision of this
25 chapter, is not fulfilled or there is any other statutory basis for
26 denying relief.

27 b. The need for the availability of the records outweighs the
28 desirability of having a person freed from any disabilities as
29 otherwise provided in this chapter. An application may be denied
30 under this subsection only following objection of a party given
31 notice pursuant to 2C:52-10 and the burden of asserting such
32 grounds shall be on the objector, except that in regard to
33 expungement sought for third or fourth degree drug offenses
34 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
35 court shall consider whether this factor applies regardless of
36 whether any party objects on this basis.

37 c. In connection with a petition under section 2C:52-6, the
38 acquittal, discharge or dismissal of charges resulted from a plea
39 bargaining agreement involving the conviction of other charges.
40 This bar, however, shall not apply once the conviction is itself
41 expunged.

42 d. The arrest or conviction sought to be expunged is, at the time
43 of hearing, the subject matter of civil litigation between the
44 petitioner or his legal representative and the State, any
45 governmental entity thereof or any State agency and the
46 representatives or employees of any such body.

1 e. A person has had a previous criminal conviction expunged
2 regardless of the lapse of time between the prior expungement, or
3 sealing under prior law, and the present petition. This provision
4 shall not apply:

5 (1) When the person is seeking the expungement of a municipal
6 ordinance violation or,

7 (2) When the person is seeking the expungement of records
8 pursuant to section 2C:52-6.

9 f. The person seeking the relief of expungement of a conviction
10 for a disorderly persons, petty disorderly persons, or criminal
11 offense has prior to or subsequent to said conviction been granted
12 the dismissal of criminal charges following completion of a
13 supervisory treatment or other diversion program.

14 (cf: N.J.S.2C:52-14)

15

16 4. This act shall take effect on the 60th day after enactment.

ASSEMBLY, No. 1771

STATE OF NEW JERSEY 213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

SYNOPSIS

Revises eligibility for expungement of criminal and juvenile delinquency records.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 1/29/2008)

1 AN ACT concerning expungement of criminal and juvenile
2 delinquency records and amending N.J.S.2C:52-2, P.L.1980,
3 c.163, and N.J.S.2C:52-14.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. N.J.S.2C:52-2 is amended to read as follows:
9 2C:52-2. Indictable Offenses.

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

22 Notwithstanding the provisions of the preceding paragraph, on
23 motion of the petitioner, the court shall allow a petition to be filed
24 and presented, which may be granted pursuant to this section,
25 although less than 10 years has expired in accordance with the
26 requirements of the preceding paragraph where the court finds:

27 (1) less than 10 years has expired from the satisfaction of a fine,
28 but the 10-year time requirement is otherwise satisfied, and the
29 court finds that the person substantially complied with any payment
30 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so
31 due to compelling circumstances affecting his ability to satisfy the
32 fine; or

33 (2) at least five years has expired from the date of his conviction,
34 payment of fine, satisfactory completion of probation or parole, or
35 release from incarceration, whichever is later; the person has not
36 been convicted of a crime, disorderly persons offense, or petty
37 disorderly persons offense since the time of the conviction; and the
38 court finds in its discretion that expungement is in the public
39 interest, giving due consideration to the nature of the offense, and
40 the applicant's character and conduct since conviction.

41 In determining whether compelling circumstances exist for the
42 purposes of paragraph (1) of this subsection, a court may consider
43 the amount of the fine or fines imposed, the person's age at the time

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 of the offense, the person's financial condition and other relevant
2 circumstances regarding the person's ability to pay.

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

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

16 Records of conviction for the following crimes specified in the
17 New Jersey Code of Criminal Justice shall not be subject to
18 expungement: Section 2C:11-1 et seq. (Criminal Homicide), except
19 death by auto as specified in section 2C:11-5; section 2C:13-1
20 (Kidnapping); section 2C:13-6 (Luring or Enticing); Section 1 of
21 P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); section 2C:14-2
22 (Aggravated Sexual Assault); section 2C:14-3a (Aggravated
23 Criminal Sexual Contact); if the victim is a minor, section 2C:14-3b
24 (Criminal Sexual Contact); if the victim is a minor and the offender
25 is not the parent of the victim, section 2C:13-2 (Criminal Restraint)
26 or section 2C:13-3 (False Imprisonment); section 2C:15-1
27 (Robbery); section 2C:17-1 (Arson and Related Offenses); section
28 2C:24-4a. (Endangering the welfare of a child by engaging in
29 sexual conduct which would impair or debauch the morals of the
30 child); section 2C:24-4b(4) (Endangering the welfare of a child);
31 section 2C:24-4b(3) (Causing or permitting a child to engage in a
32 prohibited sexual act); section 2C:24:4b(5)(a) (Selling or
33 manufacturing child pornography); section 2C:28-1 (Perjury);
34 section 2C:28-2 (False Swearing); section 2C:34-1b(4) (Knowingly
35 promoting the prostitution of the actor's child); section 2 of
36 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
37 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
38 Weapons, Biological Agents or Nuclear or Radiological Devices);
39 and conspiracies or attempts to commit such crimes.

40 Records of conviction for any crime committed by a person
41 holding any public office, position or employment, elective or
42 appointive, under the government of this State or any agency or
43 political subdivision thereof and any conspiracy or attempt to
44 commit such a crime shall not be subject to expungement if the
45 crime involved or touched such office, position or employment.

46 c. In the case of conviction for the sale or distribution of a
47 controlled dangerous substance or possession thereof with intent to

1 sell, expungement shall be denied except where the crimes [relate
2 to] involve:

3 (1) Marijuana, where the total quantity sold, distributed or
4 possessed with intent to sell was 25 grams or less[, or] ;

5 (2) Hashish, where the total quantity sold, distributed or
6 possessed with intent to sell was five grams or less; or

7 (3) Any controlled dangerous substance provided that the
8 conviction is of the third or fourth degree, where the court finds that
9 expungement is consistent with the public interest, giving due
10 consideration to the nature of the offense and the petitioner's
11 character and conduct since conviction.

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

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

19

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

22 1. a. Any person adjudged a juvenile delinquent may have such
23 adjudication expunged as follows:

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

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

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

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

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

38 (1) Five years have elapsed since the final discharge of the
39 person from legal custody or supervision or 5 years have elapsed
40 after the entry of any other court order not involving custody or
41 supervision, except that periods of post-incarceration supervision
42 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
43 considered in calculating the five-year period for purposes of this
44 paragraph;

45 (2) He has not been convicted of a crime, or a disorderly or petty
46 disorderly persons offense, or adjudged a delinquent, or in need of
47 supervision, during the 5 years prior to the filing the petition, and

1 no proceeding or complaint is pending seeking such a conviction or
2 adjudication, except that periods of post-incarceration supervision
3 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
4 considered in calculating the five-year period for purposes of this
5 paragraph;

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

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

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

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

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

17

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

19 2C:52-14.

20 A petition for expungement filed pursuant to this chapter shall be
21 denied when:

22 a. Any statutory prerequisite, including any provision of this
23 chapter, is not fulfilled or there is any other statutory basis for
24 denying relief.

25 b. The need for the availability of the records outweighs the
26 desirability of having a person freed from any disabilities as
27 otherwise provided in this chapter. An application may be denied
28 under this subsection only following objection of a party given
29 notice pursuant to 2C:52-10 and the burden of asserting such
30 grounds shall be on the objector, except that in regard to
31 expungement sought for third or fourth degree drug offenses
32 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
33 court shall consider whether this factor applies regardless of
34 whether any party objects on this basis.

35 c. In connection with a petition under section 2C:52-6, the
36 acquittal, discharge or dismissal of charges resulted from a plea
37 bargaining agreement involving the conviction of other charges.
38 This bar, however, shall not apply once the conviction is itself
39 expunged.

40 d. The arrest or conviction sought to be expunged is, at the time
41 of hearing, the subject matter of civil litigation between the
42 petitioner or his legal representative and the State, any
43 governmental entity thereof or any State agency and the
44 representatives or employees of any such body.

45 e. A person has had a previous criminal conviction expunged
46 regardless of the lapse of time between the prior expungement, or

1 sealing under prior law, and the present petition. This provision
2 shall not apply:

3 (1) When the person is seeking the expungement of a municipal
4 ordinance violation or,

5 (2) When the person is seeking the expungement of records
6 pursuant to section 2C:52-6.

7 f. The person seeking the relief of expungement of a conviction
8 for a disorderly persons, petty disorderly persons, or criminal
9 offense has prior to or subsequent to said conviction been granted
10 the dismissal of criminal charges following completion of a
11 supervisory treatment or other diversion program.

12 (cf: N.J.S.2C:52-14)

13

14 4. This act shall take effect on the 60th day after enactment.

15

16

17

STATEMENT

18

19 This bill changes the criteria for expungement of criminal
20 convictions and adjudications of delinquency.

21 Section 1 of the bill reduces the amount of time that must elapse
22 before a person convicted of an indictable offense is eligible for
23 expungement. Under current law, subsection a. of N.J.S.2C:52-2
24 requires a person to wait 10 years from the date of his conviction,
25 payment of fine, satisfactory completion of probation or parole, or
26 release from incarceration, whichever is later, before applying to
27 expunge a conviction for an indictable offense. The bill would
28 allow expungement for an indictable offense although less than 10
29 years has expired if the court finds that:

- 30
- 31 • Less than 10 years has expired from the satisfaction of a
32 fine, but the 10-year time requirement is otherwise satisfied,
33 and the court finds that the person substantially complied
34 with any payment plan ordered by the court, or could not do
35 so due to compelling circumstances affecting his ability to
36 satisfy the fine; or
 - 37 • At least five years has expired from the date of conviction,
38 payment of fine, satisfactory completion of probation or
39 parole, or release from incarceration, whichever is later; the
40 person has not been convicted of a crime, disorderly persons
41 offense, or petty disorderly persons offense since the time of
42 the conviction; and the court finds in its discretion that
43 expungement is in the public interest, giving due
44 consideration to the nature of the offense, and the applicant's
45 character and conduct since conviction.

45 In determining whether compelling circumstances exist, a court
46 may consider the amount of the fine or fines imposed, the person's

1 age at the time of the offense, the person's financial condition and
2 other relevant circumstances regarding the person's ability to pay.

3 Section 1 of the bill adds the following crimes to the list of
4 crimes that may not be expunged:

- 5 • Human Trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8);
- 6 • Causing or permitting a child to engage in a prohibited
7 sexual act, N.J.S.2C:24-4b(3);
- 8 • Selling or manufacturing child pornography,
9 N.J.S.2C:24:4b(5)(a);
- 10 • Knowingly promoting the prostitution of the actor's child,
11 N.J.S.2C:34-1b(4);
- 12 • Terrorism, section 2 of P.L.2002, c.26 (C.2C:38-2); and
- 13 • Producing or Possessing Chemical Weapons, Biological
14 Agents or Nuclear or Radiological Devices, subsection a. of
15 section 3 of P.L.2002, c.26 (C.2C:38-3);

16 Section 1 of the bill also creates an exception to the prohibition
17 on expunging convictions for the sale or distribution of a controlled
18 dangerous substance or possession thereof with intent to sell. The
19 exception would apply if the convictions involve crimes of the third
20 or fourth degree, and the court finds that expungement is consistent
21 with the public interest, giving due consideration to the nature of
22 the offense, and the petitioner's character and conduct since
23 conviction. Under current law, a person may not have their
24 conviction for the sale or distribution of a controlled dangerous
25 substance or possession thereof with intent to sell expunged unless
26 it relates to the sale, distribution, or possession of a small amount of
27 marijuana or hashish.

28 Section 2 of the bill changes the criteria for expunging a record
29 of an adjudication of delinquency. Under current law, to expunge
30 an adjudication of delinquency, a minimum of five years must
31 elapse after final discharge of the person from legal custody or
32 supervision or after the entry of any other court order not involving
33 custody or supervision. Also, the person must not have been
34 convicted of a crime, or a disorderly or petty disorderly persons
35 offense, or adjudged a delinquent, or in need of supervision, during
36 the five years prior to the filing of the petition for expungement.
37 Section 2 of the bill would except periods of post-incarceration
38 supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44)
39 from these five-year periods.

40 Section 3 of the bill amends N.J.S.2C:52-14 to require a court to
41 determine whether the need for the availability of a person's
42 criminal record outweighs the desirability of freeing the person
43 from the disabilities normally associated with a criminal conviction
44 in cases of third and fourth degree drug offenses. This change is
45 necessitated by section 1 of the bill, which authorizes expungement
46 of third and fourth degree convictions for the sale or distribution of
47 a controlled dangerous substance or possession thereof with intent

1 to sell. Under current law, a court only weighs this consideration if
2 an objection to the expungement is raised by a law enforcement
3 official.

4 This bill embodies a recommendation of the Governor's *Strategy*
5 *for Safe Streets and Neighborhoods*, announced earlier this year.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1771

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2008

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1771.

This bill changes the criteria for expungement of criminal convictions and adjudications of delinquency.

Section 1 of the bill reduces the amount of time that must elapse before a person convicted of an indictable offense is eligible for expungement. Under current law, subsection a. of N.J.S.2C:52-2 requires a person to wait 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, before applying to expunge a conviction for an indictable offense. The bill would allow expungement for an indictable offense although less than 10 years has expired if the court finds that:

- Less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered by the court, or could not do so due to compelling circumstances affecting his ability to satisfy the fine; or
- At least five years has expired from the date of conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction.

In determining whether compelling circumstances exist, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

Section 1 of the bill adds the following crimes to the list of crimes that cannot be expunged:

- Human Trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8);
- Causing or permitting a child to engage in a prohibited sexual act, N.J.S.2C:24-4b(3);
- Selling or manufacturing child pornography, N.J.S.2C:24:4b(5)(a);
- Knowingly promoting the prostitution of the actor's child, N.J.S.2C:34-1b(4);
- Terrorism, section 2 of P.L.2002, c.26 (C.2C:38-2); and
- Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices, subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3).

Section 1 of the bill also allows expungement of certain convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Expungement would be allowed if the convictions involve crimes of the third or fourth degree, and the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense, and the petitioner's character and conduct since conviction. Under current law, a person may not have his conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell expunged unless it relates to the sale, distribution, or possession of a small amount of marijuana or hashish.

The committee amended section 1 to clarify the language concerning the petitioner's motion for expungement. The current language appears to require two appearances before a judge: one to determine if a petition may be filed and a second for consideration on the merits. The amendments provide that there is only one hearing. A defendant will be allowed to file a petition and, subsequently, the court will consider the petition, apply the statutory factors and decide whether to permit expungement under the listed criteria.

Section 2 of the bill changes the criteria for expunging a record of an adjudication of delinquency. Under current law, to expunge an adjudication of delinquency, a minimum of five years must elapse after final discharge of the person from legal custody or supervision or after the entry of any other court order not involving custody or supervision. Also, the person must not have been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the five years prior to the filing of the petition for expungement. Section 2 of the bill would except periods of post-incarceration supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) from these five-year periods.

Section 3 of the bill amends N.J.S.2C:52-14 to require a court to determine whether the need for the availability of a person's criminal record outweighs the desirability of freeing the person from the disabilities normally associated with a criminal conviction in cases of third and fourth degree drug offenses. This change is necessitated by section 1 of the bill, which authorizes expungement of third and fourth

degree convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Under current law, a court only weighs this consideration if an objection to the expungement is raised by a law enforcement official.

This bill embodies a recommendation of the Governor's *Strategy for Safe Streets and Neighborhoods*, announced in 2007.

This bill was pre-filed for introduction in the 2008-2009 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

Amends section 1 of the bill to clarify the language concerning the petitioner's motion for expungement. The current language appears to require two appearances before a judge: one to determine if a petition may be filed and then consideration on the merits. The amendments provide that there is only one hearing. Any defendant will be allowed to file a petition and, subsequently, the court will consider the petition, apply the statutory factors and decide whether to permit expungement under the listed criteria.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1771

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2009

The Senate Judiciary Committee reports favorably Assembly Bill No. 1771.

This bill makes some changes to the criteria for expungement of criminal convictions and adjudications of delinquency and also adds to the list of crimes that may not be expunged.

Expungement of Indictable Offenses Generally Section 1 of the bill reduces the amount of time that must elapse before a person convicted of an indictable offense is eligible for expungement. Under current law, subsection a. of N.J.S.2C:52-2 requires a person to wait 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, before applying to expunge a conviction for an indictable offense. The bill would allow expungement for an indictable offense although less than 10 years has expired if the court finds that:

- Less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered by the court, or could not do so due to compelling circumstances affecting his ability to satisfy the fine; or
- At least five years has expired from the date of conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction.

In determining whether compelling circumstances exist, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

Crimes that May Not Be Expunged Section 1 of the bill also adds the following crimes to the list of crimes that cannot be expunged:

- Human Trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8);
- Causing or permitting a child to engage in a prohibited sexual act, N.J.S.2C:24-4b(3);
- Selling or manufacturing child pornography, N.J.S.2C:24:4b(5)(a);
- Knowingly promoting the prostitution of the actor's child, N.J.S.2C:34-1b(4);
- Terrorism, section 2 of P.L.2002, c.26 (C.2C:38-2); and
- Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices, subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3).

Expungement of Certain Drug Crimes Section 1 of the bill also allows expungement of certain convictions for the sale or distribution of a controlled dangerous substance (CDS) or possession thereof with intent to sell. Expungement would be allowed if the convictions involve crimes of the third or fourth degree, and the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense, and the petitioner's character and conduct since conviction. Under current law, a person may not have his conviction for the sale or distribution of a CDS or possession thereof with intent to sell expunged unless it relates to the sale, distribution, or possession with intent to sell a small amount of marijuana or hashish.

Expungement of Delinquency Adjudications Section 2 of the bill changes the criteria for expunging a record of an adjudication of delinquency. Under current law, to expunge an adjudication of delinquency, a minimum of five years must elapse after final discharge of the person from legal custody or supervision or after the entry of any other court order not involving custody or supervision. Also, the person must not have been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the five years prior to the filing of the petition for expungement. Section 2 of the bill would except periods of post-incarceration supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) from these five-year periods.

Need for Availability of Criminal Records Factor Section 3 of the bill amends N.J.S.2C:52-14 to require a court to determine whether the need for the availability of a person's criminal record outweighs the desirability of freeing the person from the disabilities normally associated with a criminal conviction in cases of third and fourth degree drug offenses. This change is necessitated by section 1 of the bill, which authorizes expungement of third and fourth degree convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Under current law,

a court only weighs this consideration if an objection to the expungement is raised by a law enforcement official.

This bill embodies a recommendation of the Governor's *Strategy for Safe Streets and Neighborhoods*, announced in 2007.

This bill is identical to Senate, No. 3061.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 1771
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: DECEMBER 1, 2008

SUMMARY

Synopsis: Revises eligibility for expungement of criminal and juvenile delinquency records.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary.

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate - See comments below		

- The Office of Legislative Services **concurs** with the Executive estimate.
- The bill changes the criteria for expungement of criminal convictions and adjudications of delinquency.
- The Administrative Office of the Courts (AOC) states that the Judiciary is unable to accurately determine the fiscal impact of this legislation.

BILL DESCRIPTION

Assembly Bill No. 1771 (1R) of 2008 changes the criteria for expungement of criminal convictions and adjudications of delinquency.

Section 1 of the bill reduces the amount of time that must elapse before a person convicted of an indictable offense is eligible for expungement. Under current law, subsection a. of N.J.S.2C:52-2 requires a person to wait 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, before applying to expunge a conviction for an indictable offense. The bill would allow expungement for an indictable offense although less than 10 years has expired if the court finds that:

- Less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially

complied with any payment plan ordered by the court, or could not do so due to compelling circumstances affecting his ability to satisfy the fine; or

- At least five years has expired from the date of conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction.

In determining whether compelling circumstances exist, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

Section 1 of the bill adds the following crimes to the list of crimes that cannot be expunged:

- Human Trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8);
- Causing or permitting a child to engage in a prohibited sexual act, N.J.S.2C:24-4b(3);
- Selling or manufacturing child pornography, N.J.S.2C:24:4b(5)(a);
- Knowingly promoting the prostitution of the actor's child, N.J.S.2C:34-1b(4);
- Terrorism, section 2 of P.L.2002, c.26 (C.2C:38-2); and
- Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices, subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3).

Section 1 of the bill also allows expungement of certain convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Expungement would be allowed if the convictions involve crimes of the third or fourth degree, and the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense, and the petitioner's character and conduct since conviction. Under current law, a person may not have his conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell expunged unless it relates to the sale, distribution, or possession of a small amount of marijuana or hashish.

The committee amended section 1 to clarify the language concerning the petitioner's motion for expungement. The current language appears to require two appearances before a judge: one to determine if a petition may be filed and a second for consideration on the merits. The amendments provide that there is only one hearing. A defendant will be allowed to file a petition and, subsequently, the court will consider the petition, apply the statutory factors and decide whether to permit expungement under the listed criteria.

Section 2 of the bill changes the criteria for expunging a record of an adjudication of delinquency. Under current law, to expunge an adjudication of delinquency, a minimum of five years must elapse after final discharge of the person from legal custody or supervision or after the entry of any other court order not involving custody or supervision. Also, the person must not have been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the five years prior to the filing of the petition for expungement. Section 2 of the bill would except periods of post-incarceration supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) from these five-year periods.

Section 3 of the bill amends N.J.S.2C:52-14 to require a court to determine whether the need for the availability of a person's criminal record outweighs the desirability of freeing the person from the disabilities normally associated with a criminal conviction in cases of third and fourth degree drug offenses. This change is necessitated by section 1 of the bill, which authorizes expungement of third and fourth degree convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Under current law, a court only

weighs this consideration if an objection to the expungement is raised by a law enforcement official.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The AOC states that according to statistical data maintained by the Judiciary, the courts heard a total of 6,735 petitions for expungement during 2007. In addition, 223 delinquency complaint expungements were processed by the Family Part during the same period.

The AOC notes that although it is possible that loosening the requirements for expungement provided by this legislation could result in an increase in the number of expungement petitions that would need to be heard by the Criminal and Family Courts, thereby impacting judicial resources, this cannot be estimated with any certainty because there is no historical data from which to draw this determination conclusively. Moreover, the amount of revenue (\$52.50 per expungement petition) derived from an increase in the number of expungement petitions might offset, at least in part, a portion of any costs incurred by enactment of the legislation. In this regard, the Judiciary is unable to accurately determine the fiscal impact of this legislation.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services concurs with the Executive estimate.

Section: Judiciary
Analyst: Anne Raughley
Principal Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 3061

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 23, 2009

Sponsored by:

Senator RONALD L. RICE

District 28 (Essex)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Revises eligibility for expungement of criminal and juvenile delinquency records.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/8/2010)

S3061 RICE

2

1 AN ACT concerning expungement of criminal and juvenile
2 delinquency records and amending N.J.S.2C:52-2, P.L.1980,
3 c.163, and N.J.S.2C:52-14.

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

7
8 1. N.J.S.2C:52-2 is amended to read as follows:
9 2C:52-2. Indictable Offenses.

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

22 Notwithstanding the provisions of the preceding paragraph, a
23 petition may be filed and presented, and the court may grant an
24 expungement pursuant to this section, although less than 10 years
25 has expired in accordance with the requirements of the preceding
26 paragraph where the court finds:

27 (1) less than 10 years has expired from the satisfaction of a fine,
28 but the 10-year time requirement is otherwise satisfied, and the
29 court finds that the person substantially complied with any payment
30 plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so
31 due to compelling circumstances affecting his ability to satisfy the
32 fine; or

33 (2) at least five years has expired from the date of his
34 conviction, payment of fine, satisfactory completion of probation or
35 parole, or release from incarceration, whichever is later; the person
36 has not been convicted of a crime, disorderly persons offense, or
37 petty disorderly persons offense since the time of the conviction;
38 and the court finds in its discretion that expungement is in the
39 public interest, giving due consideration to the nature of the
40 offense, and the applicant's character and conduct since conviction.

41 In determining whether compelling circumstances exist for the
42 purposes of paragraph (1) of this subsection, a court may consider
43 the amount of the fine or fines imposed, the person's age at the time
44 of the offense, the person's financial condition and other relevant
45 circumstances regarding the person's ability to pay.

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.

S3061 RICE

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

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

14 Records of conviction for the following crimes specified in the
15 New Jersey Code of Criminal Justice shall not be subject to
16 expungement: Section 2C:11-1 et seq. (Criminal Homicide), except
17 death by auto as specified in section 2C:11-5; section 2C:13-1
18 (Kidnapping); section 2C:13-6 (Luring or Enticing); section 1 of
19 P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); section 2C:14-2
20 (Aggravated Sexual Assault); section 2C:14-3a (Aggravated
21 Criminal Sexual Contact); if the victim is a minor, section 2C:14-3b
22 (Criminal Sexual Contact); if the victim is a minor and the offender
23 is not the parent of the victim, section 2C:13-2 (Criminal Restraint)
24 or section 2C:13-3 (False Imprisonment); section 2C:15-1
25 (Robbery); section 2C:17-1 (Arson and Related Offenses); section
26 2C:24-4a. (Endangering the welfare of a child by engaging in
27 sexual conduct which would impair or debauch the morals of the
28 child); section 2C:24-4b(4) (Endangering the welfare of a child);
29 section 2C:24-4b. (3) (Causing or permitting a child to engage in a
30 prohibited sexual act); section 2C:24:4b.(5)(a) (Selling or
31 manufacturing child pornography); section 2C:28-1 (Perjury);
32 section 2C:28-2 (False Swearing); section 2C:34-1b.(4) (Knowingly
33 promoting the prostitution of the actor's child); section 2 of
34 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
35 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
36 Weapons, Biological Agents or Nuclear or Radiological Devices);
37 and conspiracies or attempts to commit such crimes.

38 Records of conviction for any crime committed by a person
39 holding any public office, position or employment, elective or
40 appointive, under the government of this State or any agency or
41 political subdivision thereof and any conspiracy or attempt to
42 commit such a crime shall not be subject to expungement if the
43 crime involved or touched such office, position or employment.

44 c. In the case of conviction for the sale or distribution of a
45 controlled dangerous substance or possession thereof with intent to
46 sell, expungement shall be denied except where the crimes [relate
47 to] involve:

S3061 RICE

4

1 (1) Marijuana, where the total quantity sold, distributed or
2 possessed with intent to sell was 25 grams or less **[, or]** ;

3 (2) Hashish, where the total quantity sold, distributed or
4 possessed with intent to sell was five grams or less; or

5 (3) Any controlled dangerous substance provided that the
6 conviction is of the third or fourth degree, where the court finds that
7 expungement is consistent with the public interest, giving due
8 consideration to the nature of the offense and the petitioner's
9 character and conduct since conviction.

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

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

17

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

20 1. a. Any person adjudged a juvenile delinquent may have
21 such adjudication expunged as follows:

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

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

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

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

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

36 (1) Five years have elapsed since the final discharge of the
37 person from legal custody or supervision or 5 years have elapsed
38 after the entry of any other court order not involving custody or
39 supervision, except that periods of post-incarceration supervision
40 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), shall not be
41 considered in calculating the five-year period for purposes of this
42 paragraph;

43 (2) He has not been convicted of a crime, or a disorderly or
44 petty disorderly persons offense, or adjudged a delinquent, or in
45 need of supervision, during the 5 years prior to the filing the
46 petition, and no proceeding or complaint is pending seeking such a
47 conviction or adjudication, except that periods of post-incarceration
48 supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44),

1 shall not be considered in calculating the five-year period for
2 purposes of this paragraph;

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

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

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

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

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

14

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

16 2C:52-14. A petition for expungement filed pursuant to this
17 chapter shall be denied when:

18 a. Any statutory prerequisite, including any provision of this
19 chapter, is not fulfilled or there is any other statutory basis for
20 denying relief.

21 b. The need for the availability of the records outweighs the
22 desirability of having a person freed from any disabilities as
23 otherwise provided in this chapter. An application may be denied
24 under this subsection only following objection of a party given
25 notice pursuant to 2C:52-10 and the burden of asserting such
26 grounds shall be on the objector, except that in regard to
27 expungement sought for third or fourth degree drug offenses
28 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
29 court shall consider whether this factor applies regardless of
30 whether any party objects on this basis.

31 c. In connection with a petition under section 2C:52-6, the
32 acquittal, discharge or dismissal of charges resulted from a plea
33 bargaining agreement involving the conviction of other charges.
34 This bar, however, shall not apply once the conviction is itself
35 expunged.

36 d. The arrest or conviction sought to be expunged is, at the
37 time of hearing, the subject matter of civil litigation between the
38 petitioner or his legal representative and the State, any
39 governmental entity thereof or any State agency and the
40 representatives or employees of any such body.

41 e. A person has had a previous criminal conviction expunged
42 regardless of the lapse of time between the prior expungement, or
43 sealing under prior law, and the present petition. This provision
44 shall not apply:

45 (1) When the person is seeking the expungement of a municipal
46 ordinance violation or,

47 (2) When the person is seeking the expungement of records
48 pursuant to section 2C:52-6.

1 f. The person seeking the relief of expungement of a
2 conviction for a disorderly persons, petty disorderly persons, or
3 criminal offense has prior to or subsequent to said conviction been
4 granted the dismissal of criminal charges following completion of a
5 supervisory treatment or other diversion program.

6 (cf: N.J.S.2C:52-14)

7
8 4. This act shall take effect on the 60th day after enactment.

9
10
11 STATEMENT

12
13 This bill changes the criteria for expungement of criminal
14 convictions and adjudications of delinquency.

15 Section 1 of the bill reduces the amount of time that must elapse
16 before a person convicted of an indictable offense is eligible for
17 expungement. Under current law, subsection a. of N.J.S.2C:52-2
18 requires a person to wait 10 years from the date of his conviction,
19 payment of fine, satisfactory completion of probation or parole, or
20 release from incarceration, whichever is later, before applying to
21 expunge a conviction for an indictable offense. Under this bill, a
22 defendant would be allowed to file a petition and, subsequently, the
23 court would consider the petition, apply the statutory factors and
24 decide whether to permit expungement under the listed criteria.
25 The bill would allow expungement for an indictable offense
26 although less than 10 years has expired if the court finds that:

- 27
- 28 • Less than 10 years has expired from the satisfaction of a
29 fine, but the 10-year time requirement is otherwise satisfied,
30 and the court finds that the person substantially complied
31 with any payment plan ordered by the court, or could not do
32 so due to compelling circumstances affecting his ability to
33 satisfy the fine; or
 - 34 • At least five years has expired from the date of conviction,
35 payment of fine, satisfactory completion of probation or
36 parole, or release from incarceration, whichever is later; the
37 person has not been convicted of a crime, disorderly persons
38 offense, or petty disorderly persons offense since the time of
39 the conviction; and the court finds in its discretion that
40 expungement is in the public interest, giving due
41 consideration to the nature of the offense, and the applicant's
42 character and conduct since conviction.

42 In determining whether compelling circumstances exist, a court
43 may consider the amount of the fine or fines imposed, the person's
44 age at the time of the offense, the person's financial condition and
45 other relevant circumstances regarding the person's ability to pay.

46 Section 1 of the bill adds the following crimes to the list of
47 crimes that cannot be expunged:

- 48
- Human Trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8);

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- 1 • Causing or permitting a child to engage in a prohibited
2 sexual act, N.J.S.2C:24-4b(3);
- 3 • Selling or manufacturing child pornography,
4 N.J.S.2C:24:4b(5)(a);
- 5 • Knowingly promoting the prostitution of the actor's child,
6 N.J.S.2C:34-1b(4);
- 7 • Terrorism, section 2 of P.L.2002, c.26 (C.2C:38-2); and
- 8 • Producing or Possessing Chemical Weapons, Biological
9 Agents or Nuclear or Radiological Devices, subsection a. of
10 section 3 of P.L.2002, c.26 (C.2C:38-3).

11 Section 1 of the bill also allows expungement of certain
12 convictions for the sale or distribution of a controlled dangerous
13 substance or possession thereof with intent to sell. Expungement
14 would be allowed if the convictions involve crimes of the third or
15 fourth degree, and the court finds that expungement is consistent
16 with the public interest, giving due consideration to the nature of
17 the offense, and the petitioner's character and conduct since
18 conviction. Under current law, a person may not have his
19 conviction for the sale or distribution of a controlled dangerous
20 substance or possession thereof with intent to sell expunged unless
21 it relates to the sale, distribution, or possession of a small amount of
22 marijuana or hashish..

23 Section 2 of the bill changes the criteria for expunging a record
24 of an adjudication of delinquency. Under current law, to expunge
25 an adjudication of delinquency, a minimum of five years must
26 elapse after final discharge of the person from legal custody or
27 supervision or after the entry of any other court order not involving
28 custody or supervision. Also, the person must not have been
29 convicted of a crime, or a disorderly or petty disorderly persons
30 offense, or adjudged a delinquent, or in need of supervision, during
31 the five years prior to the filing of the petition for expungement.
32 Section 2 of the bill would except periods of post-incarceration
33 supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44)
34 from these five-year periods.

35 Section 3 of the bill amends N.J.S.2C:52-14 to require a court to
36 determine whether the need for the availability of a person's
37 criminal record outweighs the desirability of freeing the person
38 from the disabilities normally associated with a criminal conviction
39 in cases of third and fourth degree drug offenses. This change is
40 necessitated by section 1 of the bill, which authorizes expungement
41 of third and fourth degree convictions for the sale or distribution of
42 a controlled dangerous substance or possession thereof with intent
43 to sell. Under current law, a court only weighs this consideration if
44 an objection to the expungement is raised by a law enforcement
45 official.

46 This bill embodies a recommendation of the Governor's *Strategy*
47 *for Safe Streets and Neighborhoods*, announced in 2007.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3061

STATE OF NEW JERSEY

DATED: DECEMBER 7, 2009

The Senate Judiciary Committee reports favorably Senate Bill No. 3061.

This bill makes some changes to the criteria for expungement of criminal convictions and adjudications of delinquency and also adds to the list of crimes that may not be expunged.

Expungement of Indictable Offenses Generally Section 1 of the bill reduces the amount of time that must elapse before a person convicted of an indictable offense is eligible for expungement. Under current law, subsection a. of N.J.S.2C:52-2 requires a person to wait 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, before applying to expunge a conviction for an indictable offense. The bill would allow expungement for an indictable offense although less than 10 years has expired if the court finds that:

- Less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered by the court, or could not do so due to compelling circumstances affecting his ability to satisfy the fine; or
- At least five years has expired from the date of conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction.

In determining whether compelling circumstances exist, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

Crimes that May Not Be Expunged Section 1 of the bill also adds the following crimes to the list of crimes that cannot be expunged:

- Human Trafficking, section 1 of P.L.2005, c.77 (C.2C:13-8);
- Causing or permitting a child to engage in a prohibited sexual act, N.J.S.2C:24-4b(3);
- Selling or manufacturing child pornography, N.J.S.2C:24:4b(5)(a);
- Knowingly promoting the prostitution of the actor's child, N.J.S.2C:34-1b(4);
- Terrorism, section 2 of P.L.2002, c.26 (C.2C:38-2); and
- Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices, subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3).

Expungement of Certain Drug Crimes Section 1 of the bill also allows expungement of certain convictions for the sale or distribution of a controlled dangerous substance (CDS) or possession thereof with intent to sell. Expungement would be allowed if the convictions involve crimes of the third or fourth degree, and the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense, and the petitioner's character and conduct since conviction. Under current law, a person may not have his conviction for the sale or distribution of a CDS or possession thereof with intent to sell expunged unless it relates to the sale, distribution, or possession with intent to sell a small amount of marijuana or hashish.

Expungement of Delinquency Adjudications Section 2 of the bill changes the criteria for expunging a record of an adjudication of delinquency. Under current law, to expunge an adjudication of delinquency, a minimum of five years must elapse after final discharge of the person from legal custody or supervision or after the entry of any other court order not involving custody or supervision. Also, the person must not have been convicted of a crime, or a disorderly or petty disorderly persons offense, or adjudged a delinquent, or in need of supervision, during the five years prior to the filing of the petition for expungement. Section 2 of the bill would except periods of post-incarceration supervision pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44) from these five-year periods.

Need for Availability of Criminal Records Factor Section 3 of the bill amends N.J.S.2C:52-14 to require a court to determine whether the need for the availability of a person's criminal record outweighs the desirability of freeing the person from the disabilities normally associated with a criminal conviction in cases of third and fourth degree drug offenses. This change is necessitated by section 1 of the bill, which authorizes expungement of third and fourth degree convictions for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell. Under current law, a court only weighs this consideration if an objection to the expungement is raised by a law enforcement official.

This bill embodies a recommendation of the Governor's *Strategy for Safe Streets and Neighborhoods*, announced in 2007.

This bill is identical to Assembly, No. 1771 (1R).