2C:52-2 & 2C:52-3, 2C:52-5.3 et al
LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2023 **CHAPTER:** 260

NJSA: 2C:52-2 & 2C:52-3, 2C:52-5.3 et al Revises and clarifies certain expungement procedures.

BILL NO: A5826 (Substituted for S4211 (1R))

SPONSOR(S) Quijano, Annette and others

DATE INTRODUCED: 12/4/2023

COMMITTEE: **ASSEMBLY:** Judiciary
Appropriations

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 01/08/2024

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FOLLOWING ARE ATTACHED IF AVAILABLE:

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A5826

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: Yes Judiciary
Appropriations

SENATE: Yes Judiciary

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 12/27/2023
01/11/2024

S4211 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes Judiciary

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FLOOR AMENDMENT STATEMENT: No

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P.L. 2023, CHAPTER 260, ***approved January 12, 2024***
Assembly, No. 5826 ***(Second Reprint)***

CORRECTED COPY

AN ACT concerning expungements and amending 2[N.J.S.2C:52-2, N.J.S.2C:52-3, and P.L.2019, c.269] various parts of the statutory law2.

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

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

2C:52-2. Indictable Offenses.

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

the person has been convicted of one crime under the laws of this State, and does not otherwise have any subsequent conviction for another crime, whether within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime shall not bar presenting an application seeking expungement relief for the criminal conviction that is the subject of the application; or

the person has been convicted of one crime and no more than three disorderly persons or petty disorderly persons offenses under the laws of this State, and does not otherwise have any subsequent conviction for another crime, or any subsequent conviction for another disorderly persons or petty disorderly persons offense such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed three, whether any such crime or offense conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the one criminal conviction and no more than three convictions for disorderly persons or petty disorderly persons offenses that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, all of which are listed in a single judgment of conviction, and does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any

other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that is not listed in a single judgment of conviction shall not bar presenting an application seeking expungement relief for the convictions listed in a single judgment of conviction that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of crimes or crimes and offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the Superior Court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but

shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the **[**most recent conviction for a crime was**]** person resides or a county in which one or more of the person's convictions were adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

Notwithstanding the provisions concerning the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that if expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and

disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the time requirement of five years is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or

(2) at least four but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of **[**paragraph (1) of**]** ²paragraph (1) of² this **[**subsection**]** ²**[**section**]** subsection², a court may consider ²any relevant information provided by the person submitting the application and the prosecutor, including² the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay. ²However, regarding a determination of compelling circumstances pursuant to paragraph (1) of this subsection or a determination of compelling circumstances pursuant to any other part of this section, the person shall not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the application or any other filing.²

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

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except

death by auto as specified in N.J.S.2C:11-5 and strict liability vehicular homicide as specified in section 1 of P.L.2017, c.165 (C.2C:11-5.3); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal Sexual Contact); if the victim is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm); paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or filming a child in a prohibited sexual act or for portrayal in a sexually suggestive manner); paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to engage in a prohibited sexual act or the simulation of an act, or to be portrayed in a sexually suggestive manner); subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child); section 8 of P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices); and conspiracies or attempts to commit such crimes.

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

[2]<u>A person convicted of a crime enumerated in this subsection shall not present an expungement application to the Superior Court for any other crime or offense committed by the person which otherwise is subject to expungement.</u>**]**[2]

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

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was less than one ounce;

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

(3) Any controlled dangerous substance provided that the conviction is of the third or fourth degree, where the court finds that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

d. In the case of a State licensed physician or podiatrist convicted of an offense involving drugs or alcohol or pursuant to section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the petitioner shall notify the State Board of Medical Examiners upon filing an application for expungement and provide the board with a copy thereof. The petitioner shall also provide to the court a certification attesting that the requirements of this subsection were satisfied. Failure to satisfy the requirements of this subsection shall be grounds for denial of the expungement application and, if applicable, administrative discipline by the board.

[2][e. A person convicted of any crime enumerated in this section which is not subject to expungement shall not present an expungement application to the Superior Court for any other crime or offense committed by the person which is subject to expungement.]**[2]**

(cf: P.L.2019, c.269, s.2)

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

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses.

a. **[1]**(1)**[1]** Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application to a court pursuant to this section.

[1](2)**[1]** Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has also been convicted of one or more crimes shall not be eligible to apply for an expungement pursuant to this section, but may present an expungement application to the Superior Court **[1]**in the county in which the person resides or a county in which one or more of the person's convictions were adjudged,**[1]** pursuant to N.J.S.2C:52-2.

b. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement

application pursuant to this section to [1][any court designated by the Rules of Court] the Superior Court in the county in which the person resides or a county in which one or more of the person's convictions were adjudged[1] if:

the person has been convicted, under the laws of this State, on the same or separate occasions of no more than five disorderly persons offenses, no more than five petty disorderly persons offenses, or a combination of no more than five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any subsequent conviction for a disorderly persons or petty disorderly persons offense, whether within this State or any other jurisdiction, such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed five. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the convictions that are the subject of the application, which may include convictions for no more than five disorderly persons or petty disorderly persons offenses, or combination thereof; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which convictions were entered on the same day, and does not otherwise have any subsequent conviction for another offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons or petty disorderly persons offense that was not entered on the same day shall not bar presenting an application seeking expungement relief for the convictions entered on the same day that are the subject of the application; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which offenses or combination of offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual offense, and the person does not otherwise have any subsequent conviction for another offense in addition to those convictions included in the expungement application, whether within this State

or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5,or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation [1]**[**ofN.J.S.2C:36-2**]** <u>of N.J.S.2C:36-2</u>[1], or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

Additionally, for purposes of determining eligibility to present an expungement application to the court pursuant to this section, a conviction for unlawful distribution or dispensing of, possession with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia in violation of N.J.S.2C:36-3 when the paraphernalia is a hypodermic syringe or needle, or for an equivalent crime involving a hypodermic syringe or

needle in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for using or possessing with intent to use drug paraphernalia in violation of N.J.S.2C:36-2 when the paraphernalia is a hypodermic syringe or needle, or possession with intent to use or to distribute a hypodermic syringe or needle in violation of N.J.S.2C:36-6, of for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to [1][a court] the Superior Court[1] in the county in which the [1][most recent conviction for a disorderly persons or petty disorderly persons offense was] person resides or a county in which one or more of the person's convictions were[1] adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition appended to an application shall comply with the requirements of N.J.S.2C:52-1 et seq.

Notwithstanding the provisions of the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the

transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the five-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or

(2) at least three but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of **[**paragraph (1) of**]** ²paragraph (1) of² this **[**subsection**]** ²**[**section**]** subsection², a court may consider ²any relevant information provided by the person submitting the application and the prosecutor, including² the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay. ²However, regarding a determination of compelling circumstances pursuant to paragraph (1) of this subsection or a determination of compelling circumstances pursuant to any other part of this section, the person shall not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the application or any other filing.²

(cf: P.L.2021, c.403, s.1)

3. Section 7 of P.L.2019, c.269 (C.2C:52-5.3) is amended to read as follows:

7. "Clean slate" expungement by petition. a. A person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if the person

has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, one or more municipal violations, or a combination of one or more crimes [and] , offenses, or violations under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. The person may present an application pursuant to this section regardless of whether the person would otherwise be ineligible pursuant to subsection e. of N.J.S.2C:52-14 for having had a previous criminal conviction expunged, or due to having been granted an expungement pursuant to this or any other provision of law.

b. The person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the [most recent conviction for a crime or offense was adjudged] person resides or a county in which one or more of the [2][petitioner's] person's[2] convictions were adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that all the person's convictions, and all records and information pertaining thereto, be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

c. [2](1)[2] Notwithstanding the provisions concerning the ten-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) [2][was satisfied late or][2] is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of ten years is otherwise satisfied, the person may submit the expungement application [and] [2][to the court. In the case of a late payment of the court-ordered financial assessment,] and[2] the court [2][may grant the expungement in accordance with this section if it finds that compelling circumstances exist or in the case of a court-ordered financial assessment that is yet to be satisfied,][2] shall grant [an] [2][the] an[2] expungement in accordance with this section; provided, however, that at the time of the expungement the court shall enter a civil judgment for the unpaid portion of the court-

ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). [2]**[**In determining whether compelling circumstances exist for the purposes of this section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.**]**[2] The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

[2](2) Additionally, an application may be filed and presented, and the court shall grant an expungement pursuant to this section, although less than ten years have expired in accordance with the time requirements when the court finds that the court-ordered financial assessment is satisfied but less than ten years have expired from the date of satisfaction, and the ten-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting the person's ability to satisfy the assessment. In determining whether compelling circumstances exist for the purposes of this paragraph, a court may consider any relevant information provided by the person submitting the application and the prosecutor, including the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay. However, regarding a determination of compelling circumstances pursuant to this paragraph, the person shall not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the application or any other filing.[2]

d. No expungement applications may be filed pursuant to this section after the establishment of the automated "clean slate" process pursuant to subsection a. of section 8 of P.L.2019, c.269 (C.2C:52-5.4).

(cf: P.L.2019, c.269, s.7)

[1]4. N.J.S.2C:52-4 is amended to read as follows:

2C:52-4. Ordinances.

In all cases wherein a person has been found guilty of violating a municipal ordinance of any governmental entity of this State and who has not been convicted of any prior or subsequent crime,

whether within this State or any other jurisdiction, and who has not been adjudged a disorderly person or petty disorderly person on more than two occasions, may, after the expiration of a period of 2 years from the date of his conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52-7 herein to the Superior Court in the county in which the [violation occurred] person resides or a county in which one or more of the person's convictions were adjudged praying that such conviction and all records and information pertaining thereto be expunged.[1]

(cf: P.L.1979, c.178, s.111)

[1]5. N.J.S.2C:52-5 is amended to read as follows:

2C:52-5. Expungement of Records of Young Drug Offenders. Notwithstanding the provisions of N.J.S.2C:52-2 and N.J.S.2C:52-3, after a period of not less than one year following conviction, termination of probation or parole or discharge from custody, whichever is later, any person convicted of an offense under chapter 35 or 36 of this title for the possession or use of a controlled dangerous substance, convicted of violating P.L.1955, c.77, s.3 (C.2A:170-77.5), or convicted of violating P.L.1962, c.113, s.1 (C.2A:170-77.8), and who at the time of the offense was 21 years of age or younger, may apply to the Superior Court in the county wherein the [matter was] person resides or [2][a] the[2] county in which [2][one or more of][2] the person's [2][convictions were] conviction was[2] disposed of for the expungement of such person's conviction and all records pertaining thereto. The relief of expungement under this section shall be granted only if said person has not, prior to the time of hearing, violated any of the conditions of his probation or parole, albeit subsequent to discharge from probation or parole, has not been convicted of any previous or subsequent criminal act or any [2][subsequent or][2] previous [2]or subsequent[2] violation of chapter 35 or 36 of this title or of P.L.1955, c.277, s.3 (C.2A:170-77.5) or of P.L.1962, c.113, s.1 (C.2A:170-77.8), or who has not had a prior or subsequent criminal matter dismissed because of acceptance into a supervisory treatment or other diversion program.

This section shall not apply to any person who has been convicted of the sale or distribution of a controlled dangerous substance or possession with the intent to sell any controlled dangerous substance except:

(1) Marihuana, where the total sold, distributed or possessed with intent to sell was less than one ounce, or

(2) Hashish, where the total amount sold, distributed or possessed with intent to sell was less than five grams.[1]

(cf: P.L.2017, c.244, s.3)

[1]6. Section 5 of P.L.2019, c.269 (C.2C:52-5.1), is amended to read as follows:

5. a. (1) Notwithstanding the requirements of N.J.S.2C:52-2 and N.J.S.2C:52-3 or any other provision of law to the contrary, beginning on the effective date of this section, the following persons may file a petition for an expungement with **[**any court designated by the Rules of Court**]** the Superior Court in the county in which the person resides or a county in which one or more of the person's convictions were adjudged at any time, provided they have satisfied, except as otherwise set forth in this subsection, payment of any court-ordered financial assessment as defined in section 8 of P.L.2017, c.244 (C.2C:52-23.1), satisfactorily completed probation or parole, been released from incarceration, or been discharged from legal custody or supervision at the time of application:

(a) any person who, prior to the development of a system for sealing records from the public pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), was charged with, convicted of, or adjudicated delinquent for, any number of offenses for, or delinquent acts which if committed by an adult would constitute, unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or a violation of that paragraph and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building; or

(b) any person who, prior to the development of a system for sealing records from the public pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), was charged with, convicted of, or adjudicated delinquent for, any number of offenses for, or delinquent acts which if committed by an adult would constitute, obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10; or

(c) any person who, prior to the development of a system for sealing records from the public pursuant to section 6 of P.L.2019, c.269 (C.2C:52-5.2), was charged with, convicted of, or adjudicated delinquent for, any number of offenses for, or delinquent acts which if committed by an adult would constitute, a violation involving marijuana or hashish as described in subparagraph (a) or (b) of this paragraph and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

(2) If, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the provisions of paragraph (1) of this subsection are otherwise satisfied, the person may submit the expungement application and the court shall grant an expungement in accordance with subsection c. of this section; provided, however, that at the time the expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52:23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

b. (1) Notwithstanding the requirements of N.J.S.2C:52-2 and N.J.S.2C:52-3 or any other provision of law to the contrary, beginning on the effective date of this section, a person who, prior, on, or after that effective date is charged with, convicted of, or adjudicated delinquent for, any number of offenses for, or delinquent acts which if committed by an adult would constitute, unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, may file a petition for an expungement with a court after the expiration of three years from the date of the most recent conviction, payment of any court-ordered financial assessment as defined in section 8 of P.L.2017, c.244 (C.2C:52-23.1), satisfactory completion of probation or parole, release from incarceration, or discharge from legal custody or supervision, whichever is later.

(2) (a) Notwithstanding the provisions concerning the three-year time requirement set forth in paragraph (1) of this subsection, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement is otherwise satisfied, the person may submit the expungement application and the court shall grant an expungement in accordance with subsection c. of this section; provided, however, that at the time the expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State

Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52:23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

(b) Additionally, an application may be filed and presented, and an expungement granted pursuant to subsection c. of this section, although less than three years have expired in accordance with the time requirement set forth in paragraph (1) of this subsection, when the court finds that the court-ordered financial assessment is satisfied but less than three years have expired from the date of satisfaction, and the time requirement of three years is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting the person's ability to satisfy the financial assessment. [2]In determining whether compelling circumstances exist for the purposes of this subparagraph, a court may consider any relevant information provided by the person submitting the application and the prosecutor, including the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay. However, regarding a determination of compelling circumstances pursuant to this subparagraph, the person shall not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the application or other filing.[2]

c. (1) The provisions of N.J.S.2C:52-8 through N.J.S.2C:52-14 shall not apply to an expungement as set forth in this section.

(2) Upon review of the petition, the court shall immediately grant an expungement for each arrest, conviction, or adjudication of delinquency as described in subsection a. or b. of this section, as applicable. The court shall provide copies of the expungement order to the person who is the subject of the petition or that person's representative.

(3) A court order vacating an expungement that is granted to a person pursuant to this subsection may be issued upon an action filed by a county prosecutor with the court that granted the expungement, if filed no later than 30 days after the expungement order was issued, with notice to the person, and a hearing is scheduled at which the county prosecutor shows proof that the expungement was granted in error due to a statutory disqualification to expungement that existed at the time the relief was initially granted.

d. Any public employee or public agency that provides information or records pursuant to this section shall be immune from

criminal and civil liability as a result of an act of commission or omission by that person or entity arising out of and in the course of participation in, or assistance with, in good faith, an expungement. The immunity shall be in addition to and not in limitation of any other immunity provided by law.[1]

(cf: P.L.2019, c.269, s.5)

[1]7. N.J.S.2C:52-6 is amended to read as follows:

2C:52-6. Arrests not resulting in conviction.

a. When a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense, or municipal ordinance violation under the laws of this State or of any governmental entity thereof and proceedings against the person were dismissed, the person was acquitted, or the person was discharged without a conviction or finding of guilt, the Superior Court shall, at the time of dismissal, acquittal, or discharge, or, in any case set forth in paragraph (1) of this subsection, order the expungement of all records and information relating to the arrest.

(1) If proceedings took place in municipal court, the municipal court shall follow procedures developed by the Administrative Director of the Courts.

(2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to an expungement pursuant to this subsection.

(3) An expungement under this subsection shall not be ordered where the dismissal, acquittal, or discharge resulted from a plea bargaining agreement involving the conviction of other charges. This bar, however, shall not apply once the conviction is itself expunged.

(4) The court shall forward a copy of the expungement order to the county prosecutor. The county prosecutor shall promptly distribute copies of the expungement order to appropriate law enforcement agencies and correctional institutions who have custody and control of the records specified in the order so that they may comply with the requirements of N.J.S.2C:52-15.

(5) An expungement related to a dismissal, acquittal, or discharge ordered pursuant to this subsection shall not bar any future expungement.

(6) Where a dismissal of an offense is based on an eligible servicemember's successful participation in a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.), the county prosecutor, on behalf of the eligible servicemember, may move before the court for the expungement of all records and information relating to the arrest and the diversion at the time of dismissal pursuant to this section.

b. When a person did not apply or a prosecutor did not move on behalf of an eligible servicemember for an expungement of an arrest not resulting in a conviction pursuant to subsection a. of this section, the person may at any time following the disposition of proceedings,

present a duly verified petition as provided in N.J.S.2C:52-7 to the Superior Court in the county in which the person resides or [2][a][2] the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.

c. (1) Any person who has had charges dismissed against him pursuant to a program of supervisory treatment pursuant to N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et al.), shall be barred from the relief provided in this section until six months after the entry of the order of dismissal.

(2) A servicemember who has successfully participated in a Veterans Diversion Program pursuant to P.L.2017, c.42 (C.2C:43-23 et al.) may apply for expungement pursuant to this section at any time following the order of dismissal if an expungement was not granted at the time of dismissal.

d. Any person who has been arrested or held to answer for a crime shall be barred from the relief provided in this section where the dismissal, discharge, or acquittal resulted from a determination that the person was insane or lacked the mental capacity to commit the crime charged.[1]

(cf: P.L.2019, c.269, s.4)

[1]8. N.J.S.2C:52-7 is amended to read as follows:

2C:52-7. Petition for expungement. Every petition for expungement filed pursuant to this chapter shall be filed in the Superior Court in the county in which the petitioner resides or a county in which one or more of the petitioner's matters were disposed of, and shall be verified and include:

a. Petitioner's date of birth.

b. Petitioner's date of arrest.

c. The statute or statutes and offense or offenses for which petitioner was arrested and of which petitioner was convicted.

d. The original indictment, summons or complaint number.

e. Petitioner's date of conviction, or date of disposition of the matter if no conviction resulted.

f. The court's disposition of the matter and the punishment imposed, if any.[1]

(cf: P.L.1979, c. 178, s. 114)

[1]9. This act shall take effect immediately.[1]

Revises and clarifies certain expungement procedures.

ASSEMBLY, No. 5826

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 4, 2023

Sponsored by:
Assemblywoman ANNETTE QUIJANO
District 20 (Union)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)

SYNOPSIS

Revises and clarifies certain expungement procedures.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/7/2023)

AN ACT concerning expungements and amending N.J.S.2C:52-2, N.J.S.2C:52-3, and P.L.2019, c.269.

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

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

2C:52-2. Indictable Offenses.

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

the person has been convicted of one crime under the laws of this State, and does not otherwise have any subsequent conviction for another crime, whether within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime shall not bar presenting an application seeking expungement relief for the criminal conviction that is the subject of the application; or

the person has been convicted of one crime and no more than three disorderly persons or petty disorderly persons offenses under the laws of this State, and does not otherwise have any subsequent conviction for another crime, or any subsequent conviction for another disorderly persons or petty disorderly persons offense such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed three, whether any such crime or offense conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the one criminal conviction and no more than three convictions for disorderly persons or petty disorderly persons offenses that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, all of which are listed in a single judgment of conviction, and does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of

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 <u>thus</u> is new matter.

subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that is not listed in a single judgment of conviction shall not bar presenting an application seeking expungement relief for the convictions listed in a single judgment of conviction that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of crimes or crimes and offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the Superior Court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime

within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the **[**most recent conviction for a crime was**]** person resides or a county in which one or more of the person's convictions were adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

Notwithstanding the provisions concerning the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that if expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the

technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the time requirement of five years is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or

(2) at least four but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of **[**paragraph (1) of**]** this **[**subsection**]** section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

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

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in N.J.S.2C:11-5 and strict liability vehicular homicide as specified in section 1 of P.L.2017, c.165 (C.2C:11-5.3); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); subsection a. of N.J.S.2C:14-3

(Aggravated Criminal Sexual Contact); if the victim is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm); paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or filming a child in a prohibited sexual act or for portrayal in a sexually suggestive manner); paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to engage in a prohibited sexual act or the simulation of an act, or to be portrayed in a sexually suggestive manner); subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child); section 8 of P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices); and conspiracies or attempts to commit such crimes.

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

<u>A person convicted of a crime enumerated in this subsection shall not present an expungement application to the Superior Court for any other crime or offense committed by the person which otherwise is subject to expungement.</u>

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

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was less than one ounce;

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

(3) Any controlled dangerous substance provided that the conviction is of the third or fourth degree, where the court finds that compelling circumstances exist to grant the expungement. The

prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

d. In the case of a State licensed physician or podiatrist convicted of an offense involving drugs or alcohol or pursuant to section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the petitioner shall notify the State Board of Medical Examiners upon filing an application for expungement and provide the board with a copy thereof. The petitioner shall also provide to the court a certification attesting that the requirements of this subsection were satisfied. Failure to satisfy the requirements of this subsection shall be grounds for denial of the expungement application and, if applicable, administrative discipline by the board.

e. A person convicted of any crime enumerated in this section which is not subject to expungement shall not present an expungement application to the Superior Court for any other crime or offense committed by the person which is subject to expungement.

(cf: P.L.2019, c.269, s.2)

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

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses.

a. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application to a court pursuant to this section. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has also been convicted of one or more crimes shall not be eligible to apply for an expungement pursuant to this section, but may present an expungement application to the Superior Court pursuant to N.J.S.2C:52-2.

b. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application pursuant to this section to any court designated by the Rules of Court if:

the person has been convicted, under the laws of this State, on the same or separate occasions of no more than five disorderly persons offenses, no more than five petty disorderly persons offenses, or a combination of no more than five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any subsequent conviction for a disorderly persons or petty disorderly persons offense, whether within this State or any other jurisdiction, such that the total number of convictions for

disorderly persons and petty disorderly persons offenses would exceed five. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the convictions that are the subject of the application, which may include convictions for no more than five disorderly persons or petty disorderly persons offenses, or combination thereof; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which convictions were entered on the same day, and does not otherwise have any subsequent conviction for another offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons or petty disorderly persons offense that was not entered on the same day shall not bar presenting an application seeking expungement relief for the convictions entered on the same day that are the subject of the application; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which offenses or combination of offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual offense, and the person does not otherwise have any subsequent conviction for another offense in addition to those convictions included in the expungement application, whether within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5,or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation ofN.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term “court-ordered financial assessment” as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to a court in the county in which the most recent conviction for a disorderly persons or petty disorderly persons offense was adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be

expunged. The petition appended to an application shall comply with the requirements of N.J.S.2C:52-1 et seq.

Notwithstanding the provisions of the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment. Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the five-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or

(2) at least three but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, orN.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of **[**paragraph (1) of**]** this **[**subsection**]** section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the

person's financial condition and other relevant circumstances regarding the person's ability to pay.
(cf: P.L.2019, c.269, s.3)

3. Section 7 of P.L.2019, c.269 (C.2C:52-5.3) is amended to read as follows:

7. "Clean slate" expungement by petition. a. A person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if the person has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, <u>one or more municipal violations,</u> or a combination of one or more crimes **[**and**]** <u>,</u> offenses<u>, or violations</u> under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. The person may present an application pursuant to this section regardless of whether the person would otherwise be ineligible pursuant to subsection e. of N.J.S.2C:52-14 for having had a previous criminal conviction expunged, or due to having been granted an expungement pursuant to this or any other provision of law.

b. The person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the **[**most recent conviction for a crime or offense was adjudged**]** <u>person resides or a county in which one or more of the petitioner’s convictions were adjudged</u>, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that all the person's convictions, and all records and information pertaining thereto, be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

c. Notwithstanding the provisions concerning the ten-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) <u>was satisfied late or</u> is not yet satisfied due to

reasons other than willful noncompliance, but the time requirement of ten years is otherwise satisfied, the person may submit the expungement application **[**and**]** to the court. In the case of a late payment of the court-ordered financial assessment, the court may grant the expungement in accordance with this section if it finds that compelling circumstances exist or in the case of a court-ordered financial assessment that is yet to be satisfied, shall grant **[**an**]** the expungement in accordance with this section; provided, however, that at the time of the expungement the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). In determining whether compelling circumstances exist for the purposes of this section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay. The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

d. No expungement applications may be filed pursuant to this section after the establishment of the automated "clean slate" process pursuant to subsection a. of section 8 of P.L.2019, c.269 (C.2C:52-5.4).

(cf: P.L.2019, c.269, s.7)

4. This act shall take effect immediately.

STATEMENT

This bill makes various revisions to the expungement laws including the “clean slate” provisions of P.L.2019, c.269.

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person’s convictions were adjudged. Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged. The intent of this provision is to allow petitioners more flexibility and access to the expungement process.

Under current law, in determining whether compelling circumstances exist that would affect a person’s ability to satisfy a court-ordered financial assessment, a court may consider the

amount of any court-ordered financial assessment 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. Under the provisions of this bill, a court may consider these same factors in determining whether compelling circumstances exist under other provisions in the statute

The bill also clarifies that a conviction of any of the crimes enumerated in current law, including but not limited to, criminal homicide, kidnapping, luring or enticing, human trafficking, sexual and aggravated sexual assault, robbery, endangering the welfare of a minor, and terrorism constitute a complete bar to expungement. Further, the bill clarifies that a person may submit an application for expungement under the “clean slate” law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations.

Finally, the bill provides that the court may grant an expungement to an otherwise eligible person whose court-ordered financial assessments were paid late.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5826

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2023

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 5826.

As amended and reported, this bill makes various revisions to the expungement laws including the "clean slate" provisions of P.L.2019, c.269.

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person's convictions were adjudged. Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged. The intent of this provision is to allow petitioners more flexibility and access to the expungement process.

Under current law, in determining whether compelling circumstances exist that would affect a person's ability to satisfy a court-ordered financial assessment, a court may consider the amount of any court-ordered financial assessment 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. Under the provisions of this bill, a court may consider these same factors in determining whether compelling circumstances exist under other provisions in the statute.

The bill also clarifies that a conviction of any of the crimes enumerated in current law, including but not limited to, criminal homicide, kidnapping, luring or enticing, human trafficking, sexual and aggravated sexual assault, robbery, endangering the welfare of a minor, and terrorism constitute a complete bar to expungement. Further, the bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations.

Finally, the bill provides that the court may grant an expungement to an otherwise eligible person whose court-ordered financial assessments were paid late.

COMMITTEE AMENDMENTS:

The committee amended the bill to provide that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person's matters were adjudged, in various sections of the expungement law where those statutes limit the filing of an expungement petition to the Superior Court in the county in which the most recent matter was adjudged. The committee also amended the bill to make certain grammatical corrections.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5826

STATE OF NEW JERSEY

DATED: DECEMBER 18, 2023

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5826 (1R).

This bill makes various revisions to the expungement laws including the "clean slate" provisions of P.L.2019, c.169.

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person's convictions were adjudged. Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged. The intent of this provision is to allow petitioners more flexibility and access to the expungement process.

Under current law, in determining whether compelling circumstances exist that would affect a person's ability to satisfy a court-ordered financial assessment, a court may consider the amount of any court-ordered financial assessment 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. Under the provisions of this bill, a court may consider these same factors in determining whether compelling circumstances exist under other provisions in the statute.

The bill also clarifies that a conviction of any of the crimes enumerated in current law, including but not limited to, criminal homicide, kidnapping, luring or enticing, human trafficking, sexual and aggravated sexual assault, robbery, endangering the welfare of a minor, and terrorism constitute a complete bar to expungement. Further, the bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations.

Finally, the bill provides that the court may grant an expungement to an otherwise eligible person whose court-ordered financial assessments were paid late.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 5826

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 4, 2024

The Senate Judiciary Committee reports favorably and with committee amendments the First Reprint of Assembly Bill No. 5826.

This bill, as amended, makes various revisions to the expungement laws, including the clarification of several provisions dealing with expungement procedures.

First, concerning the filing of an application for expungement relief, the bill would establish that the person filing the application would have the choice of filing in the Superior Court in the county in which the person resides, or in a county in which one or more of the person's convictions for which expungement is sought were adjudged. These two options would provide more flexibility than the current application procedure, for which the person is required to make the filing in the county in which the most recent conviction was adjudged.

Regarding a person's general expungement eligibility, the law usually requires that the person wait to make an application for a period of time, the length of which is determined by the number or types of crimes or offenses for which the expungement is sought, and is counted from such events as the most recent conviction, release from incarceration, or payment of any court-ordered fine, fee, or other form of financial assessment, whichever event is later. Several of the expungement statutes include two exceptions which permit a person to get an expungement when either (1) the person has fully satisfied the court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

These exceptions do not currently exist for a "clean slate" expungement applied for pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), which generally permits a person's entire record of convictions and related information to be expunged. The bill adds the eligibility exceptions related to the timing of the satisfaction of

the financial assessment or alternatively, the nonpayment due to compelling circumstances, in order for a person with either circumstance to still obtain a "clean slate" expungement.

The bill also expressly incorporates into the "clean slate" expungement the eligibility to expunge convictions for one or more municipal violations, which would not only make the statutory law more consistent with the New Jersey Superior Court's decision in State v. R.O.-S., 474 N.J. Super. 87 (Law. Div. 2021), permitting the inclusion of certain municipal violations in a "clean slate" expungement, but extend the scope of the statute to cover all such violations.

For all of the expungement statutes that involve the above described compelling circumstances analysis to determine whether an expungement may be granted even though there is a nonpayment of court-ordered financial assessments, the bill further provides, regarding the court's determination, that a person would not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the expungement application or any other filing. This restriction on the information to be provided by the person would also apply to any other statutory compelling circumstances analysis not tied to court-ordered financial assessments, such as the analysis associated with whether to grant an expungement for a third- or fourth-degree conviction for the sale, possession with intent to sell, or distribution of a controlled dangerous substance pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2.

Finally, as introduced, the bill would have rendered a person ineligible to apply for an expungement for any crime, disorderly persons offense, or petty disorderly persons offense, even if such acts were eligible to be expunged, if that person had been convicted of any of the crimes enumerated in N.J.S.2C:52-2 that are ineligible for expungement. Such crimes are generally those considered to be more serious, violent, or immoral in character, and include such acts as: N.J.S.2C:11-1 et seq. (Criminal Homicide); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); and acts by public officials or employees constituting a crime involving or touching upon such officials' or employees' office, position, or employment. The amendments revert the bill back to the current state of the law, so that a person with a conviction that is ineligible for an expungement would still have an opportunity to expunge other, eligible convictions.

This bill, as amended and reported, is identical to Senate Bill No. 4211, also amended and reported today by the committee.

The committee amendments to the bill:

- establish, consistent with other categories of expungement, the above described two exceptions from the standard waiting period before a person may apply for a "clean slate" expungement if the person has either (1) fully satisfied any court-ordered fine, fee, or other financial assessment, but the time since that satisfaction does not meet the waiting period, or (2) not satisfied the financial assessment, and the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement;

- no longer expressly permit a court to use the potential financial factors for a compelling circumstances analysis regarding nonpayment of court-ordered financial assessments for making other types of expungement decisions which are not directly tied to the financial circumstances of the person applying for an expungement;

- add a restriction for any financially based or non-financially based compelling circumstances analysis which prevents a person from having to provide transcripts of plea or sentencing proceedings, or providing any presentence reports with an expungement application or any other filing;

- restore the ability of a person with a conviction that is ineligible for expungement, as described above in the statement, to still expunge other, eligible convictions; and

- amend the bill's title to reflect the changes made by the amendments.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 5826

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: DECEMBER 27, 2023

SUMMARY

Synopsis: Revises and clarifies certain expungement procedures.

Type of Impact: Annual State expenditure increase.

Agencies Affected: Department of Law and Public Safety; The Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	**Annual**
State Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill may increase the annual administrative workload and associated costs of the Judiciary and the Department of Law and Public Safety by indeterminate amounts.

- Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged. The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or the county in which any of the person's convictions were adjudged. This may encourage more individuals to file for expungement and increase the number of applications.

- The bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations. The clarification may also result in a small uptick in expungement applications.

BILL DESCRIPTION

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person's convictions were adjudged. Under current law, a person is required to submit the application

to the court in the county where the most recent conviction was adjudged. The intent of this provision is to allow petitioners more flexibility and access to the expungement process.

Under current law, in determining whether compelling circumstances exist that would affect a person's ability to satisfy a court-ordered financial assessment, a court may consider the amount of any court-ordered financial assessment 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. Under the provisions of this bill, a court may consider these same factors in determining whether compelling circumstances exist under other provisions in the statute.

The bill also clarifies that a conviction of any of the crimes enumerated in current law, including but not limited to, criminal homicide, kidnapping, luring or enticing, human trafficking, sexual and aggravated sexual assault, robbery, endangering the welfare of a minor, and terrorism constitute a complete bar to expungement. Further, the bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations.

Finally, the bill provides that the court may grant an expungement to an otherwise eligible person whose court-ordered financial assessments were paid late.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may increase the annual administrative workload and associated costs of the Judiciary and the Department of Law and Public Safety by indeterminate amounts.

Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged. The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or the county in which any of the person's convictions were adjudged. This may encourage more individuals to file for expungement and increase the number of applications.

The bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations. The clarification may also result in a small uptick in expungement applications.

Section: *Judiciary*

Analyst: *Anuja Pande Joshi*
Senior Fiscal Analyst

Approved: *Thomas Koenig*
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 5826

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JANUARY 11, 2024

SUMMARY

Synopsis: Revises and clarifies certain expungement procedures.

Type of Impact: Annual State and local expenditure increases.

Agencies Affected: Department of Law and Public Safety; the Judiciary; County Prosecutors; Local Law Enforcement Agencies.

Office of Legislative Services Estimate

Fiscal Impact	Annual
State Expenditure Increase	Indeterminate
Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill may increase the administrative workload and associated costs of the Judiciary, the Department of Law and Public Safety, county prosecutors' offices, and local law enforcement agencies by indeterminate amounts.

- Under current law, a person is required to submit the expungement application to the court in the county where the most recent conviction was adjudged, with notices served upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted. The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or the county in which any of the person's convictions were adjudged.

- The bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes municipal violations. Additionally, the bill also clarifies that a person may submit a "clean slate" application even if (1) the person has fully satisfied any court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

- The OLS finds these provisions regarding the appropriate county of filing, municipal violations under the "clean slate" law, and eligibility timing under the "clean slate" law are likely to result in an increase in expungement applications. Such an increase in case volumes is consequently likely to increase administrative workload and associated costs.

BILL DESCRIPTION

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person's convictions were adjudged. Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged, with notices served upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted.

The bill clarifies that a person may submit an application for expungement under the "clean slate" law, P.L.2019, c.269, that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations. Under current law, it is unclear whether municipal violations could be included in a "clean slate" expungement.

Under current law, when a conviction includes a court-ordered financial assessment, a person who would otherwise qualify for an expungement but for the court-ordered financial assessment may still get an expungement if either (1) the person has fully satisfied the court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay. The bill clarifies that these provisions regarding financial assessments also apply to expungement applications under the "clean slate" law.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may increase the annual administrative workload and associated costs of the Judiciary, the Department of Law and Public Safety, county prosecutors' offices, and local law enforcement agencies by indeterminate amounts.

Under current law, a person is required to submit the expungement application to the court in the county where the most recent conviction was adjudged, with notices served upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted. The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or the county in which any of the person's convictions were adjudged. This may encourage more individuals to file for expungement and increase the number of applications.

Additionally, the bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations. The bill also clarifies that a person may submit a "clean slate" application even if (1) the person has fully satisfied any court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

The OLS finds these provisions regarding the appropriate county of filing, municipal violations under the "clean slate" law, and eligibility timing under the "clean slate" law are likely to result in an increase in expungement applications. Such an increase in case volumes is consequently likely to increase administrative workload and associated costs.

Section:	*Judiciary*
Analyst:	*William Lim* *Deputy Counsel*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 4211

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED DECEMBER 7, 2023

Sponsored by:
Senator BRIAN P. STACK
District 33 (Hudson)
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)

SYNOPSIS

Revises and clarifies certain expungement procedures.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 12/21/2023)

AN ACT concerning expungements and amending N.J.S.2C:52-2, N.J.S.2C:52-3, and P.L.2019, c.269.

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

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

2C:52-2. Indictable Offenses.

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

the person has been convicted of one crime under the laws of this State, and does not otherwise have any subsequent conviction for another crime, whether within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime shall not bar presenting an application seeking expungement relief for the criminal conviction that is the subject of the application; or

the person has been convicted of one crime and no more than three disorderly persons or petty disorderly persons offenses under the laws of this State, and does not otherwise have any subsequent conviction for another crime, or any subsequent conviction for another disorderly persons or petty disorderly persons offense such that the total number of convictions for disorderly persons and petty disorderly persons offenses would exceed three, whether any such crime or offense conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the one criminal conviction and no more than three convictions for disorderly persons or petty disorderly persons offenses that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, all of which are listed in a single judgment of conviction, and does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of

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 <u>thus</u> is new matter.

subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that is not listed in a single judgment of conviction shall not bar presenting an application seeking expungement relief for the convictions listed in a single judgment of conviction that are the subject of the application; or

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of crimes or crimes and offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the Superior Court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime

within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the **[**most recent conviction for a crime was**]** person resides or a county in which one or more of the person's convictions were adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

Notwithstanding the provisions concerning the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that if expungement is granted the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the

technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the time requirement of five years is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or

(2) at least four but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of **[**paragraph (1) of**]** this **[**subsection**]** section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

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

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in N.J.S.2C:11-5 and strict liability vehicular homicide as specified in section 1 of P.L.2017, c.165 (C.2C:11-5.3); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); subsection a. of N.J.S.2C:14-3

(Aggravated Criminal Sexual Contact); if the victim is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, N.J.S.2C:13-2 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child, or causing the child other harm); paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or filming a child in a prohibited sexual act or for portrayal in a sexually suggestive manner); paragraph (3) of subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to engage in a prohibited sexual act or the simulation of an act, or to be portrayed in a sexually suggestive manner); subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing or viewing items depicting the sexual exploitation or abuse of a child); section 8 of P.L.2017, c.141 (C.2C:24-4.1) (Leader of a child pornography network); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices); and conspiracies or attempts to commit such crimes.

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

A person convicted of a crime enumerated in this subsection shall not present an expungement application to the Superior Court for any other crime or offense committed by the person which otherwise is subject to expungement.

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

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was less than one ounce;

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

(3) Any controlled dangerous substance provided that the conviction is of the third or fourth degree, where the court finds that compelling circumstances exist to grant the expungement. The

prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, or N.J.S.2C:52-24.

d. In the case of a State licensed physician or podiatrist convicted of an offense involving drugs or alcohol or pursuant to section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the petitioner shall notify the State Board of Medical Examiners upon filing an application for expungement and provide the board with a copy thereof. The petitioner shall also provide to the court a certification attesting that the requirements of this subsection were satisfied. Failure to satisfy the requirements of this subsection shall be grounds for denial of the expungement application and, if applicable, administrative discipline by the board.

e. A person convicted of any crime enumerated in this section which is not subject to expungement shall not present an expungement application to the Superior Court for any other crime or offense committed by the person which is subject to expungement.

(cf: P.L.2019, c.269, s.2)

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

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses.

a. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application to a court pursuant to this section. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has also been convicted of one or more crimes shall not be eligible to apply for an expungement pursuant to this section, but may present an expungement application to the Superior Court pursuant to N.J.S.2C:52-2.

b. Any person who has been convicted of one or more disorderly persons or petty disorderly persons offenses under the laws of this State who has not been convicted of any crime, whether within this State or any other jurisdiction, may present an expungement application pursuant to this section to any court designated by the Rules of Court if:

the person has been convicted, under the laws of this State, on the same or separate occasions of no more than five disorderly persons offenses, no more than five petty disorderly persons offenses, or a combination of no more than five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any subsequent conviction for a disorderly persons or petty disorderly persons offense, whether within this State or any other jurisdiction, such that the total number of convictions for

disorderly persons and petty disorderly persons offenses would exceed five. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense shall not bar presenting an application seeking expungement relief for the convictions that are the subject of the application, which may include convictions for no more than five disorderly persons or petty disorderly persons offenses, or combination thereof; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which convictions were entered on the same day, and does not otherwise have any subsequent conviction for another offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons or petty disorderly persons offense that was not entered on the same day shall not bar presenting an application seeking expungement relief for the convictions entered on the same day that are the subject of the application; or

the person has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses under the laws of this State, or a combination of multiple disorderly persons and petty disorderly persons offenses under the laws of this State, which offenses or combination of offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual offense, and the person does not otherwise have any subsequent conviction for another offense in addition to those convictions included in the expungement application, whether within this State or any other jurisdiction. Subject to the provision of subsection e. of N.J.S.2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged, a prior conviction for another disorderly persons offense or petty disorderly persons offense that was not interdependent or closely related in circumstances and was not committed within a comparatively short period of time as described above shall not bar presenting an application seeking expungement relief for the convictions of offenses that were interdependent or closely related and committed within a comparatively short period of time, and that are the subject of the application.

For purposes of determining eligibility to present an expungement application to the court pursuant to this section, a conviction for unlawful distribution of, or possessing or having under control with intent to distribute, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5,or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building, or for obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10, or for an equivalent crime in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction of a crime within this State or any other jurisdiction but shall instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10, or a violation involving marijuana or hashish as described herein and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation ofN.J.S.2C:36-2, or for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, shall not be considered a conviction within this State or any other jurisdiction.

The person, if eligible, may present the expungement application after the expiration of a period of five years from the date of his most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term “court-ordered financial assessment” as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to a court in the county in which the most recent conviction for a disorderly persons or petty disorderly persons offense was adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be

expunged. The petition appended to an application shall comply with the requirements of N.J.S.2C:52-1 et seq.

Notwithstanding the provisions of the five-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of five years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement; provided, however, that the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collections and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment. Additionally, an application may be filed and presented, and the court may grant an expungement pursuant to this section, although less than five years have expired in accordance with the time requirements when the court finds:

(1) the court-ordered financial assessment is satisfied but less than five years have expired from the date of satisfaction, and the five-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the assessment; or

(2) at least three but less than five years have expired from the date of the most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

the person has not been otherwise convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the most recent conviction; and the court finds in its discretion that compelling circumstances exist to grant the expungement. The prosecutor may object pursuant to section 11 of P.L.2019, c.269 (C.2C:52-10.1), N.J.S.2C:52-11, N.J.S.2C:52-14, orN.J.S.2C:52-24.

In determining whether compelling circumstances exist for the purposes of **[**paragraph (1) of**]** this **[**subsection**]** section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the

person's financial condition and other relevant circumstances regarding the person's ability to pay.
(cf: P.L.2019, c.269, s.3)

3. Section 7 of P.L.2019, c.269 (C.2C:52-5.3) is amended to read as follows:

7. "Clean slate" expungement by petition. a. A person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if the person has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, one or more municipal violations, or a combination of one or more crimes **[**and**]** , offenses, or violations under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. The person may present an application pursuant to this section regardless of whether the person would otherwise be ineligible pursuant to subsection e. of N.J.S.2C:52-14 for having had a previous criminal conviction expunged, or due to having been granted an expungement pursuant to this or any other provision of law.

b. The person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term "court-ordered financial assessment" as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the **[**most recent conviction for a crime or offense was adjudged**]** person resides or a county in which one or more of the petitioner's convictions were adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that all the person's convictions, and all records and information pertaining thereto, be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

c. Notwithstanding the provisions concerning the ten-year time requirement, if, at the time of application, a court-ordered financial assessment subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) was satisfied late or is not yet satisfied due to

reasons other than willful noncompliance, but the time requirement of ten years is otherwise satisfied, the person may submit the expungement application **[**and**]** to the court. In the case of a late payment of the court-ordered financial assessment, the court may grant the expungement in accordance with this section if it finds that compelling circumstances exist or in the case of a court-ordered financial assessment that is yet to be satisfied, shall grant **[**an**]** the expungement in accordance with this section; provided, however, that at the time of the expungement the court shall enter a civil judgment for the unpaid portion of the court-ordered financial assessment in the name of the Treasurer, State of New Jersey and transfer collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1). In determining whether compelling circumstances exist for the purposes of this section, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay. The Treasurer may specify, and the Administrative Office of the Courts shall collaborate with, the technical and informational standards required to effectuate the transfer of the collection and disbursement responsibilities. Notwithstanding any provision in this law or any other law to the contrary, the court shall have sole discretion to amend the judgment.

d. No expungement applications may be filed pursuant to this section after the establishment of the automated "clean slate" process pursuant to subsection a. of section 8 of P.L.2019, c.269 (C.2C:52-5.4).

(cf: P.L.2019, c.269, s.7)

4. This act shall take effect immediately.

STATEMENT

This bill makes various revisions to the expungement laws including the “clean slate” provisions of P.L.2019, c.169.

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person’s convictions were adjudged. Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged. The intent of this provision is to allow petitioners more flexibility and access to the expungement process.

Under current law, in determining whether compelling circumstances exist that would affect a person’s ability to satisfy a court-ordered financial assessment, a court may consider the

amount of any court-ordered financial assessment 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. Under the provisions of this bill, a court may consider these same factors in determining whether compelling circumstances exist under other provisions in the statute

The bill also clarifies that a conviction of any of the crimes enumerated in current law, including but not limited to, criminal homicide, kidnapping, luring or enticing, human trafficking, sexual and aggravated sexual assault, robbery, endangering the welfare of a minor, and terrorism constitute a complete bar to expungement. Further, the bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations.

Finally, the bill provides that the court may grant an expungement to an otherwise eligible person whose court-ordered financial assessments were paid late.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 4211

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 4, 2024

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 4211.

This bill, as amended, makes various revisions to the expungement laws, including the clarification of several provisions dealing with expungement procedures.

First, concerning the filing of an application for expungement relief, the bill would establish that the person filing the application would have the choice of filing in the Superior Court in the county in which the person resides, or in a county in which one or more of the person's convictions for which expungement is sought were adjudged. These two options would provide more flexibility than the current application procedure, for which the person is required to make the filing in the county in which the most recent conviction was adjudged.

Regarding a person's general expungement eligibility, the law usually requires that the person wait to make an application for a period of time, the length of which is determined by the number or types of crimes or offenses for which the expungement is sought, and is counted from such events as the most recent conviction, release from incarceration, or payment of any court-ordered fine, fee, or other form of financial assessment, whichever event is later. Several of the expungement statutes include two exceptions which permit a person to get an expungement when either (1) the person has fully satisfied the court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

These exceptions do not currently exist for a "clean slate" expungement applied for pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), which generally permits a person's entire record of convictions and related information to be expunged. The bill adds the eligibility exceptions related to the timing of the satisfaction of the financial assessment or alternatively, the nonpayment due to compelling circumstances, in order for a person with either circumstance to still obtain a "clean slate" expungement.

The bill also expressly incorporates into the "clean slate" expungement the eligibility to expunge convictions for one or more municipal violations, which would not only make the statutory law more consistent with the New Jersey Superior Court's decision in State v. R.O.-S., 474 N.J. Super. 87 (Law. Div. 2021), permitting the inclusion of certain municipal violations in a "clean slate" expungement, but extend the scope of the statute to cover all such violations.

For all of the expungement statutes that involve the above described compelling circumstances analysis to determine whether an expungement may be granted even though there is a nonpayment of court-ordered financial assessments, the bill further provides, regarding the court's determination, that a person would not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the expungement application or any other filing. This restriction on the information to be provided by the person would also apply to any other statutory compelling circumstances analysis not tied to court-ordered financial assessments, such as the analysis associated with whether to grant an expungement for a third- or fourth-degree conviction for the sale, possession with intent to sell, or distribution of a controlled dangerous substance pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2.

Finally, as introduced, the bill would have rendered a person ineligible to apply for an expungement for any crime, disorderly persons offense, or petty disorderly persons offense, even if such acts were eligible to be expunged, if that person had been convicted of any of the crimes enumerated in N.J.S.2C:52-2 that are ineligible for expungement. Such crimes are generally those considered to be more serious, violent, or immoral in character, and include such acts as: N.J.S.2C:11-1 et seq. (Criminal Homicide); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); and acts by public officials or employees constituting a crime involving or touching upon such officials' or employees' office, position, or employment. The amendments revert the bill back to the current state of the law, so that a person with a conviction that is ineligible for an expungement would still have an opportunity to expunge other, eligible convictions.

This bill, as amended and reported, is identical to the First Reprint of Assembly Bill No. 5826, also amended and reported today by the committee.

The committee amendments to the bill:

- establish, consistent with other categories of expungement, the above described two exceptions from the standard waiting period before a person may apply for a "clean slate" expungement if the person has either (1) fully satisfied any court-ordered fine, fee, or other financial assessment, but the time since that satisfaction does not meet the waiting period, or (2) not satisfied the financial assessment, and the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement;

- no longer expressly permit a court to use the potential financial factors for a compelling circumstances analysis regarding nonpayment of court-ordered financial assessments for making other types of expungement decisions which are not directly tied to the financial circumstances of the person applying for an expungement;

- add a restriction for any financially based or non-financially based compelling circumstances analysis which prevents a person from having to provide transcripts of plea or sentencing proceedings, or providing any presentence reports with an expungement application or any other filing;

- restore the ability of a person with a conviction that is ineligible for expungement, as described above in the statement, to still expunge other, eligible convictions;

- include additional new amendatory sections (sections 4 through 9) that provide for expungement applications to be filed in the Superior Court in the county in which the person resides or a county in which one or more of the person's convictions were adjudged, to make the bill identical to the Assembly counterpart bill; and

- amend the bill's title to reflect the changes made by the amendments.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 4211

STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JANUARY 11, 2024

SUMMARY

Synopsis: Revises and clarifies certain expungement procedures.

Type of Impact: Annual State and local expenditure increases.

Agencies Affected: Department of Law and Public Safety; the Judiciary; County Prosecutors; Local Law Enforcement Agencies.

Office of Legislative Services Estimate

Fiscal Impact	Annual
State Expenditure Increase	Indeterminate
Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill may increase the administrative workload and associated costs of the Judiciary, the Department of Law and Public Safety, county prosecutors' offices, and local law enforcement agencies by indeterminate amounts.

- Under current law, a person is required to submit the expungement application to the court in the county where the most recent conviction was adjudged, with notices served upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted. The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or the county in which any of the person's convictions were adjudged.

- The bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes municipal violations. Additionally, the bill also clarifies that a person may submit a "clean slate" application even if (1) the person has fully satisfied any court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

- The OLS finds these provisions regarding the appropriate county of filing, municipal violations under the "clean slate" law, and eligibility timing under the "clean slate" law are likely to result in an increase in expungement applications. Such an increase in case volumes is consequently likely to increase administrative workload and associated costs.

BILL DESCRIPTION

The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or a county in which any of the person's convictions were adjudged. Under current law, a person is required to submit the application to the court in the county where the most recent conviction was adjudged, with notices served upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted.

The bill clarifies that a person may submit an application for expungement under the "clean slate" law, P.L.2019, c.269, that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations. Under current law, it is unclear whether municipal violations could be included in a "clean slate" expungement.

Under current law, when a conviction includes a court-ordered financial assessment, a person who would otherwise qualify for an expungement but for the court-ordered financial assessment may still get an expungement if either (1) the person has fully satisfied the court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay. The bill clarifies that these provisions regarding financial assessments also apply to expungement applications under the "clean slate" law.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may increase the annual administrative workload and associated costs of the Judiciary, the Department of Law and Public Safety, county prosecutors' offices, and local law enforcement agencies by indeterminate amounts.

Under current law, a person is required to submit the expungement application to the court in the county where the most recent conviction was adjudged, with notices served upon the Superintendent of State Police, the Attorney General, the county prosecutor of the county wherein the court is located, and the county prosecutor of any county in which the petitioner was convicted. The bill provides that a person may submit an expungement application to the Superior Court in the county in which the person resides or the county in which any of the person's convictions were adjudged. This may encourage more individuals to file for expungement and increase the number of applications.

Additionally, the bill clarifies that a person may submit an application for expungement under the "clean slate" law that includes crimes, disorderly and petty disorderly persons offenses, and municipal violations. The bill also clarifies that a person may submit a "clean slate" application even if (1) the person has fully satisfied any court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

The OLS finds these provisions regarding the appropriate county of filing, municipal violations under the "clean slate" law, and eligibility timing under the "clean slate" law are likely to result in an increase in expungement applications. Such an increase in case volumes is consequently likely to increase administrative workload and associated costs.

Section:	*Judiciary*
Analyst:	*William Lim* *Deputy Counsel*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).