

Garden State CLE presents:

Fast-Track Expungements



Lesson Plan

Table of Contents

Early Pathway Statutes & Analysis.....	3
In re Lobasso, 423 NJ Super. 475 (App. Div. 2012).....	12
In re Kollman ___ NJ ___ (2012).....	14
Appendices.....	25

Early Pathway Statutes & Analysis

N.J.S.A. 2C:52-2a(2)

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

[I got 6-months in jail and for the past 11 years I've been making payments on my \$15,000 fine, restitution and DEDR penalty...now what?]

(1) less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered 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 fine; or

[What is a Fine?]

And whatever may have been the ancient office of a fine or of imprisonment for its nonpayment, we are clear that in our State a fine is intended to punish, and that imprisonment upon nonpayment, far from being a collection device, is substituted punishment designed to achieve the punitive end which the fine was imposed to achieve but failed to achieve. Thus it was said in [citation omitted]:

Nor is it correct to say that the purpose of imprisonment for nonpayment of a fine is to ‘compel’ its payment. Obviously that is not so. The offender is not held in custody until the fine is fully paid. On the contrary, the fine is liquidated by the imprisonment, and far from yielding payment, such imprisonment results in the loss to the State of both the fine and the cost of the additional confinement. The point to be remembered is that the in-lieu-of imprisonment is substituted punishment to achieve a punitive aim that could not be attained by way of a fine. The statute provides for the liquidation of a fine by time in jail precisely because the fine is intended to punish. Indeed, it would be intolerable to jail an indigent offender until the fine is paid without reduction for the period of detention, for that would smack of imprisonment for nonpayment of a debt rather than of punishment for the penal misdeed.

State v. De Bonis, 58 NJ 182, 192 (1971)

4.

[Okay for Fines - But what about other significant monetary obligations of a criminal sentence?]

Restitution is primarily rehabilitative – State v. Harris, 70 NJ 586, 592-593 (1976)

[State v. Rhoda, 206 N.J.Super. 584, 590, 503 A.2d 364 \(App.Div.1986\)](#), certif. den., [105 N.J. 524, 523 A.2d 167 \(1986\)](#) (where we noted that restitution is predominantly non-penal in nature even though it has aspects of rehabilitation and deterrence, both of which also are aspects of punishment).

See also [State v. Paladino, 203 N.J.Super. 537, 547, 497 A.2d 562 \(App.Div.1985\)](#).

=====

DEDR is primarily rehabilitative – State v. Bulu, 234 NJ Super. 331, 342-343 (App. Div. 1989)

DEDR penalties are intended to serve a general rehabilitative or preventative function in that they fund “enforcement efforts and educational, public awareness, rehabilitation or other public programs designed to prevent drug abuse.” [citation omitted]. Certainly, such goals are legitimate legislative objectives and the requirement that the achievement of these objectives be funded by individuals convicted of drug offenses, juveniles adjudicated delinquent on the basis of drug offenses and PTI enrollees who have been charged with drug offenses is rationally related to the achievement or furtherance of these objectives and is neither arbitrary nor discriminatory.

**[I paid the fine in full when I finished my
30-day jail term....now what?]**

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

[What are compelling circumstances affecting ability to satisfy the fine?]

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

[Note - This part *does not* apply to fast-track expungements]

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

[Dude...I was a doper when I was 18... what about me?]

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 25 grams or less ;

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

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

[Fast Track for Doper under the age of 22]

2C:52-5. Expungement of records of young drug offenders

Notwithstanding the provisions of [sections 2C:52-2](#) and [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 chapters 35 or 36 of this title for the possession or use of a controlled dangerous substance, convicted of violating P.L.1955, c. 277, § 3 ([C. 2A:170-77.5](#)), [\[FN1\]](#) or convicted of violating P.L.1962, c. 113, § 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 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 subsequent or previous violation of chapters 35 or 36 of this title or of P.L.1955, c. 277, § 3 ([C. 2A:170-77.5](#)) or of P.L.1962, c. 113, § 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.

10.

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 25 grams or less, or

(2) Hashish, where the total amount sold, distributed or possessed with intent to sell was 5 grams or less.

[What factors may the Court consider in addition to those pertaining to the “nature of the offense” and the applicant’s “character and conduct since conviction.”]

In re Lobasso, 423 N.J. Super. 475 (App. Div. 2012)

In connection with a petitioner’s “character and conduct since conviction,” a court may consider facts related to an arrest that did not lead to a conviction, if supported by cognizable evidence, and the court makes an appropriate finding, after a hearing if necessary. A court may not infer guilt from the fact of arrest alone. Yet, a court may consider the underlying facts of a dismissed charge that a petitioner admits in his guilty plea to a related charge. (in sentencing, court may rely on arrest record of dismissed charge where the arrest “relate[s] to an offense the defendant does not dispute, which offense was disposed of without further action as part of a plea bargain involving other offenses”);

Likewise, a court may consider other forms of admissible proof of dismissed charges.

The statute also expressly requires the court to consider the “nature of the offense.” *N.J.S.A. 2C:52–2a(2)*. We distinguish the “nature of the offense” from the circumstances of the offense. The Legislature has itself chosen to distinguish the two concepts. While the statute only requires a court to consider the “nature of the offense” in making its public interest determination, a court must consider “the nature of those ... convictions and the circumstances surrounding them” when determining whether subsequent convictions for two or fewer disorderly or petty disorderly persons offenses should bar relief. *N.J.S.A. 2C:52–2a*.

The “nature of the offense” would appear to pertain to facts surrounding the grade and definition of the offense, and the facts relating directly to the elements of the offense. Thus, the nature of an eluding offense might include that a petitioner drove at high speed or over a great distance to flee an officer, and the nature of risks presented. The nature of an assault case might include the age of the victim. The nature of a burglary might include whether the structure entered was a victim's occupied bedroom, or a detached garage or vehicle when no one was present.

State v. Kollman, ___ N.J. ___ (2012)

1. Requirements for the Public Interest Justification for Expungements.

In essence, expungement under the new “public-interest” prong initially requires three things:

[1] the passage of five years;

[2] no additional convictions; and

[3] a finding that expungement is in the public interest.

2. Public Interest for Drug Offenses

Second, in addition to allowing for expungement of convictions that involve small quantities of marijuana and hashish under [N.J.S.A. 2C:52-2\(c\)\(1\) and \(2\)](#), the amendment identified a third category of crimes that may be expunged:

Any controlled dangerous substance [conviction] provided that the conviction is of the third or fourth degree, where the court finds that expungement is consistent with the public interest, giving due consideration to the nature of the offense and the petitioner's character and conduct since conviction.

3. Grounds for Denial of Relief

Third, because of the preceding change, the Legislature modified the grounds for denial of relief. The revised law now states that “in regard to expungement sought for third or fourth degree drug offenses pursuant to [[N.J.S.A. 2C:52-2\(c\)\(3\)](#)], the court shall consider whether” the need for the availability of records outweighs the desirability of expungement, “regardless of whether any party objects on this basis.

4. Burden of Production on Petitioner

We conclude that petitioner must establish the objective elements of the new avenues for expungement—the passage of five years, without an additional conviction, after commission of an offense that may be a third- or fourth-degree CDS violation. As discussed above, settled case law placed the responsibility to prove the objective elements of the original version of section 2(a) on the applicant, and the Legislature made no changes in that regard.

The new statute requires one additional finding: “that expungement is in the public interest.” [N.J.S.A. 2C:52-2\(a\)\(2\)](#). To make that determination, courts are to consider and balance the “nature of the offense” and the “applicant's character and conduct since conviction.” *Ibid*. For a number of reasons, we conclude that the applicant must bear the burden of proof on that factor as well. To begin with, the petitioner is uniquely qualified to demonstrate facts about his or her character and recent conduct. That burden could not fairly be placed on the State initially.

5. Burden of Proof

In addition, a finding that expungement is in the public interest furthers the applicant's cause. Under [N.J.S.A. 2C:1-13\(d\)\(1\)](#), the burden of proof for a finding of fact that is not an element of an offense falls on the side “whose interest or contention will be furthered if the finding should be made.” Because the expungement law does not provide otherwise, the Code's default provision applies, and applicants must therefore demonstrate that expungement is in the public interest, by a preponderance of the evidence.

6. Nature of Offense - Defined

The “nature of the offense” encompasses undisputed or proven facts about the crime and its commission. That certainly includes basic information about the definition, grade, and elements of an offense. We note that the statute uses the terms “nature” and “circumstances” of the offense in different places), yet the Legislature also placed broad discretion in trial judges to decide the public-interest prong. In that context, we do not read the term “nature” of the offense in section 2(a)(2) as a limitation on a judge’s inquiry. To fulfill their obligation under the statute, therefore, judges may also consider details about what the petitioner did, how and with whom he acted, and the harm he may have caused in connection with the offense of conviction.

7. Public Interest Considerations

Similarly, to decide the overarching public-interest question, courts may consider related charges that have been dismissed if the underlying facts have been substantiated or are undisputed. That information furthers the fact-specific inquiry courts must undertake. In short, courts examining how the “nature of the offense” affects the public interest have wide latitude.

8. Seriousness of the Offense (drugs)

By contrast, the statute does not allow judges to reject expungement applications based on categorical or generic grounds. For example, the Legislature has identified particular offenses that are “too serious” to qualify for expungement. See [N.J.S.A. 2C:52-2\(b\)](#). Courts cannot add to the list.

For drug offenses that meet the statute’s objective criteria, then, courts cannot rule out expungement because of the judge’s view that the particular drug involved is serious. But judges may consider how many times petitioner distributed drugs, whether he sold them to children, whether a weapon was involved, and other relevant facts that are not in dispute or have been proven. Depending on the nature of a given plea agreement, those and other factors may be present in a single third- or fourth-degree conviction.

9. Character & Conduct since Conviction

The statute also directs courts to consider “the applicant's character and conduct since conviction.” In that regard, courts may examine an applicant's performance while in jail or on probation. During and after that time, courts may also consider whether an applicant has engaged in activities that have limited the risk of re-offending, or has avoided activities that enhanced that risk [including] whether a petitioner has obtained job training or education, complied with other legal obligations (such as child support and motor vehicle fines), and maintained family and community ties that promote law-abiding behavior, as well as whether the petitioner has severed relationships with persons in the criminal milieu.

Facts related to an arrest that did not result in conviction, or to a dismissed charge, may also offer insight into an applicant's character and conduct. To assess the public interest, *In re LoBasso* invited courts to consider conduct before the time of conviction as well, to gauge whether the offense was aberrational or part of a “pattern of disrespect for the law or a threat to public safety.”

10. Proof of Facts

As to all of the above areas, courts may only consider established or undisputed facts, not unproven allegations. In that regard, the State is not limited to an applicant's admissions at a plea or sentencing hearing, or to concessions in a presentence report. If the State's argument extends beyond established facts already in the record, though, and the petitioner contests those assertions, the State must present cognizable proofs to support its position. In the end, the trial judge must make appropriate findings, after a hearing if necessary, before the court can rely on a material fact that remains in dispute.

11. Mandatory Documents for Petition

To assist the court in its evaluation of the public-interest prong, we direct that applicants for expungement under include with their petition all transcripts of plea and sentencing hearings, as well as a copy of the presentence report.

12. Instruction to Judges

In practice, trial judges will balance the above factors as they decide whether expungement serves the public interest in a particular case. In doing so, they weigh the risks and benefits to the public of allowing or barring expungement.. The focus, as the statute says, is on the “public interest,” which is broader than the personal desires of an applicant, although the concepts can often be intertwined.

Appendices

N.J.S.A. 2C:52-1. et seq.

2C:52-1. Definition of expungement

- a. Except as otherwise provided in this chapter, expungement shall mean the extraction and isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.
- b. Expunged records shall include complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets" and judicial docket records.
-

2C:52-2. Indictable offenses

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

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

(1) less than 10 years has expired from the satisfaction of a fine, but the 10-year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered 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 fine; or

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

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

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

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: [Section 2C:11-1 et seq.](#) (Criminal Homicide), except death by auto as specified in [section 2C:11-5](#); [section 2C:13-1](#) (Kidnapping); [section 2C:13-6](#) (Luring or Enticing); section 1 of [P.L.2005, c. 77 \(C.2C:13-8\)](#) (Human Trafficking); [section 2C:14-2](#) (Aggravated Sexual Assault); section 2C:14-3a (Aggravated Criminal Sexual Contact); if the victim is a minor, section 2C:14-3b (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, [section 2C:13-2](#) (Criminal Restraint) or [section 2C:13-3](#) (False Imprisonment); [section 2C:15-1](#) (Robbery); [section 2C:17-1](#) (Arson and Related Offenses); section 2C:24-4a. (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child); section 2C:24-4b(4) (Endangering the welfare of a child); section 2C:24-4b. (3) (Causing or permitting a child to engage in a prohibited sexual act); [section 2C:24-4 b.\(5\)\(a\)](#) (Selling or manufacturing child pornography); [section 2C:28-1](#) (Perjury); [section 2C:28-2](#) (False Swearing); section 2C:34-1b.(4) (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.

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 25 grams or less ;

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

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

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 court shall notify the State Board of Medical Examiners upon receipt of a petition for expungement of the conviction and records and information pertaining thereto.

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

Any person convicted of a disorderly persons offense or petty disorderly persons offense under the laws of this State who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, or of another three disorderly persons or petty disorderly persons offenses, may, after the expiration of a period of 5 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](#) hereof to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.

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 praying that such conviction and all records and information pertaining thereto be expunged.

2C:52-4.1. Juvenile delinquent; expungement of adjudications and charges

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

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

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

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

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

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

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

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

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

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

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

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

2C:52-5. Expungement of records of young drug offenders

Notwithstanding the provisions of [sections 2C:52-2](#) and [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 chapters 35 or 36 of this title for the possession or use of a controlled dangerous substance, convicted of violating P.L.1955, c. 277, § 3 ([C. 2A:170-77.5](#)), [\[FNI\]](#) or convicted of violating P.L.1962, c. 113, § 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 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 subsequent or previous violation of chapters 35 or 36 of this title or of P.L.1955, c. 277, § 3 ([C. 2A:170-77.5](#)) or of P.L.1962, c. 113, § 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 25 grams or less, or

(2) Hashish, where the total amount sold, distributed or possessed with intent to sell was 5 grams or less.

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

a. In all cases, except as herein provided, wherein 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 against whom proceedings were dismissed, or who was acquitted, or who was discharged without a conviction or finding of guilt, may at any time following the disposition of proceedings, present a duly verified petition as provided in [section 2C:52-7](#) to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged.

b. Any person who has had charges dismissed against him pursuant to P.L.1970, c. 226, § 27 ([C. 24:21-27](#)) [\[FN1\]](#) or pursuant to a program of supervisory treatment, shall be barred from the relief provided in this section until 6 months after the entry of the order of dismissal.

c. 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.

2C:52-7. Petition for expungement

Every petition for expungement filed pursuant to this chapter 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.

2C:52-8. Statements to accompany petition

There shall be attached to a petition for expungement:

a. A statement with the affidavit or verification that there are no disorderly persons, petty disorderly persons or criminal charges pending against the petitioner at the time of filing of the petition for expungement.

b. In those instances where the petitioner is seeking the expungement of a criminal conviction, a statement with affidavit or verification that he has never been granted expungement, sealing or similar relief regarding a criminal conviction by any court in this State or other state or by any Federal court. “Sealing” refers to the relief previously granted pursuant to P.L.1973, c. 191 ([C. 2A:85-15 et seq.](#)) [FN1].

c. In those instances where a person has received a dismissal of a criminal charge because of acceptance into a supervisory treatment or any other diversion program, a statement with affidavit or verification setting forth the nature of the original charge, the court of disposition and date of disposition.



2C:52-9. Order fixing time for hearing

Upon the filing of a petition for relief pursuant to this chapter, the court shall, by order, fix a time not less than 35 nor more than 60 days thereafter for hearing of the matter.

2C:52-10. Service of petition and documents

A copy of each petition, together with a copy of all supporting documents, shall be served pursuant to the rules of court upon the Superintendent of State Police; the Attorney General; the county prosecutor of the county wherein the court is located; the chief of police or other executive head of the police department of the municipality wherein the offense was committed; the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest of the individual; the superintendent or warden of any institution in which the petitioner was confined; and, if a disposition was made by a municipal court, upon the magistrate of that court. Service shall be made within 5 days from the date of the order setting the date for the

hearing upon the matter.

2C:52-11. Order directing expungement where no objection prior to hearing

If, prior to the hearing, there is no objection from those law enforcement agencies notified or from those offices or agencies which are required to be served under 2C:52-10, and no reason, as provided in [section 2C:52-14](#), appears to the contrary, the court may, without a hearing, grant an order directing the clerk of the court and all relevant criminal justice and law enforcement agencies to expunge records of said disposition including evidence of arrest, detention, conviction and proceedings related thereto.

2C:52-12. Denial of relief although no objection entered

In the event that none of the persons or agencies required to be noticed under 2C:52-10 has entered any objection to the relief being sought, the court may nevertheless deny the relief sought if it concludes that petitioner is not entitled to relief for the reasons provided in [section 2C:52-14](#).

2C:52-13. When hearing on petition for expungement shall not be held

No petition for relief made pursuant to this section shall be heard by any court if the petitioner, at the time of filing or date of hearing, has a charge or charges pending against him which allege the commission of a crime, disorderly persons offense or petty disorderly persons offense. Such petition shall not be heard until such times as all pending criminal and or disorderly persons charges are adjudicated to finality.

2C:52-14. Grounds for denial of relief

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

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

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

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

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

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

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

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

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

2C:52-15. Records to be removed; control

If an order of expungement of records of arrest or conviction under this chapter is granted by the court, all the records specified in said order shall be removed from the files of the agencies which have been noticed of the pendency of petitioner's motion and which are, by the provisions of this chapter, entitled to notice, and shall be placed in the control of a person who has been designated by the head of each such agency which, at the time of the hearing, possesses said records. That designated person shall, except as otherwise provided in this chapter, insure that such records or

the information contained therein are not released for any reason and are not utilized or referred to for any purpose. In response to requests for information or records of the person who was arrested or convicted, all noticed officers, departments and agencies shall reply, with respect to the arrest, conviction or related proceedings which are the subject of the order, that there is no record information.

2C:52-16. Expunged record including names of persons other than petitioner

Any record or file which is maintained by a judicial or law enforcement agency, or agency in the criminal justice system, which is the subject of an order of expungement which includes the name or names of persons other than that of the petitioner need not be isolated from the general files of the agency retaining same if the other persons named in said record or file have not been granted an order of expungement of said record, provided that a copy of the record shall be given to the person designated in 2C:52-15 and the original shall remain in the agency's general files with the petitioner's name and other personal identifiers obliterated and deleted.

2C:52-17. Use of expunged records by agencies on pending petition for expungement

Expunged records may be used by the agencies that possess same to ascertain whether a person has had prior conviction expunged, or sealed under prior law, when the agency possessing the record is noticed of a pending petition for the expungement of a conviction. Any such agency may supply information to the court wherein the motion is pending and to the other parties who are entitled to notice pursuant to 2C:52-10.

2C:52-18. Supplying information to violent crimes compensation board

Information contained in expunged records may be supplied to the Violent Crimes Compensation Board, in conjunction with any claim which has been filed with said board.

2C:52-19. Order of superior court permitting inspection of records or release of information; limitations

Inspection of the files and records, or release of the information contained therein, which are the subject of an order of expungement, or sealing under prior law, may be permitted by the Superior Court upon motion for good cause shown and compelling need based on specific facts. The motion or any order granted pursuant thereto shall specify the person or persons to whom the records and information are to be shown and the purpose for which they are to be utilized. Leave to inspect shall be granted by the court only in those instances where the subject matter of the records of arrest or conviction is the object of litigation or judicial proceedings. Such records may not be inspected or utilized in any subsequent civil or criminal proceeding for the purposes of impeachment or otherwise but may be used for purposes of sentencing on a subsequent offense after guilt has been established

2C:52-20. Use of expunged records in conjunction with supervisory treatment or diversion programs

Expunged records may be used by any judge in determining whether to grant or deny the person's application for acceptance into a supervisory treatment or diversion program for subsequent charges. Any expunged records which are possessed by any law enforcement agency may be supplied to the Attorney General, any county prosecutor or judge of this State when same are requested and are to be used for the purpose of determining whether or not to accept a person into a supervisory treatment or diversion program for subsequent charges.

2C:52-21. Use of expunged records in conjunction with setting bail, presentence report or sentencing

Expunged records, or sealed records under prior law, of prior arrests or convictions shall be provided to any judge, county prosecutor, probation department or the Attorney General when same are requested for use in conjunction with a bail hearing or for the preparation of a presentence report or for purpose of sentencing.

2C:52-22. Use of expunged records by parole board

Expunged records, or sealed records under prior law, of prior disorderly persons, petty disorderly persons and criminal convictions shall be provided to the Parole Board when same are requested for the purpose of evaluating the granting of parole to the person who is the subject of said records. Such sealed or expunged records may be used by the Parole Board in the same manner and given the same weight in its considerations as if the records had not been expunged or sealed.

2C:52-23. Use of expunged records by department of corrections

Expunged records, and records sealed under prior law, shall be provided to the Department of Corrections for its use solely in the classification, evaluation and assignment to correctional and penal institutions of persons placed in its custody.

2C:52-24. County prosecutor's obligation to ascertain propriety of petition

Notwithstanding the notice requirements provided herein, it shall be the obligation of the county prosecutor of the county wherein any petition for expungement is filed to verify the accuracy of the allegations contained in the petition for expungement and to bring to the court's attention any facts which may be a bar to, or which may make inappropriate the granting of, such relief. If no disabling, adverse or relevant information is ascertained other than that as included in the petitioner's affidavit, such facts shall be communicated by the prosecutor to the hearing judge.

2C:52-25. Retroactive application

This chapter shall apply to arrests and convictions which occurred prior to, and which occur subsequent to, the effective date of this act.

2C:52-26. Vacating of orders of sealing; time; basis

If, within 5 years of the entry of an expungement order, any party to whom notice is required to be given pursuant to [section 2C:52-10](#) notifies the court which issued the order that at the time of the petition or hearing there were criminal, disorderly persons or petty disorderly persons charges pending against the person to whom the court granted such order, which charges were not revealed to the court at the time of hearing of the original motion or that there was some other statutory disqualification, said court shall vacate the expungement order in question and reconsider the original motion in conjunction with the previously undisclosed information.

2C:52-27. Effect of expungement

Unless otherwise provided by law, if an order of expungement is granted, the arrest, conviction and any proceedings related thereto shall be deemed not to have occurred, and the petitioner may answer any questions relating to their occurrence accordingly, except as follows:

a. The fact of an expungement, sealing or similar relief shall be disclosed as provided in section 2C:52-8b.

b. The fact of an expungement of prior charges which were dismissed because of the person's acceptance into and successful completion of a supervisory treatment or other diversion program shall be disclosed by said person to any judge who is determining the propriety of accepting said person into a supervisory treatment or other diversion program for subsequent criminal charges; and

c. Information divulged on expunged records shall be revealed by a petitioner seeking employment within the judicial branch or with a law enforcement or corrections agency and such information shall continue to provide a disability as otherwise provided by law.

2C:52-27.1. Practitioners convicted of health care claims fraud; rescission of debarment order

a. If an order of expungement of records of conviction under the provisions of chapter 52 of Title 2C of the New Jersey Statutes is granted by the court to a person convicted of health care claims fraud in which the court had ordered the offender's professional license or certificate be forfeited

and the person be forever barred from the practice of the profession, occupation, trade, vocation or business pursuant to subsection a. of section 4 of [P.L.1997, c. 353 \(C.2C:51-5\)](#), the person may petition the court for an order to rescind the court's order of debarment if the person can demonstrate that the person is sufficiently rehabilitated.

b. If an order to rescind the court's order of debarment is granted, the person granted the order may apply to be licensed or certified to practice the profession, occupation, trade, vocation or business from which the offender was barred.

2C:52-28. Motor vehicle offenses

Nothing contained in this chapter shall apply to arrests or conviction for motor vehicle offenses contained in Title 39.

2C:52-29. Fee

Any person who files an application pursuant to this chapter shall pay to the State Treasurer a fee of \$30.00 to defer administrative costs in processing an application hereunder.

2C:52-30. Disclosure of expungement order

Except as otherwise provided in this chapter, any person who reveals to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining thereto have been expunged or sealed is a disorderly person. Notwithstanding the provisions of [section 2C:43-3](#), the maximum fine which can be imposed for violation of this section is \$200.00.

2C:52-31. Limitation

Nothing provided in this chapter shall be interpreted to permit the expungement of records contained in the Controlled Dangerous Substances Registry created pursuant to P.L.1970, c. 227 ([C. 26:2G-17 et seq.](#)), [\[FN1\]](#) or the registry created by the Administrative Office of the Courts

pursuant to [section 2C:43-21](#).

2C:52-32. Construction

This chapter shall be construed with the primary objective of providing relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby periodic violators of the law or those who associate themselves with criminal activity have a regular means of expunging their police and criminal records.
