EXPUNGEMENT LAW FOR CRIMINAL LAW AND MUNICIPAL COURT LAW PRACTITIONERS

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Get straight answers to these questions, and more, right here.

Straight Answers to Thirty-four Frequently Asked Questions of Expungement Lawyers in New Jersey™

Basic Concepts
Benefits and Limitations
Eligibility
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Expungement Lawyers in New Jersey™

Basic Concepts

Q1. What is an expungement?

A. When a person is arrested, or charged with any non-traffic offense, that person gets a criminal record. At a minimum, there is a record of an arrest. If the person is later convicted, then the person has a record of both an arrest and a conviction. These records include complaints, warrants, commitments, DNA, processing records, fingerprints, photographs, index cards, rap sheets, and judicial dockets records. They can be on paper. More ominously, they can be on computer.

When a person is taken into custody, it is obvious that he has been arrested. However, many of the records just discussed exist even when the person is just given a summons, and never taken into custody. Some offenses are of such a trivial nature that the person pays a fine through the mail, and that is the end of it. Or is it?

These events are still reported as “arrests.” If the person was fingerprinted, a record of the arrest went to the FBI. Even when not taken into custody records of these events follow the person over the years. Prospective employers can access these records. Insurance companies, landlords, adoption agencies, and prospective creditors can too.

To expunge a criminal record means to go through a court process. Upon successful completion of that process, you get a court order signed by a judge. The court order states that the offense “...shall be deemed not to have occurred.” Persons doing a background check through New Jersey State Police or through the FBI will receive a response that there is “no record.” Additionally, after you expunge your criminal record, you are legally entitled to respond to most inquiries that the arrest or conviction never happened.

Q2. Is an expungement the same as a pardon?

A. No. To expunge a criminal record and to get a pardon are two completely separate things. When an expungement is granted, the person whose record is expunged may, for most purposes, treat the event as if it never occurred. A pardon (also called “executive clemency”), on the other hand, does not “erase” the event. Rather, it constitutes forgiveness. An
expungement can be granted only by a judge. A pardon for a New Jersey offense can be granted only by the governor. A pardon for a federal offense can be granted only by the President.

While we’re on the subject, there is yet an additional process available under some circumstances. This process is called obtaining a “Certificate of Rehabilitation.” This Certificate of Rehabilitation, when available, removes statutory bars to obtaining a professional license. It may also convince prospective private employers (or landlords, or adoption agencies, etc.) to disregard the criminal record that otherwise would have caused refusal. This Certificate of Rehabilitation may occasionally be available where the applicant would otherwise not qualify for expungement. On most occasions, Expungement Lawyers in New Jersey™ recommends expungement, when available. However, when circumstances will allow only the Certificate of Rehabilitation, Expungement Lawyers in New Jersey™ are able to assist in that process also.

Q3. Expungement of records, expulsion of records, sealing of records—what’s the difference?

A. There is no difference between expulsion of records and expunction of records. Those are just different terms for the same thing. Sealing refers to the situation where the court makes records unavailable to the public. Legally, the event in question still happened, but nobody (supposedly) can find out about it. Thus, all expunged records are sealed, but not all sealed records are expunged.

Adult criminal records in New Jersey normally cannot be sealed, outside the context of expungements. However, a special process does exist for sealing records relating to adjudications of delinquency, for juveniles. The specific New Jersey statute that treats sealing is N.J.S. 2A:4A-62. This site discusses sealing of juvenile delinquency adjudications a bit more on this page at Question 17.

It is sometimes possible to expunge or seal records in States other than New Jersey. Attorneys representing persons seeking sealing in those states must be licensed to practice there. The effect in New Jersey of such expungement or sealing upon requires intense review of the law of that State (as well as deep knowledge of New Jersey law as it relates to expungements). CPL Section 160.59 is the New York statute that governs sealing of records there. Subsection 10 of Section 160.59 discusses the limited effect of a New York sealing.

Benefits and Limitations

Q4. Are expunged criminal records destroyed?

A. No. Expunged records are segregated, not destroyed. That is, they are moved to special locations for expunged records. When ordinary record searches are made, records kept in these special locations are not accessed. Thus the results of this ordinary search will be a return of “No Record Information.”

The procedure that New Jersey courts follow once an expungement has been granted is detailed in a document called an “Administrative Directive.” The Administrative Office of the Courts revises these Administrative Directives from time to time. The current document that specifies how the courts in New Jersey process expungement orders is Administrative Directive 02-12. It was issued on April 16, 2012.

Q5. Why are expunged records not destroyed?

A. The New Jersey expungement statutes (and sometimes federal statutes) contain provisions under which expungements are not effective. These provisions include the following:

- The person is applying for employment with a law enforcement agency;
- The person is applying for employment with a corrections agency;
- The person is applying for employment in the judicial branch of government;
- The person is seeking diversion of criminal or disorderly persons charges after having had a previous diversion expunged;
- The person is being sentenced for an offense committed after the previous expungement;
received or will receive monetary compensation in an amount equal to or greater than any fines, penalties or court costs the person paid.

"b. Notwithstanding the provisions of any other law, purging of identifying information pursuant to this act shall not require any action by the defendant or the payment of any fee.

c. The Supreme Court of New Jersey may adopt rules and the Administrative Director of the Courts may issue directives and guidelines to be followed by municipal courts to implement the purposes of this act.

d. The Attorney General may issue any guidelines which may be necessary concerning procedures for law enforcement agencies or any agency in the criminal justice system for purging records or files of municipal ordinance violations as required by this act."

The second exception concerned dismissals. A law that became effective on April 16, 2016, required the prosecutor to automatically expunge all records when all New Jersey charges relating to an arrest were dismissed. Expungements of arrests disposed of by a municipal court, supposedly automatic, did require completion and processing of AOC Form 11980.

A new law that took effect on June 15, 2020, expanded the number of situations wherein expungement was supposed to become automatic. Those situations all related to cases where charges were dismissed, where the defendant was acquitted, or where the matter was otherwise disposed of without a conviction.

- The person is seeking naturalization.

So records stored in these special locations are checked in situations such as those.

There is a second reason expunged records are not destroyed. From time to time it is discovered that an expungement was granted in error. If that discovery is made known to the court within five years from when the expungement was granted, N.J.S. 2C:52-26 requires the court to vacate and reconsider the expungement. If the expungement is vacated, the segregated records then must be unsegregated.

There is still a third reason expunged records are not destroyed. It occasionally happens that different agencies or, sometimes, the very person whose records were expunged, needs actual copies, or certified copies of those records. One common situation of need for these copies is the naturalization process. Other situations exist. N.J.S. 2C:52-19 enables that person to ask the court to order that the agency that has those records make them available.

We provide do-it-yourself forms published by the Administrative Office of the Courts that enable individuals to obtain their own expunged records. AOC Form 11422 is the application, with instructions, for the release of expunged records. AOC Form 11424 is the blank court order for the judge to sign, authorizing release of the records. Expungement Lawyers in New Jersey™ also provide that service for persons seeking their help.

Q6. Then in what situations are expungement effective?

A. There are many. Employment applications to be a nurse need not recite expunged matters. The same is true for employment applications to be a teacher, real estate broker, stock broker, banker, hospital worker, computer programmer, taxi driver, barber, or anything else, so long as it is not in law enforcement, corrections, or the court system. Applications to obtain professional licenses (other than to practice law) similarly need not recite court proceedings that have been expunged. After the court expunges the record, it no longer exists for purposes of an application to adopt a child. If you apply for admission to a school or a professional organization, the expungement is effective: You need not recite matters that have been expunged. If your arrest resulted in a conviction and that conviction is later expunged, Section 1570.3 of Title 49 of the Code of Federal Regulations allows you to tell the Transportation Security Administration (TSA) that you have not been convicted. Section 1570.3 is in that part of federal regulations that deals with maritime and land transportation security. (49 CFR 1570.3 does not specify whether you would still have to disclose the arrest on an employment application, or in a job interview. Additionally, you would be required to divulge the expunged conviction on a merchant mariner credential (MMC) application.)

Q7. Does this mean that I can never get a job in law enforcement, or in the court system, or that I can never become a lawyer?

A. It does not mean that at all. It just means that if you do pursue any of those activities, you would be required to specify prior arrests on the application when asked, even though they have been expunged. You can state that they have been expunged, but you still need to recite them. The government agency will then consider your entire application, including the expunged information, and approve or reject your application on that basis. Unless a statute, or the expungement order itself, specifies it (almost none do), the recitation is not automatically disqualifying.

Q8. If I am placed under oath, am I committing perjury, or false swearing, if I deny the existence of expunged information?

A. It depends. If you are under oath in a New Jersey setting and not relating to a federal matter, you can legally deny the matter, even under oath. Note, however, that the information is still available to New Jersey officials in certain instances. We list those instances in Question 5, above. So although you can legally deny the matter in those circumstances under oath, it makes little sense to do so, since the information will be available anyway to the agency that is asking the question.

When it comes to federal forms and proceedings, and matters involving other States, the law

Some federal forms tell you that failure to reveal the matter when asked under oath is a federal crime. See, for example, the certification on page 121 of the National Security Positions Employment Questionnaire form. So does denying the existence of this matter that now supposedly never happened expose you to criminal prosecution? We offer here some guidelines:

1. Read very carefully the question, and whatever information accompanies the questions to which you are responding. For example, the question or the instructions sometimes explicitly indicate whether how previously expunged matters are to be treated. On other occasions, a careful reading will sometimes reveal that the event in your past is one about which the question is not even inquiring.

2. Call the agency that provided the form and inquire as to their interpretation of the question.

3. Consult with a criminal defense lawyer who practices in the pertinent jurisdiction.

4. Lacking an authoritative answer by following guidelines one, two, and three, proceed with the understanding that, at least in theory, exposure may exist. Until someone is prosecuted and a court decides the issue and issues a published opinion in any given instance, no one knows for sure. The safest response, generally, would be to divulge the information. At the same time, the consequences of divulgence will sometimes outweigh whatever risk may exist from not divulging.

See also Questions 6, 9, 13, and 14 on this page.

Q9. Will a New Jersey expungement clear my FBI criminal history?

A. Yes. As part of its processing, New Jersey State Police notifies the FBI when records of an arrest or a conviction have been expunged. This notification is electronic. Thus, when we receive New Jersey State Police acknowledgement that it has processed the expungement order, the FBI will have already been notified.

Upon receiving the notification, federal law requires the FBI to adjust its records accordingly. This requirement is spelled out in the Code of Federal Regulations. More particularly, 28 C.F.R. Section 16.34 specifies, “Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.” The FBI will then report that no record exists concerning the New Jersey arrest that was expunged. Our Your Arrest History page on this site explains how you can verify for yourself that the FBI has, indeed, cleared your history of arrests and convictions.

A couple of notes of caution are in order. First, one of the consequences of 9-11 was that federal agencies increased sharing of information. One must now assume, therefore, that information provided originally to the FBI will have been shared with agencies such as Homeland Security, Immigration and Customs Enforcement (ICE), and maybe even the CIA. The federal regulation that requires the FBI to adjust its records says nothing concerning those other agencies. It could be a mistake to assume that those other agencies will comply with a New Jersey court order expunging arrest or conviction records.

The second note concerns travel outside the United States. The information sharing just mentioned includes dissemination of arrest and conviction records to other countries. Canada, in particular, has very stringent regulations about who can enter the country. An article that we uploaded discusses some of these regulations. Persons whose criminal history precludes their legally entering Canada can seek an exemption. Even after a matter has been expunged, persons considering traveling outside the United States are strongly advised to speak with an immigration lawyer or embassy official for the destination country. FWCanada is a Montreal-based immigration law firm that provides professional legal services on Canadian immigration. That firm also offers a quick assessment tool to determine eligibility for entry.

Q10. I am not a United States Citizen. Is there anything special I need to know about expungements?

A. Indeed there is. As just mentioned, important federal exceptions to the effectiveness of
expungement orders are the Department of Homeland Security, including Immigration and Customs Enforcement (ICE). Non-citizens applying for entry into the United States, or seeking naturalization, will likely need to divulge arrests and convictions, even after they have been expunged.

Additional considerations exist for non-citizens who may apply for citizenship in the future. For example, just as for non-citizens seeking entry, persons seeking citizenship must divulge information concerning arrests and convictions even after those arrests and convictions have been expunged. In that regard, they may need to furnish particular documents relating to those past matters. Those documents may need to be certified by the court, or by the agency that generated them. Specific documents that may be needed can change from time to time, at the whim of naturalization agencies. After expungement, needed records may be obtainable (if at all) only by court order. For all of these reasons, Expungement Lawyers in New Jersey™ generally recommend that non-citizens contemplating naturalization defer expungement until the naturalization process has been completed.

Persons choosing to not wait should obtain, before completion of the expungement process, copies of all documents that might foreseeably be needed in future naturalization proceedings. Those documents may include the following:

- Initial Complaint
- Investigation Report
- Arrest Report
- Indictment or Accusation
- Laboratory Report (if applicable)
- Plea Transcript
- Order of Dismissal, or Judgment of Conviction

The Order of Dismissal or Judgment of Conviction must be certified. Expungement Lawyers in New Jersey™ recommend certification of the other listed documents (although probably not the plea transcript) whenever possible.

Finally, Expungement Lawyers in New Jersey™ encourage persons facing such issues to consult with an attorney who specializes in immigration law.

Q11. My record was expunged. Yet my criminal history is still showing up when I apply for a job. Why? And what can I do about it?

A. The answer to this question is complicated. We’ll answer the “why” question right here. The “what can I do about it” question we discuss briefly below, and in more detail on a separate page.

In seeking an answer to the “why” question, one place to look would be to see whether the expungement process was fully completed. After the judge signs the expungement order, still more remains to be done.

For expungements filed on or after January 1, 2021, the court is supposed to send copies of signed expungement orders to all courts, law enforcement agencies, supervising authorities (parole or probation), and places of confinement that have records of the arrest or conviction. For expungements on applications filed before January 1, 2021, the court provides a copy of the signed Order to the person who filed the original expungement petition. That person is usually a lawyer, but sometimes it is a person acting without a lawyer (“pro se”—see Question 30, below). Regardless, that person must then serve a copy of that signed expungement Order upon the agencies indicated above. Until those agencies have received and processed the expungement Order, they report the history as before.

Various methods exist for persons wanting to see what is still being reported. They can obtain a Municipal Court Case Search on themselves (or, for that matter, on anyone else). They can obtain New Jersey Criminal Conviction Information for themselves (or, again, for anyone else). And they can obtain an FBI criminal history report (but only for themselves). The Your Arrest History page on this site walks you through that process.

For New Jersey State Police, processing expungement Orders is far from their highest priority.
Question 24, below, discusses this situation in more detail. Once upon a time, their processing typically consumed about four weeks. On November 29, 2021, NJSP Trooper Somers told us that processing can take up to eight months. That information now appears to be unduly optimistic. Presently, delays of a year or more are now the norm. Processing is sporadic. Contrary to what they tell us, New Jersey State Police does not complete its processing on a first-in first-out basis.

More reasons exist for why your history can continue to show up. Expungements are of limited use in some situations. We discuss some of those situations in Questions 5 and 9, above. Question 14, below, provides additional information in that regard.

Still more reasons exist why potential employers might see your expunged record. Consider the Internet. It is everywhere. Once information arrives there, it becomes difficult or impossible to get it removed. In addition to what is on the Internet, consumer reporting agencies all over the world collect arrest information and criminal history from court records. As observed in G.D. v. Bernard Kenny, 205 N.J. 275, 298 (2011), “The expungement statute—enacted at a time when law enforcement and court documents may have been stored in the practical obscurity of a file room—now must coexist in a world where information is subject to rapid and mass dissemination.”

There are also sites that exist for the sole purpose of extorting money from people that have a record. These sites post mug shots and identification, supposedly as a “public service.” For a fee, those sites will remove that information. In one hopeful piece of news, California brought criminal charges against principals of one of the more flagrant violators, mugshots.com. One can only hope that such charges discourage vermin of that ilk. That lawsuit and, possibly, others like it, appear to have had some success. mugshots.com now claims that as of July 1, 2018, it removes entries once notified that the event in question has been expunged.

You also asked what you can do about it. For the situation where the expungement processing was never completed, the first step is to verify that the order for expungement was provided to New Jersey State Police. You can call Expungement Unit of the New Jersey State Police to check on the status of their processing. Their phone number is 609-671-7900.

Persons unwilling to tolerate State Police lethargy can return to the court that granted the expungement order, and ask the court to enforce it. The technical term for this legal process is a “motion to enforce litigant's rights.” The cost of this process, however, is likely to vastly exceed the cost of the original expungement. The judge considering the application can order New Jersey State Police to pay that additional cost. Expungement Lawyers in New Jersey™ successfully utilized this procedure in one egregious case where New Jersey State Police point blank refused to process the expungement Order at all. In that instance, however, the judge lacked sufficient backbone to order New Jersey State Police to pay counsel fees.

A less drastic possibility is to complain to the Administrative Office of the Courts. Our “Unreasonable Delays” page on this site details how to do that.

No perfect solutions to these other situations exist. Partial solutions are available. Our After the Expungement page gives some suggestions. We provide still more partial solutions elsewhere.

Q12. I was arrested for possessing a small amount of marijuana, and a pipe. I went to court and got a conditional discharge. After I successfully completed my probation, the court dismissed both of the charges. Will an expungement be of any benefit to me?

A. Yes. Since your charges were dismissed, you have no record of a conviction. However the original arrest may still be on your record. Under a new law called L. 2019, c.269, these arrests are supposed to be expunged automatically. If that has not yet happened, its mere existence can put you at a competitive disadvantage. Your arrest record can cause prospective employers to hire someone else equally (or less) qualified, instead of you. Employers can even fire you after you’ve been hired. Discrimination against persons with an arrest record may be unfair, but it nevertheless exists. In order for your marijuana charge to not show up, your arrest record must be expunged.

Note that marijuana- and hashish-related convictions may have already been expunged
Q13. My convictions were expunged. Now I want to apply for a gun permit. Should I divulge those expunged matters on my New Jersey firearms application?

A. No. In fact, questions on the official New Jersey Firearms Identification Card Application Form relating to past criminal convictions or arrests specifically exclude records that have been expunged or sealed. Question 18 on the official New Jersey Application for Permit To Carry a Handgun does likewise.

Your New Jersey expungement will also remove any federal firearms disability that arose on account of the New Jersey conviction. This follows from Title 18, Section 921(a)(20) of the United States Code. That provision states: "Any conviction which has been expunged...shall not be considered a conviction for purposes of this chapter, unless such...expungement...expressly provides that the person may not ship, transport, possess, or receive firearms." Note, however, that if you previously had a gun permit that was revoked, or if you previously applied for and were denied a gun permit, you would have to divulge that fact and explain the reasons even though those reasons related to matters that were later expunged.

As mentioned above, your New Jersey expungement will "clear" you to obtain your gun permit both federally and for New Jersey. Unfortunately, we are not able to advise you of the effect of your New Jersey expungement for gun permits in states other than New Jersey. In that regard, please see answers to Questions 9, 14, and 32 on this page.

Q14. I was able to expunge my criminal record in New Jersey. Now I am seeking licensure in California to be a teacher. California tells me that I must divulge all past offenses, even if they have been expunged. Must I divulge it?

A. Simple the question, not so simple the answer. This question involves interplay between three diverse areas of law. Those areas are the Full Faith and Credit Clause of the United States Constitution, New Jersey expungement law, and applicable California law (or the law of whatever jurisdiction may be involved). We discuss this interplay elsewhere. However, if all you want is the "the bottom line," the answer is that, ultimately, only the United States Supreme Court can tell us and, so far, that Court has not done so.

Q15. Do I really need to expunge my record?

A. The answer to this question depends on the value that you place on an expungement. A record of a criminal conviction, or even an arrest, can keep people from obtaining a much desired job. We discuss that situation in Question 12, above. "Collateral consequences" are many.

If you are self-employed, you perhaps have no need for an expungement. But even if you are self-employed, need sometimes arises. For example, potential clients, customers, or lending institutions may look up your record. You may want to be considered for government contracts. Or you may want to rent an apartment, or coach a local sports team, or adopt a child. Prospective dates can look up your record! Remember, too, the psychological benefit. The weight of the past is lifted from your shoulders if your record is saddled with this burr. As former client M.D. put it, "It's a new beginning."

At the same time, understand that an expungement will not magically solve all day to day problems. You will still have to get up each morning, take a shower, kiss your spouse and go to work. You will still have to care for your spouse, your kids (present or future), or your elderly parents. To borrow from an old joke, if you could not play the piano before the expungement, you will still be unable to play it after. What it will do, however, is help you to reach your potential. It will open doors previously shut. Continuing our analogy, if you could play the piano before the expungement, your expungement may enable you to join the orchestra. We expunge records; the rest is up to you. Expungement is simply another tool in managing this improbable journey we call life.

So do you really need it? This is a question that only you can answer.

Eligibility

Q16. Can anyone expunge his criminal record?

A. No. Whether someone can expunge his record is determined by the law of the state where the event occurred. Thus a person who qualifies for an expungement in Nebraska or Arizona
may not qualify in New Jersey, since the law in each state is different. In New Jersey, the
determination of who qualifies is quite complicated. Relevant factors are set forth in NJ
expungement statutes. These factors include:

- Is what the person wants to expunge just an arrest, or was there also a conviction?
- If there was a conviction, what was the person convicted of? Some convictions can
  never be expunged. These include convictions for murder, robbery, arson, kidnapping,
  perjury, and sexual assault. If a person was adjudicated delinquent as a juvenile for any
  these offenses, that adjudication, similarly, cannot ordinarily be expunged. However, a
  “back door” approach may be able to overcome that disqualification. We will explain
  this, eventually, on another page on this site. Until then, call us if your record contains
  adjudications for one or more of the indicated offenses.
- How many times has the person been convicted?
- When was the person convicted?
- What was the person’s sentence?
- Were all fines paid? When?
- Has the person ever previously had an expungement?
- Are any charges against the person still open?

This “Eligibility” section (right here through Question 22) provides much information
concerning eligibility. An expungement eligibility assessment is also available using our
online questionnaire. This assessment often identifies possible trouble areas. However, It is
only preliminary. A more accurate assessment sometimes requires reviewing results of a
criminal history search.

Eligibility determinations are easiest when you have been charged with an offense exactly one
time in your entire life, and you know what the charge was, the court in which it was ultimately
resolved, the exact outcome of the charge, and the date. When not all of these facts are readily
available, or when you have been charged on more than one occasion, things get more
involved. The situation may require a detailed review of all convictions and arrests that you
have ever had. Expungement Lawyers in New Jersey™ can provide that review. In order for us
to do that, you sometimes need to do some work on your own first. For starters, unless you
already have your complete record of arrests and convictions, we must track it down. We
explain how to do that elsewhere on this site.

Wikipedia has a good overview of New Jersey eligibility criteria. You can also obtain a
preliminary assessment from an online questionnaire available on this site. However, an
authoritative determination is best obtained from a conference with Expungement Lawyers in
New Jersey™.

Note: Where records cannot be expunged, other alternatives may exist. Also, laws change.
Some changes are for the better, and some for the worse. In the past few years, the New
Jersey Legislature has increased expungement eligibility in several ways. If your record still
cannot be expunged now, check again from time to time. You never know!

Q17. How long must I wait before I can expunge my conviction?

A. Convictions almost always require a waiting time before the court will let you expunge your
record. The major exception to that rule is marijuana convictions. The times are as follows:

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<tr>
<th>Nature of Conviction</th>
<th>Waiting Time</th>
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<tbody>
<tr>
<td>Crime (Felony)</td>
<td>The full waiting period is five years. The court will consider an application to expunge an eligible felony conviction after four years. (The court refers to this as “early pathway.”) For early pathway, the court will require you to show “compelling circumstances” to grant the expungement. Note that some</td>
</tr>
<tr>
<td>Disorderly Persons Offense (Misdemeanor)</td>
<td>The full waiting period is five years. However, the court will consider an application to expunge a disorderly persons conviction after three years. (The court refers to this as &quot;early pathway.&quot;) For early pathway, the court will require you to show &quot;compelling circumstances&quot; to grant the expungement. When the disorderly persons conviction was for marijuana, there is no waiting period.</td>
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<tr>
<td>Petty Disorderly Persons Offense (Misdemeanor)</td>
<td>The full waiting period is five years. However, the court will consider an application to expunge a petty disorderly persons conviction after three years. (The court refers to this as &quot;early pathway.&quot;) For early pathway, the court will require you to show &quot;compelling circumstances&quot; to grant the expungement.</td>
</tr>
<tr>
<td>Juvenile Adjudication</td>
<td>Three years, or period for equivalent offense if committed by an adult, whichever is less. Note that a separate process exists whereby records of juvenile adjudications that cannot be expunged may be &quot;sealed.&quot; Sealing provides many of the same benefits that are obtained with expungement. The waiting period to seal juvenile delinquency adjudications is two years. For persons seeking entry into the United States Armed Forces, the two-year waiting period is waived.</td>
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<tr>
<td>Municipal Ordinance</td>
<td>Two years</td>
</tr>
<tr>
<td>Young Drug Offender (21 years of age or younger when offense was committed)</td>
<td>One year</td>
</tr>
<tr>
<td>Driving While Intoxicated (DWI/DUI)</td>
<td>DWI/DUI arrests and convictions cannot be expunged under New Jersey law. Please see Question 19, below, for more detailed information.</td>
</tr>
<tr>
<td>Dismissal following successful completion of diversion (PTI, Conditional Discharge, or Conditional Dismissal)</td>
<td>Six months</td>
</tr>
<tr>
<td>Not guilty by reason of insanity, or not guilty for lack of mental capacity</td>
<td>These dispositions cannot be expunged. However, if there was a commitment to a mental health facility, it may be possible to expunge that commitment.</td>
</tr>
<tr>
<td>Final Restraining Order arising from domestic violence situation (“DVRO”)</td>
<td>Records relating to restraining orders cannot be expunged because restraining orders are civil in nature, not criminal. Information about restraining orders is available elsewhere.</td>
</tr>
<tr>
<td>Dismissal, Other</td>
<td>No waiting time at all. Call us!</td>
</tr>
</tbody>
</table>

Q18. Do these times run from the date of the offense?

A. No. The times run from the date that the judge imposes sentence, the date you finish paying all of your fines, the date you successfully complete parole or probation, or the date you complete your jail or prison sentence, whichever comes last. Any conviction for a disorderly persons offense or petty disorderly persons offense will reset the clock to zero. The court may relax the waiting period relating to payment of fines if the court finds that fines were paid substantially on the schedule specified by the sentencing judge, or if we satisfy the court that compelling circumstances prevented you from paying your fines.

More information concerning how payment of fines affects waiting period is available elsewhere on this site.

Q19. I was found guilty of driving while intoxicated. Your chart does not specify the waiting time before I can get that matter expunged.

A. New Jersey classifies driving while intoxicated as a motor vehicle offense. Motor vehicle offenses are defined in Title 39 of New Jersey Statutes. One of the New Jersey expungement statutes specifies that motor vehicle offenses defined in Title 39 cannot be expunged. Thus unless New Jersey laws change, your DWI conviction remains on your driving record, regardless of how much time has passed.
Some offenses, although in Title 39, are designated disorderly persons offenses, rather than motor vehicle offenses. One such offense relates to the situation of a parent or guardian who, driving while intoxicated, had a minor as a passenger. The statutory reference for that offense is N.J.S. 39:4-50.15b. Arrests and convictions of non-motor vehicle matters, even though in Title 39, can be expunged.

Note that inability to expunge DWI offenses can create difficulties beyond driving consequences. One example of such difficulties relates to exclusion from foreign countries. Canada, in particular, routinely denies entry for persons convicted of driving while intoxicated. Question 9, above, discusses this situation at greater length.

Q20. I was charged with a federal crime. What is involved in getting that expunged?

A. In general, federal law is very unforgiving. Provision exists for persons who obtained a “Special Probation” under Title 18, Section 3607 of the United States Code. That section relates to persons charged with simple possession of controlled dangerous substances. It is available only to persons under twenty-one years of age at the time of the offense. And, incredibly, this exception is available only to persons found guilty of the offense. If a person was arrested, went to trial, and acquitted; or if the charge was dismissed for insufficient evidence, 18 U.S.C. 3607 makes no provision for expungement of that arrest.

H.R. 3884, introduced in the House of Representatives on July 23, 2019, would have decriminalized marijuana under federal law, and provided for expungement of previous federal marijuana convictions. H.R. 3884 died in the 116th Session of Congress. Provisions of H.R. 3884 were reintroduced in the 117th Session of Congress, redesignated H.R. 3617. H.R. 3617 has passed the House of Representatives! It now awaits Senate consideration.

A different situation exists in which expungement for federal arrests and convictions arguably can be expunged. That situation is where a person is charged in a federal complaint with violating a state statute. This can happen when the alleged offense occurs within New Jersey, but on federal property. Title 18, Section 13, of the United States Code authorizes charges in that situation. An example of this might be simple possession of marijuana occurring in Sandy Hook National Park.

We use the word “arguably” above because whether 18 U.S.C. 13-type arrests and convictions can actually be expunged, to our knowledge, has never been decided by any federal court.

The Ninth Circuit held in United States v. Bossel, 866 F.2d 315 (9th Cir., 1989), that state rehabilitative statutes that permit dispositions not resulting in a permanent conviction can be used by a federal court sentencing a defendant under this Act. Note, however, that what was involved in Bossel was sentencing, not expungement. Also, decisions of the Ninth Circuit are often contrary to decisions of other Circuits. When the United States Supreme Court reviews decisions of the Ninth Circuit, those reviews often result in reversal. Thus Bossel provides a cogent argument as to why federal courts should allow expungement of offenses prosecuted under 18 U.S.C. 13. The final outcome, however, is far from certain.

Emerging limited case law holds that federal courts have inherent power to expunge criminal records when necessary to preserve basic legal rights. We discuss this limited federal case law separately. The long and the short of it however, is that, except for the “Special Probation” described above, expunction of federal criminal records remains a very open question.

The absence of more meaningful provision to expunge federal arrests and court history is a national disgrace. Some members of Congress, from time to time, have attempted to address this problem in “Second Chance Acts”. To date, all such efforts have failed, although a growing consciousness is emerging of the injustice. Perhaps with enough members of Congress, or their families, are indicted and convicted of federal offenses, real change will come.

Q21. When I was nineteen, I pleaded guilty to possession of cocaine with intent to distribute. Two lawyers have told me that that offense can never be expunged. Are they right?

A. When did they tell you this? Expungement law in New Jersey has changed over the years, in most instances for the better. Thus, although your record originally could not be expunged, it may now be eligible.

If your offense was possession with intent to sell, and if it was of the first or second degree, then records of that offense still cannot be expunged. But if your crime was of the third or fourth degree, your records can be considered for expungement. Before the court will allow
you to expunge those records, however, the judge must make a finding that compelling reasons support the expungement you seek. Compared with “plain vanilla” expungement processing, this is a substantial undertaking. And you must still, of course, meet all other requirements. We discuss this concept of “compelling reasons” expungements in much more detail elsewhere on this site.

Even if your crime was of the first or second degree, you may still be eligible, provided that your intent was to distribute without selling. This distinction is subtle, but important. Sales usually involve a distribution, but not all distributions involve a sale. The Superior Court of New Jersey, Appellate Division, addressed this subtlety on August 3, 2007, in a case entitled Expungement Application of G.R. What the G.R. court said is that convictions for possession with intent to distribute can be expunged provided that the distribution was to be gratuitous. If the intent to distribute was to be in connection with a sale, then expungement must be denied. A May 2019 decision of the Supreme Court of New Jersey, State v. Davon M. Johnson, A-58-17, (not an expungement-related case), elaborates upon this distinction.

Combining the changed law with the decision in G.R., many convictions for possession with intent to distribute can now be expunged. Even under the changed law, however, such applications will seldom sail through smoothly. You should be prepared for an objection from the prosecutor. An in-court hearing will then be needed. It may be necessary to obtain the services of an expert witness. At the in-court hearing, the judge will consider the entire circumstances of the conviction. Where distribution or intent to distribute was involved, you may still have to convince the judge that compelling circumstances support the expungement application. The final decision to grant or deny the expungement application will turn on that determination.

It is also important to note that the losing party after such a hearing has the right to appeal the judge’s decision. The bottom line is that if you are seeking to have this offense expunged, expect delays, possible need for a court appearance, and a process that will likely be costly and with no guaranteed outcome.

Q22. My record was expunged a few years ago. Unfortunately, I was subsequently arrested again. Can I get a new expungement for those later charges?

A. Maybe.

A popular myth has been circulating for years that the most expungements a person can ever get is one. That is nonsense. There is no limit to the number of expungements you can apply for and receive in New Jersey. However, when determining whether your newest matter is eligible to be expunged, the court will consider your entire past criminal history, including everything previously expunged. See Question 5, above. For that reason, if you are using our free eligibility review, answer the questions as if you never had any arrests or convictions previously expunged.

Cost

Q23. What will it cost for me to seek an expungement?

A. This question, like the question, “How much does a divorce cost?” is a question that is impossible to answer in a vacuum. Before being able to answer the divorce question, details are needed: Will the other party oppose the divorce? Are there child custody issues? Health issues? Disputes over division of assets? And so forth.

So it is with expungements. Cost depends on many factors. These factors include the following:

- Are you using a lawyer, or will you do it on your own? (See Question 30.)
- Which lawyer are you using?
- Does your expungement have special issues that must be addressed? For example, is it an “early pathway” (FAQ 17, above) or other type of “public interest” (FAQ 21, above) case?
- Will the prosecutor (or anyone else) object to the expungement application?

If you handle the matter on your own, your cost will usually be limited to out-of-pocket expenses. Those out-of-pocket expenses are often just nominal. Having a lawyer entails lawyer fees.
The fee of Expungement Lawyers in New Jersey™ ranges from $1,285.00 including expenses, to $3,985.00, plus expenses. (For expungements in Camden, Essex, or Mercer Counties, their fee could exceed even the $3,985.00.) For the vast majority of expungements, their fee is $1,685.00. That amount includes their guarantee. Discounts are sometimes available for military veterans. So which is it, $1,285.00, $3,985.00, or some other number? The answer is, “It depends.” Expungement Lawyers in New Jersey™ provide a much more detailed analysis of their fee structure, including their military veterans discount, elsewhere.

Procedure

Q24. How long does it take to expunge a criminal record, and is there any way to speed it up?

A. In theory, the expungement process should take about three months. In reality, it is now taking well over a year, and increasing. By “the expungement process,” we mean not just how long it takes for the judge to grant the expungement but also, even after that, the time before the arrest and conviction history is actually cleared.

Why so long? The answer is that expungement processing in New Jersey is broken. Five break points exist. All five break points occur after the expungement Petition is signed and forwarded to the court for filing.

Break point one is court processing upon receipt of the Petition. Formerly, this was a recurring problem. In some counties this processing could be completed in as little as a week or ten days. But other counties could take a month. If the person who processes expungement applications is away for an extended period (some counties have no back-up person for that particular task), the expungement Petitions pile up. In most instances, this is no longer a problem because this aspect of the processing is handled electronically. In rare instances, expungement Petitions must still be filed “the old fashioned way,” on paper. In those instances, delay on this step becomes relevant.

Break point two is with New Jersey State Police. For Petitions filed “the old fashioned way,” the applicant or their lawyer serves various State agencies. When filed electronically, these notifications are automatic. Two of the agencies that are notified are the county prosecutor, and New Jersey State Police. N.J.S. 2C:52-24 requires county prosecutors to inform the court of any disqualifying conditions. For the most part, prosecutors rely upon New Jersey State Police to verify the petitions’ accuracy. New Jersey State Police can perform this verification process within minutes. That notwithstanding, present New Jersey State Police delay on this step is now eight to ten months.

The third break point is with county prosecutors. Prosecutors are required to advise the court of the State’s position on whether the Petitioner’s record is one that the law allows to be expunged. As just indicated, prosecutors rely upon New Jersey State Police information to formulate that position. After receiving that information, processing again halts until the prosecutor has reviewed it and then communicated its position to the court. Assessing the length of this break point is difficult because New Jersey State Police never informs applicants when it provides results of its investigation to the county prosecutor. Expungement Lawyers in New Jersey™ suspect that this is seldom a significant delay. It is often a major delay, however, in some counties. Those include especially, in our experience, Essex County and Mercer County.

Break point four is with the judiciary. Upon the filing of a petition for expungement “the old fashioned way,” courts set a date for a final hearing. N.J.S. 2C:52-9 requires that that date be within sixty days. Courts usually comply with that requirement. The problem is that when the specified date finally arrives, because of the previous break points, primarily break point two, more often than not the courts will not have been favored with the information that N.J.S. 2C:52-24 requires the prosecutor to provide. Processing stops. When Petitions are filed electronically (as most are), no deadline is specified at all for when the court is to consider the Petition. Even after receiving the prosecutor’s position, judges in some counties consider expungement applications once a month. If the prosecutor opposites the application and the Petitioner requests a hearing, a delay of two to three months, or more, before obtaining that hearing is not uncommon.

Break point five is typically the longest. It again involves New Jersey State Police. After the judge finally signs the expungement order, the petitioner serves a copy of that order upon (among other agencies) New Jersey State Police. For Petitions filed electronically, this is automatic. New Jersey State Police must then process it. It is this step that causes the petitioner’s record to actually be cleared. The problem is that upon receiving court orders
granting expungement, New Jersey State Police tosses them onto yet another pile, to be processed when reached. Question 11 on this page provides current figures on how long the expungement orders remain in that pile.

On February 2, 2019, the New Jersey Law Journal published an Op Ed that we submitted, The Op Ed encouraged the New Jersey Attorney General and the Administrative Office of the Courts to involve themselves in this travesty. That encouragement has fallen upon deaf ears. Allan Marain is a member of and immediate past chair of the Expungements Committee of the Association of Criminal Defense Lawyers of New Jersey. That Committee, and ACDL-NJ, are addressing this problem. A rapid solution does not appear to be at hand.

You also asked whether there was any way to speed up the process. Persons whose expungement application processing is stalled do have remedies, in theory. These remedies are financially costly. They may speed up the process. Then again, they may not. We provide much more detail elsewhere for persons interested in alternatives to passively allowing the process to run its course.

Q25. Must I personally appear in court to obtain the expungement?

A. In the vast majority of cases, no court appearance is needed. Exceptions exist. If someone objects to the application, an appearance might be required. And, as explained earlier, if your offense involved possession of a controlled dangerous substance with intent to distribute, a court appearance on your part may sometimes make a difference.

Q25. Even though the statute says that I qualify for an expungement, won't the victim, or the cop who arrested me, object anyway?

A. The expungement statutes are very specific concerning who must be notified when a person applies for an expungement. Neither the victim nor the arresting officer are included amongst the persons who receive notice of the expungement application. Thus when a person satisfies all of the requirements of the statutes, it is rare that anyone will object.

Q27. I was convicted of prostitution. A few years after I was arrested I got married. I never told my husband about my past. Will he find out about it if I apply for an expungement?

Q28. I was charged with possessing a small amount of marijuana a few years ago. I received a conditional discharge, paid fines, and successfully completed my probation. That is the only time I was ever charged with an offense. Will you guarantee that I can have my record expunged?

A. Lawyers who guarantee a particular outcome are either being less than candid with their clients, or do not know what they are doing. In the situation you describe, the process should run smoothly. But always the possibility of something unexpected exists. These possibilities include the following:

- You were charged with another offense that you've forgotten about.
- Someone else who was arrested used your name and your social security number.
- You never actually completed all of your payments to the court.
- You did complete your payments, but the court did not properly record it.
- You did successfully complete your probation, but the court never formally dismissed the complaint.
- Someone objects to the Petition, even though the objection has no legal or factual basis.
That said, Expungement Lawyers in New Jersey™ would add that while complications such as these sometimes happen, they are the exception and not the rule. Your own past court history and payment of fines is something that you likely are on top of. Those other situations happen but, fortunately, rarely. Most potential expungement problems are weeded out by careful review of the situation before filing the application with the court. Do expect complications if your matter is one that must be filed in Camden County.

While Expungement Lawyers in New Jersey™ do not guarantee a particular outcome, they do guarantee the quality of their work. The specific terms of their guarantee are on a separate page.

Q29. I would like to expunge my New Jersey criminal record. How do I begin?

A. We recommend these steps:

- Decide whether you are going to seek assistance from a lawyer, or whether you will represent yourself. The next question on this page, Question 30, lists some factors to consider in making that decision.

- If you decide to seek legal assistance, select a law firm.

- Contact the firm that you choose. Make an appointment, if convenient. Otherwise, make arrangements to provide the firm with relevant information, and for payment. Cost information can be found elsewhere on this page. Contact information for Expungement Lawyers in New Jersey™ is on the Contact Us page on this site.

Expungement Lawyers in New Jersey™

Q30. Do I need one of the Expungement Lawyers in New Jersey™?

A. Perhaps not. Some people obtain an expungement without the assistance of a lawyer. Proceeding without a lawyer has two advantages. First, of course, is the savings in lawyers' fees. The second advantage is that some people just enjoy the satisfaction and the challenge of doing it themselves. But it is, indeed, a challenge. The process is complicated. So is NJ expungement law. Much paper work is involved. There is a big learning curve. Prosecutors and judges demand extremely strict adherence to the technical requirements contained in the statutes. And some prosecutors insist on requirements beyond what is specified in NJ statutes. While this page answers Frequently Asked Questions, it certainly does not cover everything. Having a lawyer means not having to pull your hair out when other questions come along. And they will!

The expungement statutes themselves were poorly written. They contain ambiguities and, in some cases, outright inconsistencies. Expungement Lawyers in New Jersey™ are aware of those difficulties, and are able to help steer applicants through these rocky shoals.

If you qualify, mistakes in what you submit will seldom be fatal. However, mistakes can cause great delay and frustration. Expungement Lawyers in New Jersey™ will make the process faster, easier, less prone to mistakes. Nevertheless, if you want to explore obtaining the expungement on your own, the New Jersey Administrative Office of the Courts provides forms with instructions.

Q31. Must I come to Allan Marain’s New Brunswick offices in order to use his services?

A. No. Before the pandemic, Allan Marain regularly met with clients and prospective clients at his New Brunswick offices. Given the pandemic, Mr. Marain now discourages such meetings. However, the primary benefit achieved from those meetings was that the meeting enabled the client to better evaluate his or her prospective lawyer. In that regard, however, Allan Marain is a recognized authority on handling expungements throughout New Jersey. He is the immediate past chair of the expungement committee of the Association of Criminal Defense Lawyers of New Jersey. Other New Jersey expungement lawyers consult with him regularly on expungement-related questions. As a Wikipedia editor, Mr. Marain did a complete rewrite of the section relating to expungements in New Jersey. In February 2005, and again in October 2015, the monthly magazine of the New Jersey State Bar Association published articles that he wrote on expungement law, and handling expungement cases. Allan is a Senior Instructor on the faculty of Garden State Continuing Legal Education Services. He has presented its “Expungements under New Jersey Law” seminars to New Jersey attorneys throughout the State. Between June and November 2018, he gave presentations to the Criminal Law Section, and to the Municipal Court Practice Section of the New Jersey State Bar Association; he will
present another seminar to the New Jersey Bar Association’s Municipal Court Practice Section on February 22, 2021; he presented a New Jersey State Bar Association Webinar; and he coordinated and presented Expungement Hot Topics at the Association of Criminal Defense Lawyers of New Jersey’s “Super Saturday”.

Allan Marain represents expungement clients worldwide on an ongoing basis from his New Brunswick location. Judges and prosecutors throughout New Jersey, and New Jersey State Police, regularly process petitions that he submits for his clients. Client communications are routinely handled by telephone, by mail, and by email, either plain text or encrypted. Thus you are not required to come to his New Brunswick offices to use his services.

Q32. The arrest that I want expunged happened in New York. Can Allan Marain get that arrest expunged?

A. Allan Marain is licensed to practice only in New Jersey (plus before various federal courts and administrative agencies). Therefore he cannot represent persons seeking expungement of matters from other states. CPL Section 160.59 discusses sealing of New York criminal arrests and convictions. For information concerning expungement in other jurisdictions, you may want to take a look at Wikipedia or other web sources.

Q33. Should I contact Expungement Lawyers in New Jersey™ now even though my waiting period still has a while to go?

A. Yes. The sooner you begin, the better. In order for Expungement Lawyers in New Jersey™ to prepare the necessary expungement application, they often must obtain pertinent information from the police, from the court, or from other sources. Obtaining this information requires time, sometimes months. While your waiting period is running, Expungement Lawyers in New Jersey™ can gainfully use this time to collect all necessary information. In that way, when your waiting period is over, Expungement Lawyers in New Jersey™ will be ready to hit the ground running.

There are important reasons why Expungement Lawyers in New Jersey™ recommend proceeding as quickly as possible. For one thing, you may unexpectedly need to change jobs. It takes months to expunge a record (see Question 11, above), even when things go smoothly. You may not be able to wait that long. Secondly, if some day you are charged with a new offense, you will be unable to expunge any records at all until your new charges are ultimately resolved. Further, the outcome of new charges can disqualify you from obtaining expungement of convictions that previously could have been expunged. Finally, eligibility to expunge records is measured against the law in effect when the expungement application is filed, not the law in effect at the time of the arrest. The Legislature can change eligibility rules at any time. Thus convictions eligible for expungement when the waiting period is satisfied can later become ineligible. This actually happens from time to time.

As an added incentive, if you retain Expungement Lawyers in New Jersey™ before your waiting period is over, you are protected from fee increases that may occur.

Q34. Where can I find more information about Expungements Lawyers in New Jersey™?

A. We thought you’d never ask. To begin with, you can read what former clients have said. Another excellent way is to contact him, or his office. Our Contact Us page mentions different ways you can do that.
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Recent Developments

The bill that Gov. Murphy signed is now designated L. 2019, c.269. With minor exceptions, L. 2019, c.269 took effect on June 15, 2020. Then Executive Order 178, signed by Gov. Murphy on August 15, 2020, interrupted its implementation until February 15, 2021, as described above. February 15 has arrived. Executive Order 178 has expired. Expungements continue!

We begin our analysis of L. 2019, c.269 with some cheerful news: With one rare exception, records that previously could be expunged can still be expunged. We will mention that exception as we go along. Now for a provision by provision analysis:

- Previously, when a record included two or more totally unrelated criminal convictions, none of those convictions could be expunged. L. 2019, c.269 now enables the most recent of those convictions to be expunged, assuming that conviction is otherwise eligible. “Otherwise eligible” means that all traditional prerequisites have been satisfied. For example, the waiting time (discussed below) must have passed. “Otherwise eligible” also means that the conviction is one that is eligible for expunction at all. Robbery convictions, for example, could previously never be expunged, and they still cannot. However, if (for example) unrelated convictions for aggravated assault and for burglary exist, then the later of those convictions can be expunged once the waiting period requirement is met.

This can make the order in which those convictions occurred important. Consider, for example, a person convicted of robbery in 1990, and theft in 2000. As a result of L. 2019, c.269, you can expunge the theft conviction because it was the most recent conviction and the waiting period is satisfied. The robbery conviction still cannot be expunged because it is not the most recent conviction and, additionally, because robbery is one of the crimes on the list of offenses for which convictions can never be expunged.

Now consider the opposite sequence: A person is convicted of theft in 1990, and robbery in 2000. The robbery conviction still cannot be expunged because robbery is one of the crimes on the list of offenses for which convictions can never be expunged. But the theft conviction cannot be expunged either because, when multiple unrelated criminal convictions exist, L. 2019, c.269 enables expunction of only the most recent.

- Convictions for various drug-related crimes, for expungement purposes, are now treated as convictions for disorderly persons offenses. Those crimes are: distribution, or possession with intent to distribute, hashish or marijuana, when the quantity of the marijuana is less than five pounds, or the quantify of hashish is less than one pound. This treatment exists even when the offense occurred within a thousand feet of a public school, or within five hundred feet of a public housing facility, public park, or public building;
• No waiting periods are now required before convictions for specified crimes involving marijuana and hashish can be expunged. Those specified crimes include simple possession, failure to make lawful disposition of marijuana or hashish, being under the influence of those substances, and simple possession of drug paraphernalia when that paraphernalia was associated with marijuana or hashish. The specified crimes also include distribution of marijuana and hashish, and possession with intent to distribute, when the amount was less than one ounce or, for hashish, less than five grams. This no-wait change applies even when the convictions relate to activities within a designated school zone, public park, and public housing project. Unfortunately, marijuana-related charges amended to other Title 2C offenses like wandering cannot benefit from this provision;

• By September 13, 2020, the Administrative Office of the Courts was to develop and maintain a system for the automatic sealing of convictions solely for the offenses just mentioned, without limit as to number. Covid-19 forced postponement of this feature. It is now well underway, however. Persons whose convictions for these offenses have not yet been expunged can wait for the system to catch up. Alternatively, they can apply using the traditional method;

• Disorderly persons convictions for possession of marijuana or hashish, or for being under their influence, or for failure to turn over those substances to a law enforcement official, are no longer considered in calculating whether a person has exceeded the limit of disorderly persons convictions that can be expunged. The same is true for disorderly persons convictions for possession of drug paraphernalia with intent to use, provided that that intent related to a disorderly persons quantity of marijuana or hashish. These convictions, too, are no longer counted against the limit of permissible disorderly persons convictions when seeking expungement of a criminal conviction;

• The waiting period before an eligible criminal conviction can be expunged as a matter of course is lowered from six years to five years. L. 2019, c.269 clarifies, but makes no meaningful change concerning when the expungement eligibility clock starts ticking;

• The waiting period before a criminal conviction can be expunged was lowered from five years to four years when the applicant demonstrates “compelling reasons” for that one-year reduction. Expungement Lawyers in New Jersey™ believe that judges will interpret “compelling reasons” more stringently than the “in the public interest” test previously used to ease expungement requirements;

• In seeking to expunge records relating to third- and fourth degree convictions of distribution, or possession with intent to sell controlled dangerous substances (other than marijuana or hashish), the applicant is similarly required to demonstrate “compelling reasons,” as opposed to “in the public interest.” This is one of the rare instances where L. 2019, c.269 may make obtaining an expungement more difficult than before;

• The number of disorderly persons convictions that can be expunged increased from four to five. (And remember that, as indicated above, marijuana- and hashish related convictions, and convictions for related paraphernalia, do not count at all towards that limit);

• When seeking expungement of disorderly persons convictions after only three years, the test that the applicant must satisfy is, again, “compelling reasons,” and not the previous “in the public interest” test. However, when expungement is sought for disorderly persons convictions for specified offenses, “compelling reasons” need not be shown. Indeed, as specified above, those specified offenses require no waiting period at all. Those specified offenses are distribution, or possession with intent to distribute, hashish or marijuana, when the quantity of the marijuana is less than one ounce, or the quantity of hashish is less than five grams. Need to establish “compelling reasons” is not needed even when the offenses occurred within a thousand feet of a public school, or within five hundred feet of a public housing facility, public park, or public building;

• Dismissals, acquittals, and discharges without conviction, be they in municipal court, or in the Superior Court of New Jersey, occurring after the effective date are to be automatically expunged. Separate application is not required. The Superior Court is to enter the expungement order for dispositions occurring there. Expungements for dispositions in municipal courts are to be in accordance with procedures developed by the Administrative Director of the Courts. This automatic expungement provision, however, does not apply to charges dismissed in conjunction with plea agreements
involving conviction of related offenses;

- Persons whose records cannot be expunged solely on account of having exceeded the number of criminal and disorderly persons convictions allowed, may nevertheless seek and obtain expungement of all convictions after passage of ten years from most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever comes last. This is known as the “clean slate” provision. This “clean slate” expungement is unavailable when the person's record includes a conviction for one or more crimes that, on account of their nature, can never be expunged. Additionally, if, after obtaining a “clean slate” expungement, the person is convicted of one or more of those ineligible crimes, all expungements obtained pursuant to that “clean slate” provision are nullified;

- The State must develop and implement a system that automates the “clean slate” expungements just described. Thus “clean slate” expungements will happen without need for any expungement application to be filed. As with non-automated “clean slate” expungements, the relief will be nullified if the individual is subsequently convicted of an ineligible crime;

- The statement that accompanies an expungement application is to include a provision that the applicant has never changed their name or, if they have, pertinent details;

- The Administrative Office of the Courts is required to develop and maintain a system to efile expungement applications. This system for development and maintenance is to be completed no later than June 15, 2021. The system is to serve the expungement application upon New Jersey State Police, the New Jersey Attorney General, and the County Prosecutor of all affected counties. Thereafter, New Jersey State Police has sixty days in which to notify the court of any objections. Upon granting the expungement, the court must serve copies of the order upon all relevant law enforcement and criminal justice agencies and, also, upon the person whose records have been expunged;

- Listed above are provisions of expungement law that have changed. It bears mention that under previous law, convictions for first- and second degree distribution of controlled dangerous substances, or possession with intent to sell, could not be expunged. L. 2019, c.269 does not change that. Convictions for those offenses will remain outside the list of crimes that can be expunged;

- All filing fees for expungements are eliminated!

Warning: Our language in the highlights indicated above is vastly simplified. The wording of L. 2019, c.269, all eighteen single-spaced pages of it, is convoluted. Very convoluted. That wording must be examined closely to determine its precise provisions. Courts will be struggling for years, trying to interpret exactly what is included, and what is not. Expungement Lawyers in New Jersey™ will be at the forefront of those struggles.

For those with the patience, and for those with sufficient curiosity, here is a link to its full text in .pdf format.

Recent Developments

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or Toll Free: 877-XPUNG-NJ
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N.J.S.A. 2C:52-2

2C:52-2. Indictable offenses

Effective: February 15, 2021

Currentness

<For current information relating to the possible extension of deadlines provided by this section due to the COVID-19 public health emergency, see Murphy Executive Order No. 275 (2021) and accompanying Appendix, 53 N.J.R. 2106(a).>

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 c. 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 c. 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 c. 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 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, 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.

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.

Credits

Footnotes

1 See N.J.S.A. § 2C:46-1 et seq.

N. J. S. A. 2C:52-2, NJ ST 2C:52-2
Current with laws through L.2022, c. 80 and J.R. No. 3

2C:52-5.3. “Clean slate" expungement by petition; terms

Effective: February 15, 2021
Currentness

“For current information relating to the possible extension of deadlines provided by this section due to the COVID-19 public health emergency, see Murphy Executive Order No. 275 (2021) and accompanying Appendix, 53 N.J.R. 2106(a).”

“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, or a combination of one or more crimes and offenses 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, 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.) 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 the court shall grant an 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). 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).

Credits

N. J. S. A. 2C:52-5.3, NJ ST 2C:52-5.3
Current with laws through L.2022, c. 80 and J.R. No. 3
New Jersey Statutes Annotated  
Title 2a. Administration of Civil and Criminal Justice (Refs & Annos)  
Subtitle 1. The Courts  
Chapter 4A. Family Court (Refs & Annos)  
Article 3. Information Relating to Juveniles

N.J.S.A. 2A:4A-62

2A:4A-62. Sealing of records

Currentness

a. On motion of a person who has been the subject of a complaint filed under this act or on its own motion, the court may vacate its order and findings and order the nondisclosure of social, medical, psychological, legal and other records of the court and probation services, and records of law enforcement agencies if it finds:

(1) Two years have elapsed since the final discharge of the person from legal custody or supervision, or two years have elapsed after the entry of any other court order not involving custody or supervision; and

(2) He has not been convicted of a crime, or a disorderly persons offense or adjudged delinquent, during the two years prior to the filing of the motion, and no proceeding or complaint is pending seeking such conviction or adjudication.

b. In any case wherein a juvenile has been adjudicated delinquent and said juvenile enlists in any branch of the Armed Forces of the United States, he may at any time after the date of such adjudication present a duly verified petition to the court where such adjudication was entered, setting forth all the facts in the matter, including proof of enlistment and acceptance in said armed forces, and praying for the relief provided in this section, and subject to the limitations hereinafter provided in this section, an order may be granted to seal all the records concerning such adjudication including records of the court, probation services and law enforcement agencies. Failure to enter the armed forces shall have the effect of nullifying the sealing order.

c. Reasonable written notice of the motion shall be given to:

(1) The Attorney General and the county prosecutor;

(2) The authority granting the discharge if the final discharge was from an institution, parole, or probation; and

(3) The law enforcement office, department, and central depository having custody of the files and records if such files and records are included in the motion.

d. Upon the entry of the order, the proceedings in the case shall be sealed and all index references shall be marked “not available” or “no record” and law enforcement officers and departments shall reply and the person may reply to any inquiry that there is no
record with respect to such person, except that records may be maintained for purposes of prior offender status, identification and law enforcement purposes. Copies of the order shall be sent to each agency or official named therein.

Inspection of the files and records included in the order may thereafter be permitted by the court only upon motion and only to those persons named in the motion; provided, however, the court, in its discretion, may by special order in an individual case permit inspection by or release of information in the records to any clinic, hospital, or agency which has the person under care or treatment or to individuals or agencies engaged in fact-finding or research.

e. Any adjudication of delinquency or conviction of a crime subsequent to sealing shall have the effect of nullifying the sealing order.

f. Expungement of juvenile records shall be governed by the applicable provisions of chapter 52 of Title 2C \(^1\) of the New Jersey Statutes.

**Credits**

**Footnotes**

\(^1\) N.J.S.A. § 2C:52-1 et seq.

Current with laws through L.2022, c. 80 and J.R. No. 3
Clients:

Are you fed up with how long your expungement is taking? You have probably heard the expression “God helps those who help themselves.” You can help yourself by writing letters explaining this failure of justice. This page tells you who to write, and suggests what to put in your letter.

If only one person reading this page sends the suggested letter one time, it will produce no results. If everyone reading this page sends the suggested letters, and keeps sending them, it will grab the court's attention. Somewhere in between there is a critical mass. Expungement Lawyers in New Jersey™ hope that that critical mass will be reached.

The tone of your letters must be respectful. Your letters must be factual, not emotional. While your frustration is totally justified, a letter that focuses excessively upon your frustration will be counterproductive.

Persons frustrated over the failure of New Jersey State Police to process expungement applications and expungement orders can write letters. Letters should not be written to the judge handling the matter. Nor should they be written to the prosecutor reviewing the matter. Letters, rather, should go to:

Administrative Office of the Courts
Attn: Hon. Glenn A. Grant
Administrative Director of the Courts
P.O. Box 037
Trenton NJ 08625

If your application still awaits review at the prosecutor's office level, your letter should include the following:

- The date your lawyer [name him or her] filed the application;
- The fact that the prosecutor of the county where the application is pending has not yet reviewed the application;
- The fact that your lawyer [name him or her] believes that the delay is on account of the prosecutor still awaiting a response from New Jersey State Police concerning the application;
- The ways in which your not having the expungement are hurting you;
- Your lawyer [name him or her] is available to provide additional details;
- Will Judge Grant please investigate this delay and take appropriate action.
If the judge has already granted the expungement but New Jersey State Police is just sitting on it, your letter should include the following:

- The date the judge granted the expungement;
- The fact that New Jersey State Police has not yet processed the expungement order;
- The ways in which the order not being processed are hurting you;
- Your lawyer [name him or her] is available to provide additional details;
- Will Judge Grant please investigate this delay and take appropriate action.

The tone of your letters must be respectful. Your letters must be factual, not emotional. While your frustration is totally justified, a letter that focuses excessively upon your frustration will be counterproductive.

Expungement Lawyers in New Jersey™ encourage you to write these letters about every three weeks for so long as your expungement application remains stuck in the bowels of an ossified system. Start today, and mark follow up on your calendars!

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N.J.S.A. 2C:35-14

2C:35-14. Rehabilitation program for drug and alcohol dependent persons subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility; special probation; mandatory commitment to residential treatment facilities; sentencing considerations; expungement

Effective: January 18, 2022
Currentness

Rehabilitation Program for Drug and Alcohol-Dependent Persons Subject to a Presumption of Incarceration or a Mandatory Minimum Period of Parole Ineligibility; Criteria for Imposing Special Probation; Ineligible Offenders; Commitment to Residential Treatment Facilities or Participation in a Nonresidential Treatment Program; Presumption of Revocation; Brief Incarceration in Lieu of Permanent Revocation.

a. Any person who is ineligible for probation due to a conviction for a crime which is subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility may be sentenced to a term of special probation in accordance with this section, and may not apply for drug and alcohol treatment pursuant to N.J.S.2C:45-1. Nothing in this section shall be construed to prohibit a person who is eligible for probation in accordance with N.J.S.2C:45-1 due to a conviction for an offense which is not subject to a presumption of incarceration or a mandatory minimum period of parole ineligibility from applying for drug or alcohol treatment as a condition of probation pursuant to N.J.S.2C:45-1; provided, however, that a person in need of treatment as defined in subsection f. of section 2 of P.L.2012, c. 23 (C.2C:35-14.2) shall be sentenced in accordance with that section. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S.2C:44-1, whenever a drug or alcohol-dependent person who is subject to sentencing under this section is convicted of or adjudicated delinquent for an offense, other than one described in subsection b. of this section, the court, upon notice to the prosecutor, may, on motion of the person, or on the court's own motion, place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that:

1. the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol-dependent and would benefit from treatment; and

2. the person is a drug or alcohol-dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol-dependent at the time of the commission of the present offense; and
(3) the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and

(4) substance use disorders treatment and monitoring will serve to benefit the person by addressing the person's drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; and

(5) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and

(6) the person has not been previously convicted on two or more separate occasions of crimes of the first or second degree, other than those listed in paragraph (7); or the person has not been previously convicted on two or more separate occasions, where one of the offenses is a crime of the third degree, other than crimes defined in N.J.S.2C:35-10, and one of the offenses is a crime of the first or second degree; and

(7) the person has not been previously convicted or adjudicated delinquent for, and does not have a pending charge of murder, aggravated manslaughter, manslaughter, kidnapping, aggravated assault, aggravated sexual assault or sexual assault, or a similar crime under the laws of any other state or the United States; and

(8) a suitable treatment facility licensed and approved by the Division of Mental Health and Addiction Services in the Department of Human Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of this section; and

(9) no danger to the community will result from the person being placed on special probation pursuant to this section.

In determining whether to sentence the person pursuant to this section, the court shall consider all relevant circumstances, and shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing or other court proceedings, and shall also consider the presentence report and the results of the professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol-dependent and would benefit from treatment. The court shall give priority to a person who has moved to be sentenced to special probation over a person who is being considered for a sentence to special probation on the court's own motion or in accordance with the provisions of section 2 of P.L.2012, c. 23 (C.2C:35-14.2).

As a condition of special probation, the court shall order the person to enter a residential treatment program at a facility licensed and approved by the Division of Mental Health and Addiction Services in the Department of Human Services or a program of nonresidential treatment by a licensed and approved treatment provider, which program may include the use of medication-assisted treatment as defined in paragraph (7) of subsection f. of this section, to comply with program rules and the requirements of the course of treatment, to cooperate fully with the treatment provider, and to comply with such other reasonable terms and conditions as may be required by the court or by law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine testing for drug or alcohol usage throughout the period of special probation. In determining whether to order the person to participate in a nonresidential rather than a residential treatment program, the court shall follow the procedure set forth in subsection j. of this section. Subject to the requirements of subsection d. of this section, the conditions of special probation may include different methods and levels of community-based or residential supervision.
b. A person shall not be eligible for special probation pursuant to this section if the person is convicted of or adjudicated delinquent for:

(1) a crime of the first degree;

(2) a crime of the first or second degree enumerated in subsection d. of section 2 of P.L.1997, c. 117 (C.2C:43-7.2), other than a crime of the second degree involving N.J.S.2C:15-1 (robbery) or N.J.S.2C:18-2 (burglary);

(3) a crime, other than that defined in section 1 of P.L.1987, c. 101 (C.2C:35-7), for which a mandatory minimum period of incarceration is prescribed under chapter 35 of this Title or any other law; or

(4) an offense that involved the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile near or on school property.

c. (Deleted by amendment, P.L.2012, c. 23)

d. Except as otherwise provided in subsection j. of this section, a person convicted of or adjudicated delinquent for a crime of the second degree or of a violation of section 1 of P.L.1987, c. 101 (C.2C:35-7), or who previously has been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, who is placed on special probation under this section shall be committed to the custody of a residential substance use disorders treatment facility licensed and approved by the Division of Mental Health and Addiction Services in the Department of Human Services. Subject to the authority of the court to temporarily suspend imposition of all or any portion of the term of commitment to a residential treatment facility pursuant to subsection j. of this section, the person shall be committed to the residential treatment facility immediately, unless the facility cannot accommodate the person, in which case the person shall be incarcerated to await commitment to the residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the court, upon recommendation of the treatment provider, determines that the person has successfully completed the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility pursuant to this section for a period in excess of five years. Upon successful completion of the required residential treatment program, the person shall complete the period of special probation, as authorized by subsection a. of this section, with credit for time served for any imprisonment served as a condition of probation and credit for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. Except as otherwise provided in subsection l. of this section, the person shall not be eligible for early discharge of special probation pursuant to N.J.S.2C:45-2, or any other provision of the law. The court, in determining the number of credits for time spent in residential treatment, shall consider the recommendations of the treatment provider. A person placed into a residential treatment facility pursuant to this section shall be deemed to be subject to official detention for the purposes of N.J.S.2C:29-5 (escape).

e. The probation department or other appropriate agency designated by the court to monitor or supervise the person's special probation shall report periodically to the court as to the person's progress in treatment and compliance with court-imposed terms and conditions. The treatment provider shall promptly report to the probation department or other appropriate agency all significant failures by the person to comply with any court-imposed term or condition of special probation or any requirements of the course of treatment, including but not limited to a positive drug or alcohol test, which shall only constitute a violation for a person using medication-assisted treatment as defined in paragraph (7) of subsection f. of this section if the positive
test is unrelated to the person's medication-assisted treatment, or the unexcused failure to attend any session or activity, and shall immediately report any act that would constitute an escape. The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person refuses to submit to a periodic drug or alcohol test or for any reason terminates the person's participation in the course of treatment, or commits any act that would constitute an escape.

f. (1) Upon a first violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court in its discretion may permanently revoke the person's special probation.

(2) Upon a second or subsequent violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation unless the court finds on the record that there is a substantial likelihood that the person will successfully complete the treatment program if permitted to continue on special probation, and the court is clearly convinced, considering the nature and seriousness of the violations, that no danger to the community will result from permitting the person to continue on special probation pursuant to this section. The court's determination to permit the person to continue on special probation following a second or subsequent violation pursuant to this paragraph may be appealed by the prosecution.

(3) In making its determination whether to revoke special probation, and whether to overcome the presumption of revocation established in paragraph (2) of this subsection, the court shall consider the nature and seriousness of the present infraction and any past infractions in relation to the person's overall progress in the course of treatment, and shall also consider the recommendations of the treatment provider. The court shall give added weight to the treatment provider's recommendation that the person's special probation be permanently revoked, or to the treatment provider's opinion that the person is not amenable to treatment or is not likely to complete the treatment program successfully.

(4) If the court permanently revokes the person's special probation pursuant to this subsection, the court shall impose any sentence that might have been imposed, or that would have been required to be imposed, originally for the offense for which the person was convicted or adjudicated delinquent. The court shall conduct a de novo review of any aggravating and mitigating factors present at the time of both original sentencing and resentencing. If the court determines or is required pursuant to any other provision of this chapter or any other law to impose a term of imprisonment, the person shall receive credit for any time served in custody pursuant to N.J.S.2C:45-1 or while awaiting placement in a treatment facility pursuant to this section, and for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. The court, in determining the number of credits for time spent in a residential treatment facility, shall consider the recommendations of the treatment provider.

(5) Following a violation, if the court permits the person to continue on special probation pursuant to this section, the court shall order the person to comply with such additional terms and conditions, including, but not limited to, more frequent drug or alcohol testing, as are necessary to deter and promptly detect any further violation.

(6) Notwithstanding any other provision of this subsection, if the person at any time refuses to undergo urine testing for drug or alcohol usage as provided in subsection a. of this section, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at any time while committed to the custody of a residential treatment facility pursuant to this section commits an act that would constitute an escape, the court shall forthwith permanently revoke the person's special probation.
(7) An action for a violation under this section may be brought by a probation officer or prosecutor or on the court's own motion. Failure to complete successfully the required treatment program shall constitute a violation of the person's special probation. In the case of the temporary or continued management of a person's drug or alcohol dependency by means of medication-assisted treatment as defined herein, whenever supported by a report from the treatment provider of existing satisfactory progress and reasonably predictable long-term success with or without further medication-assisted treatment, the person's use of the medication-assisted treatment, even if continuing, shall not be the basis to constitute a failure to complete successfully the treatment program. A person who fails to comply with the terms of the person's special probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall thereafter be ineligible for entry into the Intensive Supervision Program, provided however that this provision shall not affect the person's eligibility for entry into the Intensive Supervision Program for a subsequent conviction.

As used in this section, the term “medication-assisted treatment” means the use of any medications approved by the federal Food and Drug Administration to treat substance use disorders, including extended-release naltrexone, methadone, and buprenorphine, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

g. When a person on special probation is subject to a presumption of revocation on a second or subsequent violation pursuant to paragraph (2) of subsection f. of this section, or when the person refuses to undergo drug or alcohol testing pursuant to paragraph (6) of subsection f. of this section, the court may, in lieu of permanently revoking the person's special probation, impose a term of incarceration for a period of not less than 30 days nor more than six months, after which the person's term of special probation pursuant to this section may be reinstated. In determining whether to order a period of incarceration in lieu of permanent revocation pursuant to this subsection, the court shall consider the recommendations of the treatment provider with respect to the likelihood that such confinement would serve to motivate the person to make satisfactory progress in treatment once special probation is reinstated. This disposition may occur only once with respect to any person unless the court is clearly convinced that there are compelling and extraordinary reasons to justify reimposing this disposition with respect to the person. Any such determination by the court to reimpose this disposition may be appealed by the prosecution. Nothing in this subsection shall be construed to limit the authority of the court at any time during the period of special probation to order a person on special probation who is not subject to a presumption of revocation pursuant to paragraph (2) of subsection f. of this section to be incarcerated over the course of a weekend, or for any other reasonable period of time, when the court in its discretion determines that such incarceration would help to motivate the person to make satisfactory progress in treatment.

h. The court, as a condition of its order, and after considering the person's financial resources, shall require the person to pay that portion of the costs associated with the person's participation in any residential or nonresidential treatment program imposed pursuant to this section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to order payment or reimbursement to be made over time and in installments.

i. The court shall impose, as a condition of the special probation, any fine, penalty, fee or restitution applicable to the offense for which the person was convicted or adjudicated delinquent.

j. Where the court finds that a person has satisfied all of the eligibility criteria for special probation and would otherwise be required to be committed to the custody of a residential substance use disorders treatment facility pursuant to the provisions of subsection d. of this section, the court may temporarily suspend imposition of all or any portion of the term of commitment to a residential treatment facility and may instead order the person to enter a nonresidential treatment program, provided that the court finds on the record that:
(1) the person conducting the diagnostic assessment required pursuant to paragraph (1) of subsection a. of this section has recommended in writing that the proposed course of nonresidential treatment services is clinically appropriate and adequate to address the person's treatment needs; and

(2) no danger to the community would result from the person participating in the proposed course of nonresidential treatment services; and

(3) a suitable treatment provider is able and has agreed to provide clinically appropriate nonresidential treatment services.

If the prosecutor objects to the court's decision to suspend the commitment of the person to a residential treatment facility pursuant to this subsection, the sentence of special probation imposed pursuant to this section shall not become final for ten days in order to permit the appeal by the prosecution of the court's decision.

After a period of six months of nonresidential treatment, if the court, considering all available information, including, but not limited to, the recommendation of the treatment provider, finds that the person has made satisfactory progress in treatment and that there is a substantial likelihood that the person will successfully complete the nonresidential treatment program and period of special probation, the court, on notice to the prosecutor, may permanently suspend the commitment of the person to the custody of a residential treatment program, in which event the special monitoring provisions set forth in subsection k. of this section shall no longer apply.

Nothing in this subsection shall be construed to limit the authority of the court at any time during the term of special probation to order the person to be committed to a residential or nonresidential treatment facility if the court determines that such treatment is clinically appropriate and necessary to address the person's present treatment needs.

k. (1) When the court temporarily suspends the commitment of the person to a residential treatment facility pursuant to subsection j. of this section, the court shall, in addition to ordering participation in a prescribed course of nonresidential treatment and any other appropriate terms or conditions authorized or required by law, order the person to undergo urine testing for drug or alcohol use not less than once per week unless otherwise ordered by the court. The court-ordered testing shall be conducted by the probation department or the treatment provider. The results of all tests shall be reported promptly to the court and to the prosecutor. If the person is involved with a program that is providing the person medication-assisted treatment as defined in paragraph (7) of subsection f. of this section, only a positive urine test for drug or alcohol use unrelated to the medication-assisted treatment shall constitute a violation of the terms and conditions of special probation. In addition, the court shall impose appropriate curfews or other restrictions on the person's movements, and may order the person to wear electronic monitoring devices to enforce such curfews or other restrictions as a condition of special probation.

(2) The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person fails or refuses to submit to a drug or alcohol test, knowingly defrauds the administration of a drug test, terminates the person's participation in the course of treatment, or commits any act that would constitute absconding from parole. If the person at any time while entered in a nonresidential treatment program pursuant to subsection j. of this section knowingly defrauds the administration of a drug test, goes into hiding, or leaves the State with a purpose of avoiding supervision, the court shall permanently revoke the person's special probation.

l. If the court finds that the person has made exemplary progress in the course of treatment, the court may, upon recommendation of the person's supervising probation officer or on the court's own motion, and upon notice to the prosecutor, grant early discharge from a term of special probation provided that the person: (1) has satisfactorily completed the treatment program ordered by the
court; (2) has served at least two years of special probation; (3) within the preceding 12 months, did not commit a substantial violation of any term or condition of special probation, including but not limited to a positive urine test, which shall only constitute a violation for a person using medication-assisted treatment as defined in paragraph (7) of subsection f. of this section if the positive test is unrelated to the person's medication-assisted treatment; and (4) is not likely to relapse or commit an offense if probation supervision and related services are discontinued.

(1) The Superior Court may order the expungement of all records and information relating to all prior arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C of the New Jersey Statutes upon successful discharge from a term of special probation as provided in this section, regardless of whether the person was sentenced to special probation under this section, section 2 of P.L. 2012, c. 23 (C.2C:35-14.2), or N.J.S.2C:45-1, if the person satisfactorily completed a substance abuse treatment program as ordered by the court and was not convicted of any crime, or adjudged a disorderly person or petty disorderly person, during the term of special probation. 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 paragraph and no fee shall be charged to a person eligible for relief pursuant to this paragraph. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability, or it finds that the person is otherwise ineligible for expungement pursuant to paragraph (2) of this subsection. An expungement under this paragraph shall proceed in accordance with rules and procedures developed by the Supreme Court.

(2) A person shall not be eligible for expungement under paragraph (1) of this subsection if the records include a conviction for any offense barred from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. It shall be the obligation of the prosecutor to notify the court of any disqualifying convictions or any other factors related to public safety that should be considered by the court when deciding to grant an expungement under paragraph (1) of this subsection.

(3) The Superior Court shall provide a copy of the expungement order granted pursuant to paragraph (1) of this subsection to the prosecutor and to the person and, if the person was represented by the Public Defender, to the Public Defender. The person or, if the person was represented by the Public Defender, the Public Defender on behalf of the person, shall promptly distribute copies of the expungement order to appropriate agencies who have custody and control of the records specified in the order so that the agencies may comply with the requirements of N.J.S.2C:52-15.

(4) If the person whose records are expunged pursuant to paragraph (1) of this subsection is convicted of any crime following discharge from special probation, the full record of arrests and convictions may be restored to public access and no future expungement shall be granted to such person.

(5) A person who, prior to the effective date of P.L. 2015, c. 261, was successfully discharged from a term of special probation as provided in this section, regardless of whether the person was sentenced to special probation under this section, section 2 of P.L. 2012, c. 23 (C.2C:35-14.2), or N.J.S.2C:45-1, may seek an expungement of all records and information relating to all arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C of the New Jersey Statutes that existed at the time of discharge from special probation by presenting an application to the Superior Court in the county in which the person was sentenced to special probation, which contains a duly verified petition as provided in N.J.S.2C:52-7 for each crime or offense sought to be expunged. The petition for expungement shall proceed pursuant to N.J.S.2C:52-1 et seq. except that the requirements related to the expiration of the time periods specified in N.J.S.2C:52-2 through section 1 of P.L. 1980, c. 163 (C.2C:52-4.1) shall not apply. A person who was convicted of any offense barred from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2, or who has been convicted of any crime or offense since the date of discharge from special probation shall not be eligible to apply for an expungement under this paragraph. In addition, no application for expungement shall be considered until any pending charges are disposed. It shall be the obligation of the prosecutor to notify the court of any disqualifying convictions or any other factors related to public safety that should be considered by the court when deciding
to grant an expungement under this paragraph. The Superior Court shall consider the person's verified petition and may order the expungement of all records and information relating to all arrests, detentions, convictions, and proceedings of the person that existed at the time of discharge from special probation as appropriate. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability, or it finds that the person is otherwise ineligible for expungement pursuant to this paragraph. No fee shall be charged to a person eligible for relief pursuant to this paragraph.

(6)(a) A person who is not eligible for expungement relief pursuant to paragraph (1) or (5) of this subsection because of a conviction occurring prior to, on, or after the effective date of P.L.2021, c. 460, for any offense set forth in paragraph (2) of subsection a. of N.J.S.2C:24-4, involving endangering the welfare of a child, which is barred from expungement pursuant to subsection b. of N.J.S.2C:52-2 and therefore renders the person ineligible under those paragraphs, may be eligible to seek expungement relief pursuant to this paragraph. The person shall have been successfully discharged from a term of special probation as provided in this section, regardless of whether the person was sentenced to special probation under this section, section 2 of P.L.2012, c. 23 (C.2C:35-14.2), or N.J.S.2C:45-1, for a period of at least 10 years prior to seeking an expungement of all records and information relating to all arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C of the New Jersey Statutes that existed at the time of discharge from special probation. The person shall present an application to the Superior Court in the county in which the person was sentenced to special probation, which contains a duly verified petition as provided in N.J.S.2C:52-7 for each crime or offense sought to be expunged. The petition for expungement shall proceed pursuant to N.J.S.2C:52-1 et seq. A person shall not be eligible to apply for an expungement under this paragraph if that person was convicted of any offense barred from expungement pursuant to subsection b. or c. of N.J.S.2C:52-2, other than a conviction for endangering the welfare of a child under paragraph (2) of subsection a. of N.J.S.2C:24-4, which crime is also determined by the court, based upon a review by the prosecutor in accordance with subparagraph (b) of this paragraph, to have been nonviolent with respect to the facts and elements of the criminal act, or if that person has been convicted of any crime or offense since the date of discharge from special probation. In addition, no application for expungement shall be considered until any pending charges are disposed. It shall be the obligation of the prosecutor to notify the court of any disqualifying convictions, any conviction for endangering the welfare of a child reviewed by the prosecutor and found to be violent, or any other factors related to public safety that should be considered by the court when deciding to grant an expungement under this paragraph. The Superior Court shall consider the person's verified petition and may order the expungement of all records and information relating to all arrests, detentions, convictions, and proceedings of the person that existed at the time of discharge from special probation as appropriate. The court shall grant the relief requested unless it finds that the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability, or it finds that the person is otherwise ineligible for expungement pursuant to this paragraph. No fee shall be charged to a person eligible for relief pursuant to this paragraph.

(b) The prosecutor, when reviewing a conviction for endangering the welfare of a child under paragraph (2) of subsection a. of N.J.S.2C:24-4 as to whether the facts and elements of the criminal act were nonviolent and therefore do not prevent, as to this conviction, a person's eligibility for expungement relief under this paragraph, shall consider any act which falls under the following definitions to be violent acts, and render the person ineligible for expungement relief:

any act of “abuse,” as defined in R.S.9:6-1, that is specifically listed in part (c) of the definition, employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; part (e) of the definition, the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; part (f) of the definition, permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; or part (g) of the definition, using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property;

any act of “cruelty,” as defined in R.S.9:6-1; and
any act resulting in an “abused or neglected child,” as defined by subsection c. of section 1 of P.L.1974, c. 119 (C.9:6-8.21), that is specifically listed in paragraph (1) of the definition, inflicting or allowing to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; paragraph (2) of the definition, creating or allowing to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; paragraph (3) of the definition, committing or allowing to be committed an act of sexual abuse against the child; subparagraph (b) of paragraph (4) of the definition, solely as to a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of the child's parent or guardian to exercise a minimum degree of care in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted excessive corporal punishment, or the substantial risk thereof; paragraph (6) of the definition, for a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property; or paragraph (7) of the definition, for a child who is in an institution and, pursuant to subparagraph (a) of that paragraph, has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or, pursuant to subparagraph (b) of that paragraph, who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

Credits

Footnotes

N. J. S. A. 2C:35-14, NJ ST 2C:35-14
Current with laws through L.2022, c. 80 and J.R. No. 3
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236 N.J. 262
Supreme Court of New Jersey.

In the MATTER OF the Expungement of the Arrest/Charge Records of T.B.
In the Matter of the Expungement of the Arrest/Charge Records of J.N.-T.
In the Matter of the Expungement of the Arrest/Charge Records of R.C.

A-18/19/20 September Term 2017
| 079813
| Argued October 10, 2018
| Decided January 8, 2019

Synopsis

Synopsis

Background: Successful drug court participants applied to expunge their entire criminal records. The Superior Court, Law Division, Cape May County, in consolidated appeals, granted applications. State appealed. The Superior Court, Appellate Division, 451 N.J. Super. 391, 168 A.3d 83, vacated. Participants filed petitions for certification.

[ Holding:] The Supreme Court, Rabner, C.J., held that successful participants in drug court are entitled to a rebuttable presumption that expungement of their third- or fourth-degree drug sale offenses is consistent with the public interest.

Reversed and remanded.

Procedural Posture(s): Appellate Review; Expungement Proceeding.

West Headnotes (11)

[1] Statutes ⇒ Intent
To resolve questions of statutory interpretation, a court must discern and give effect to the Legislature's intent.
1 Cases that cite this headnote

[2] Statutes ⇒ Plain Language; Plain, Ordinary, or Common Meaning
To resolve questions of statutory interpretation, a court looks first to the statute's plain language, which is typically the best indicator of intent.
7 Cases that cite this headnote
[3] Statutes ⇔ Statute as a Whole; Relation of Parts to Whole and to One Another
A court derives legislative intent from a view of the entire statute and reads all provisions together in light of the general intent of the act.

2 Cases that cite this headnote

[4] Statutes ⇔ Plain language; plain, ordinary, common, or literal meaning
If the language of the statute is clear, the inquiry into statutory intent is over.

2 Cases that cite this headnote

[5] Statutes ⇔ Extrinsic Aids to Construction
Statutes ⇔ Plain, literal, or clear meaning; ambiguity
Statutes ⇔ Relation to plain, literal, or clear meaning; ambiguity
In interpreting a statute, the court turns to extrinsic evidence, like legislative history, if the statute is ambiguous or its plain language leads to an absurd result contrary to the statutory scheme.

[6] Criminal Law ⇔ Expungement or Correction; Effect of Acquittal or Dismissal

2 Cases that cite this headnote

[7] Criminal Law ⇔ Expungement or Correction; Effect of Acquittal or Dismissal
Applications for drug court expungements of third- and fourth-degree drug sale offenses previously committed by successful drug court participants should proceed before drug court judges, as opposed to other trial judges, because of their greater familiarity with participants in the program. N.J. Stat. Ann. § 2C:35-14(m)(2).

1 Cases that cite this headnote

[8] Criminal Law ⇔ Expungement or Correction; Effect of Acquittal or Dismissal
When a successful drug court participant seeks expungement of third- and fourth-degree drug sale offenses, the State has the burden to present proof both of objective factors -- any disqualifying convictions -- and of subjective factors that bear on public safety. N.J. Stat. Ann. § 2C:35-14(m)(2).

[9] Criminal Law ⇔ Expungement or Correction; Effect of Acquittal or Dismissal
In determining whether a successful participant in drug court is entitled to expungement of third- or fourth-degree drug sale offenses, courts may examine not only the details of an offense but also what activities an applicant has engaged in to limit the risk of re-offending, such as whether a participant 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 participant has severed relationships with persons in the criminal milieu. N.J. Stat. Ann. § 2C:35-14(m)(2).
Cases that cite this headnote

[10] **Criminal Law ⇔ Expungement or Correction; Effect of Acquittal or Dismissal**

Successful participants in drug court are entitled to a rebuttable presumption that expungement of their third- or fourth-degree drug sale offenses is consistent with the public interest; prosecutors may draw on their knowledge of an applicant’s character and conduct after conviction, as well as other information, to try to rebut the presumption. N.J. Stat. Ann. § 2C:35-14(m)(2).

Cases that cite this headnote

[11] **Criminal Law ⇔ Expungement or Correction; Effect of Acquittal or Dismissal**

Successful drug court graduates are not required to provide copies of all relevant transcripts and reports when they ask the drug court judge to expunge their records of third- and fourth-degree drug sale offenses; if drug court judges, in their discretion, are convinced they need to review the materials, they can work with the parties to determine the most appropriate, effective, and cost-efficient way to obtain them. N.J. Stat. Ann. § 2C:35-14(m)(2).


Attorneys and Law Firms


Sarah Luciano, Deputy Attorney General, argued the cause for respondent, the State of New Jersey (Gurbir S. Grewal, Attorney General, attorney; Sarah Luciano and Emily R. Anderson, Deputy Attorneys General, of counsel and on the briefs).

Tess Borden argued the cause for amicus curiae American Civil Liberties Union of New Jersey (American Civil Liberties Union of New Jersey Foundation, attorneys; Tess Borden, Alexander Shalom, Edward Barocas, and Jeanne LoCicero, on the brief).

Opinion

CHIEF JUSTICE RABNER delivered the opinion of the Court.

*265 With the strong support of all three branches of government, the court system has operated a drug court program for more than two decades. Defendants who participate in the program undergo a period of intensive supervision for up to five years. During that time, they are monitored closely by a team of treatment providers, probation officers, substance abuse evaluators, public defenders, prosecutors, and court staff. A trial judge heads the team.

Drug court is designed to rid participants of drug dependency, help them develop skills and get job experience, encourage them to continue their education, and equip them to advance in other ways. At its core, the program tries to keep participants drug free and empower them to lead productive lives.

According to the Administrative Office of the Courts, more than 5400 individuals have successfully completed drug court since 2002, when the program went operational statewide. Administrative Office of **746** the Courts, New Jersey Adult Drug Court
In 2016, the Legislature expanded opportunities for expungement for successful drug court graduates. They may now apply for the expungement of “all records and information relating to all prior arrests, detentions, convictions, and proceedings.” N.J.S.A. 2C:35-14(m)(1). The law does not allow certain serious offenses to be expunged, however. See id. §§ 35-14(m)(2); 52-2(b), (c). In these consolidated appeals, we consider how the expungement statute for drug court graduates applies to individuals convicted of certain third- or fourth-degree offenses related to the sale and distribution of drugs.

We find that the plain language of the new law requires judges to determine whether expungement would be consistent with the public interest. See id. §§ 35-14(m)(2); 52-2(c)(3). In light of the statute’s overall approach, which generally favors expungement in a number of ways, and the rigorous nature of the drug court program, we conclude that successful graduates who have committed certain offenses and apply for expungement are entitled to a rebuttable presumption that expungement is consistent with the public interest. Prosecutors, who play an integral role in drug court, become familiar with graduates from years of intensive supervision in the program. Prosecutors can draw on their knowledge of an applicant’s character and conduct since conviction, as well as other information, to try to rebut the presumption.

The above approach is consistent with our understanding of the Legislature's intent. It also simplifies the expungement process for drug court graduates to allow them to try to reintegrate into society without the collateral consequences of a criminal record.

Because the Appellate Division applied a different standard, we reverse its judgment and remand the three cases to the trial court for further proceedings.

I.

To better understand the parties’ arguments and the rulings of the trial court and Appellate Division, we begin with an overview of relevant parts of the statutory scheme for expungement.

*267 A.

Expungement offers a second chance to rehabilitated offenders who have made a commitment to lead law-abiding lives. As the Legislature explained, the expungement statutes should

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


The relevant statutes have evolved over time and have steadily expanded opportunities for expungement. See In re J.S., 223 N.J. 54, 66-71, 121 A.3d 322 (2015) (detailing revisions to the expungement statutes from 1931 forward). For several decades prior to 2010, the general expungement statute, codified in part at N.J.S.A. 2C:52-2(a), made expungement

In 2010, the Legislature amended the law and provided for expungement after five years if the applicant has not been convicted of a crime or an offense since the conviction “and the court finds ... 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.” Kollman, 210 N.J. at 570-71, 46 A.3d 1247 (quoting N.J.S.A. 2C:52-2(a)(2) (2010) (amended 2017)).

More recently, the Legislature again revised the general expungement statute. See L. 2017, c. 244, § 1 (codified at N.J.S.A. 2C:52-2) (eff. Oct. 1, 2018). It now allows for expungement of multiple crimes and offenses that, among other situations, were listed in a single judgment of conviction or “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.” N.J.S.A. 2C:52-2(a). At the same time, the Legislature reduced the time to file for expungement for certain offenses from ten to six years. Id. § 52-2(a)(1). For cases subject to a public-interest finding under subsection 2(a) (2), applicants are now eligible for expungement at least five but less than six years from the date of their most recent conviction.

Some crimes are not eligible for expungement. Section 2(b) of the general expungement statute lists categories of serious offenses that cannot be expunged, like homicide, kidnapping, aggravated sexual assault, robbery, and certain offenses against minors. N.J.S.A. 2C:52-2(b). Section 2(c), as enacted in 1979, made certain drug crimes -- for sale, distribution, or possession with intent to sell (“drug sale offenses” or “convictions”) -- ineligible for expungement except for small quantities of marijuana and hashish. L. 1979, c. 178, § 109 (codified in part at N.J.S.A. 2C:52-2(c)(1) and (2)) (amended 2017) (25 grams or less of marijuana and 5 grams or less of hashish, respectively).

The Legislature recently amended those quantities and now permits expungement for offenses involving less than one ounce of marijuana and less than five grams of hashish. See L. 2017, c. 244, § 1 (codified at N.J.S.A. 2C:52-2(c) (1) and (2)) (eff. Oct. 1, 2018).

In 2010, the Legislature added a third exception that allows for the expungement of drug sale offenses when “the crimes involve … [a]ny 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.” L. 2009, c. 188, § 1 (codified in part at N.J.S.A. 2C:52-2(c)(3)) (emphasis added). The same finding is required under section 2(a), quoted above. To make the finding under either section, courts are to give “due consideration to the nature of the offense” and to “the [individual’s] character and conduct since conviction.” N.J.S.A. 2C:52-2(a)(2), -2(c)(3).

Section 2(c)(3) lies at the center of this appeal. For simplicity, we refer to it as the “public-interest finding” or “standard.”

In LoBasso, the Appellate Division outlined various factors to consider in deciding whether expungement is in the public interest under section 2(a)(2), 423 N.J. Super. at 491-95, 33 A.3d 540. This Court in Kollman adopted and applied the analysis to section 2(c)(3). 210 N.J. at 574-77, 46 A.3d 1247. We also placed on the applicant the burden of proof to demonstrate that expungement was consistent with the public interest. Id. at 573, 46 A.3d 1247. Among other reasons, we noted that an applicant 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.” Ibid. In addition, to help courts make informed decisions on the public-interest
standard, we directed applicants to provide all transcripts of plea and sentencing hearings, along with presentence reports, as part of their petition. [*Id.* at 577, 46 A.3d 1247 (citing *LoBasso*, 423 N.J. Super. at 483 n.3, 33 A.3d 540).

**B.**

The Legislature passed a broad-ranging law in 2016, commonly known as the drug court expungement statute. L. 2015, c. 261, § 1 (codified in part at N.J.S.A. 2C:35-14(m)). (We refer to it by its common name, and as the “new law,” at various places in this opinion.) The new law allows drug court graduates to apply to expunge their entire criminal record:

> The Superior Court may order the expungement of all records and information relating to all prior arrests, detentions, convictions, and proceedings for any offense enumerated in Title 2C of the New Jersey Statutes upon successful discharge from a term of special probation as provided in this section, regardless of whether the person was sentenced to special probation under this section, N.J.S.A. 2C:35-14.2, or N.J.S.A. 2C:45-1, if the person satisfactorily completed a substance abuse treatment program as ordered by the court and was not convicted of any crime, or adjudged a disorderly person or petty disorderly person, during the term of special probation.

[N.J.S.A. 2C:35-14(m)(1) (emphasis added).]

The law carves out a number of exceptions. Expungement is not available when the court finds that (1) “the need for the availability of the records outweighs the desirability of having the person freed from any disabilities associated with their availability,” or (2) “the person is otherwise ineligible for expungement pursuant to paragraph (2) of this subsection.” [*Ibid.*]

*270* Paragraph 2, in turn, limits the availability of expungement for drug court graduates as follows:

> A person shall not be eligible for expungement under paragraph (1) of this subsection if the records include a conviction for any offense barred from expungement pursuant to subsection b. or c. of N.J.S.A. 2C:52-2. It shall be the obligation of the prosecutor to notify the court of any disqualifying convictions or any other factors related to public safety that should be considered by the court when deciding to grant an expungement under paragraph (1) of this subsection.

[*Id.* § 35-14(m)(2) (emphases added).]

The meaning of the underscored language is key to this appeal, namely, whether drug court graduates with third- or fourth-degree convictions for drug sale offenses must satisfy the public-interest standard in N.J.S.A. 2C:52-2(c)(3).

The statute provides a streamlined application process. Unlike the general expungement law, drug court graduates are not required to file and serve a verified petition or otherwise follow the requirements of N.J.S.A. 2C:52-7 through -14, and no fees are charged to eligible applicants. N.J.S.A. 2C:35-14(m)(1). The Legislature instead directed that “a[n expungement under this paragraph shall proceed in accordance with rules and procedures developed by the Supreme Court.” [*Ibid.*] Pursuant to an Administrative Directive that followed, drug court graduates simply **749** need to “bring [the] matter to the attention of the Drug Court judge prior to graduation.” Administrative Directive 02-16: Protocol for “Drug Court Expungements” 1 (May 23, 2016), https://www.njcourts.gov/attorneys/assets/directives/dir_02_16.pdf.

The drug court expungement statute includes a kicker, as well. If a graduate's records are expunged under the law, and he or she “is convicted of any crime” after discharge from drug court, “the full record of arrests and convictions may be restored to public access and no future expungement shall be granted to such person.” N.J.S.A. 2C:35-14(m)(4).
II.

The three appeals involve similar facts. T.B., J.N.-T., and R.C., the applicants, had criminal records with multiple prior arrests and convictions. In 2011, two applicants pled guilty to third-degree drug charges, and the third pled guilty to third-degree burglary. All three entered the drug court program and successfully graduated on May 17, 2016. When they completed drug court, all three were employed full-time and had paid any past due obligations for child support as well as fines and costs. All of them applied to expunge their entire criminal record under the new drug court expungement statute. N.J.S.A. 2C:35-14(m).

The trial judge’s orders described each applicant's record. T.B.’s included thirteen arrests and convictions since 1989 -- six or seven convictions in municipal court and five in Superior Court. A number involved drug-related offenses.

J.N.-T. had been arrested or convicted thirteen times since 1993. His record included eight convictions for third-degree offenses, two disorderly persons convictions, and several dismissals. His convictions included drug and burglary offenses.

R.C.’s criminal record dated back to 1996 and consisted of five arrests and three convictions. The convictions were in Superior Court, and two related to drug offenses.

The State opposed the applications and argued that the applicants failed to satisfy their burden to establish that expungement was consistent with the public interest. The trial court granted all three applications. In a letter opinion, the court found that the applicants qualified for expungement under the drug court expungement statute. The court rejected the State's claim that the public-interest standard applied to expungements under the new drug court expungement law. In any event, the court noted that in light of the applicants' commitment to sobriety and successful completion of the drug court program, “it is in the public interest to provide them with the means to rejoin the community without the burden of a criminal record.” The court therefore entered orders that expunged the criminal records of all three applicants.

The State appealed, and the Appellate Division vacated the expungement orders and remanded the matters to the trial court. *272 In re T.B., 451 N.J. Super. 391, 408, 168 A.3d 83 (App. Div. 2017). The panel concluded that the plain language of the drug court expungement statute -- which makes drug court graduates ineligible for expungement if their “records include a conviction for any offense barred from expungement pursuant to subsection b. or c. of N.J.S.A. 2C:35-14(m)(2) -- “expressly imports” the public-interest standard from N.J.S.A. 2C:35-2(c)(3). T.B., 451 N.J. Super. at 400-01, 168 A.3d 83. As a result, the panel held that trial courts may expunge third- and fourth-degree offenses under the drug court expungement law “only if the court finds that expungement is consistent with the public interest.” Id. at 404, 168 A.3d 83 (quoting N.J.S.A. 2C:35-2(c)(3)).

Consistent with Kollman, the panel added that “Drug Court graduates bear the burden to show they satisfy the public interest test.” Id. at 405, 168 A.3d 83 (citing Kollman, 210 N.J. at 572-73, 46 A.3d 1247). The panel noted that applicants must also present the court with transcripts of plea and sentencing hearings and copies of presentence reports for all third- or fourth-degree drug sale offenses the petitioners seek to expunge. Id. at 406, 168 A.3d 83 (citing Kollman, 210 N.J. at 577, 46 A.3d 1247).

Because the trial court did not conduct its public-interest analysis in accordance with Kollman, the panel vacated the expungement orders and remanded the applications for reconsideration. Id. at 405-08, 168 A.3d 83.
We granted T.B.’s, J.N.-T.’s, and R.C.’s petitions for certification, 231 N.J. 400, 176 A.3d 210 (2017); 231 N.J. 409, 176 A.3d 216 (2017); 231 N.J. 410, 176 A.3d 217 (2017), and stayed the parts of the appellate judgment that vacated the expungement orders, 231 N.J. 411, 176 A.3d 217 (2017); 231 N.J. 412, 176 A.3d 218 (2017). We also granted the motion of the American Civil Liberties Union of New Jersey (ACLU) to participate as amicus curiae.

III.

The applicants argue that the drug court expungement statute does not import the public-interest standard from N.J.S.A. 2C:52-2(c)(3). They rely on the language of the new drug court law, which they claim disallows expungement only for offenses that are absolutely barred under N.J.S.A. 2C:52-2(b) and (e). They also contend that the Legislature intended to remove procedural burdens and create “an efficient, expedient, and presumptive expungement” process as part of drug court -- one that does not require petitioners to obtain transcripts and reports of multiple past convictions to show that expungement is consistent with the public interest.

The applicants also highlight certain policy arguments. They contend that additional hurdles in the drug court expungement process would frustrate the Legislature's goal to relieve graduates of the collateral consequences of a criminal record. The applicants argue in the alternative that, even if a public-interest finding is required, judges can make that finding based on a graduate's record in drug court.

The ACLU advances similar arguments. It likewise contends that the drug court expungement statute does not import the public-interest requirement. Alternatively, the ACLU argues that if an individualized public-interest showing is required, the burden should fall on the State. Finally, the ACLU stresses that the appellate ruling limits opportunities for drug court graduates to be freed of collateral consequences, contrary to the Legislature's sound policy judgment.

The Attorney General argues that the drug court expungement statute clearly imports the public-interest requirement from N.J.S.A. 2C:52-2(c)(3). From a policy perspective, the Attorney General contends that it was rational for the Legislature to require a case-specific public-interest finding for applicants with drug distribution offenses as part of an extended criminal history.

The Attorney General also argues that, consistent with Kollman, it is the applicant -- and not the prosecutor -- who bears the burden to prove by a preponderance of the evidence that expungement is in the public interest. To do so, according to the Attorney General, petitioners must produce past transcripts and reports as described in Kollman. In addition, the Attorney General submits, successful completion of drug court alone does not establish that expungement is in the public interest.

IV.

This appeal poses the following questions: whether the public interest analysis required by N.J.S.A. 2C:52-2(c)(3) applies to expungement applications under N.J.S.A. 2C:35-14(m)(2), and, if so, how that analysis should be conducted. Put more simply, must drug court graduates who have a third- or fourth-degree conviction for a drug sale offense satisfy the public-interest standard when they seek expungement under the new drug court expungement law, and, if they must, how should the standard be applied?
Those narrow, seemingly technical questions can have far-reaching effects for drug court graduates who seek to reintegrate into society. Because older transcripts and reports can be difficult to locate, the meaning of section 14(m)(2) will have a practical effect on a graduate's ability to participate in life's daily activities without the stigma and consequences of a criminal record.

A.


We therefore begin with the relevant words of the statute: successful drug court graduates are not eligible for expungement under the new law “if the records include a conviction for any offense barred from expungement pursuant to subsection b. or c. of N.J.S.A. 2C:52-2.” N.J.S.A. 2C:35-14(m)(2) (emphasis added).

[6] The applicants and the ACLU argue that section 14(m)(2) applies only to offenses that are absolutely barred from expungement “by category of offense,” and not to individual convictions subject to a public-interest analysis. To be sure, offenses like homicide, aggravated sexual assault, robbery, and the other crimes listed in N.J.S.A. 2C:52-2(b) are barred. The same is true for first- and second-degree drug sale offenses that are automatically barred under N.J.S.A. 2C:52-2(c). Yet third- and fourth-degree offenses for which expungement is not consistent with the public interest are also barred under section 52-2(c). Had the Legislature intended to exclude those cases from the limiting language in section 14(m)(2), it could have said so. But it did not. The plain language of section 14(m)(2) thus includes cases under N.J.S.A. 2C:52-2(c)(3) and calls for a public-interest assessment before third- or fourth-degree drug sale offenses can be expunged.

**752 B.

We next consider how the public-interest analysis should be carried out under the drug court expungement statute. Once again, we start with the statute's text.

The new law favors expungement in a number of ways that go beyond the approach in the general expungement statute. First, the drug court expungement statute allows judges to order the expungement of a person's entire criminal record. N.J.S.A. 2C:35-14(m)(1); cf. id. § 52-2.

Second, the new law dispenses with the formal application process imposed by N.J.S.A. 2C:52-7 through -14. Those sections *276 require a verified petition that lists certain specific details, id. § 52-7; an accompanying statement with particular declarations, id. § 52-8; and service of the petition upon various law enforcement and other entities, id. § 52-10. Instead, the
Legislature directed that expungement under the new law “shall proceed in accordance with rules and procedures developed by the Supreme Court.” Id. § 35-14(m)(1).

[7] In response, the Director of the Administrative Office of the Courts issued Directive 02-16, which simply states, “[t]o be considered for an expungement upon graduation from Drug Court,” an applicant “should bring this matter to the attention of the Drug Court judge prior to graduation.” Administrative Directive 02-16 at 1. In addition, no fees are charged. Id. at 1-2; N.J.S.A. 2C:35-14(m)(1). For reasons set forth below, applications for drug court expungements should logically proceed before drug court judges, as opposed to other trial judges, because of their greater familiarity with participants in the program.

Third, the law directs that judges “shall grant” expungement unless (1) the need for the availability of the records outweighs the benefits of expungement to the applicant, or (2) the person is otherwise ineligible under section 14(m)(2). N.J.S.A. 2C:35-14(m)(1). In other words, the new law starts with a presumption that expungement shall be granted, subject to certain exceptions.

[8] Fourth, the new law places the following obligation on the State: prosecutors are required “to notify the court of any disqualifying convictions or any other factors related to public safety that should be considered by the court.” Id. § 35-14(m)(2). The State thus has the burden to present proof both of objective factors — any disqualifying convictions -- and of subjective factors that bear on public safety. 3

3 We note that “factors related to public safety,” which prosecutors are obliged to present under section 14(m)(2), partly overlaps with the public-interest standard.

*277 Read as a whole, the above features reveal how the new drug court expungement statute tends to favor expungement for successful graduates. With that in mind, we turn to the application of the public-interest standard in cases that arise out of the drug court expungement statute.

[9] As noted earlier, to determine whether expungement is consistent with the public interest, courts are to consider “the nature of the offense and the petitioner's character and conduct since conviction.” N.J.S.A. 2C:52-2(c)(3). Kollman, which drew heavily on LoBasso, addressed the kind of information those factors encompass. Kollman, 210 N.J. at 574-76, 46 A.3d 1247. For example, courts may examine not only the details of an offense but also what activities an applicant has engaged in to “limit [] the risk of re-offending,” such as “whether a petitioner has obtained job training or education, complied with other legal obligations (such as 753 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.” Id. at 576, 46 A.3d 1247 (quoting LoBasso, 423 N.J. Super. at 491-92, 33 A.3d 540).

Kollman placed the burden on the applicant to show that expungement under the general expungement statute is consistent with the public interest. See id. at 573, 46 A.3d 1247. In a typical case, the motion court knows little about an applicant aside from what appears in an expungement petition. In that situation, the applicant “is uniquely qualified to demonstrate facts about his or her character and recent conduct.” Ibid. As we noted, “[t]hat burden could not fairly be placed on the State initially.” Ibid.

Drug court is different. It focuses directly on many of the concerns described above as part of a rigorous program of supervision. Under N.J.S.A. 2C:35-14, participants are sentenced to a term of special probation, which requires regular court appearances and frequent drug testing. New Jersey Courts, Drug Courts, https://www.njcourts.gov/courts/criminal/drug.html (last visited Jan. 4, 2019).
*278 For a period of up to five years, a specialized team of judges, treatment providers, probation officers, substance abuse evaluators, public defenders, prosecutors, and court staff closely track each defendant's behavior. Drug Court Manual 28-29. Throughout that time, each defendant's progress and achievements are monitored with care -- whether he or she has refrained from drug use, received job training, completed a degree, found work, paid child support and other obligations, gotten a driver's license, and obtained health care coverage, among other rehabilitative steps. And missteps often result in court appearances at which judges can impose sanctions. Id. at 43-46. To graduate, participants must be free of drugs for one continuous year, must be employed (with limited exceptions), must have a regular payment history for court-ordered obligations, and “must be able to demonstrate ... a sober network of support in the community where they reside.” Id. at 42.

Based on the program's intensive supervision, coupled with weekly team conferences about active cases and regular court appearances by defendants, judges and other members of the drug court team become quite familiar with each participant. Newly assigned members of the team can gather information from their predecessors and other team members. As a result, judges, prosecutors, and public defenders alike have a basis to assess each defendant's “character and conduct since conviction.” N.J.S.A. 2C:52-2(c)(3). It is not only the applicant who can present that information. Cf. Kollman, 210 N.J. at 573, 46 A.3d 1247 (noting that “the petitioner is uniquely qualified” to make the public-interest showing under the general expungement statute).

[10] In light of the rigorous monitoring that is the hallmark of drug court, as well as the new law's overall policy in favor of expungement for successful graduates, we find that participants are entitled to a rebuttable presumption that expungement is consistent with the public interest. As an integral part of the drug court team, prosecutors may draw on their knowledge of an applicant's character and conduct after conviction, as well as other *279 information, to try to rebut the presumption. That approach dovetails with the obligation imposed on prosecutors “to notify the court of ... factors related to public safety that should be considered by the court when **754 deciding to grant an expungement.” N.J.S.A. 2C:35-14(m)(2).

[11] In Kollman, we directed applicants to provide copies of plea and sentencing transcripts, as well as presentence reports, to enable courts to evaluate the public-interest standard. 210 N.J. at 577, 46 A.3d 1247. Kollman addressed the general expungement statute, N.J.S.A. 2C:52-2; only years later did the Legislature provide for expungement of a drug court graduate's entire criminal record under a different law, id. § 35-14(m). For the same reasons that warrant a rebuttable presumption in those cases, we conclude that successful drug court graduates are not required to provide copies of all relevant transcripts and reports when they ask the drug court judge to expunge their records. If drug court judges, in their discretion, are convinced they need to review the materials, they can work with the parties to determine the most appropriate, effective, and cost-efficient way to obtain them. We anticipate, however, that drug court judges will rarely need dated transcripts and reports after having closely supervised an applicant for years.

V.

T.B.'s, J.N.-T.'s, and R.C.'s applications for expungement under the drug court expungement statute should proceed before the trial court consistent with the above principles. For any prior third- or fourth-degree convictions for drug sale offenses under N.J.S.A. 2C:52-2(c)(3), the applicants are entitled to a presumption that expungement of those offenses is consistent with the public interest. The State may present arguments and evidence to rebut the presumption.

We therefore reverse the judgment of the Appellate Division and remand the appeals to the trial court for further proceedings.
JUSTICES LaVECCHIA, ALBIN, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in CHIEF JUSTICE RABNER's opinion.

All Citations

236 N.J. 262, 199 A.3d 744
NEW JERSEY PROSECUTOR’S MANUAL

Volume II
Investigations and Prosecutions

Preface

The New Jersey Prosecutor’s Manual is intended as a guide to the prosecutorial community. It will contribute to the dissemination of noteworthy programs and practices and enhance the knowledge and proficiency of prosecutors throughout the state. The manual is a sourcebook for an efficient and professional development of the Prosecutors’ Offices in the state. It is not a collection of guidelines or directives. Rather, the sections herein contain discussions of existing law by law enforcement personnel who are knowledgeable in a particular area, for the use of their colleagues. Procedures or practices recommended by the authors of individual sections are not intended to be construed as newly issued mandatory procedures or directives. It does not create any rights or promises. Nor does it vest enforcement rights in any person claiming non-compliance or deviation from the recommended policies and practices.

This Manual replaces the 1997 New Jersey Prosecutor’s Manual. New features for this manual include:

- a detailed table of contents, containing up to 5 levels of subheadings in order to make it easier to find information on a specific topic;
- a uniform format which will enhance usability;
- a two volume format which places topics primarily of interest to managers in Volume I and topics of general interest in Volume II; and
- an introductory table for each section which lists the author, a contact person for further discussions, and the date of last revision for the section.
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afford an attorney then they are to be referred to the appropriate legal services or local or State Bar Association referral service. Members of the criminal justice community are not to recommend or suggest the use of any self-help or pro se materials, kits or packages.

The role and function of prosecutors, police and law enforcement in the expungement process is one of an adversarial nature to the petitioner. In particular, it is inappropriate for a County Prosecutor to give advice or assistance to a petitioner, since it is the prosecutor who has the legal responsibility under the provisions of N.J.S.A. 2C:52-24 to review the petition and make a determination as to its legal sufficiency and propriety. Therefore, and consistent with the general principles expressed at N.J.S.A. 52:17A-4(e) regarding the limitations on the Attorney General to only provide legal advice to departments, agencies and instrumentalities of State government, it is equally inappropriate for prosecutors to give or provide legal advice to private citizens.

20.1.3.3 Objecting to a Petition to Expunge

If the prosecutor or other party entitled to notice determines that a petitioner is not eligible to expunge the record, then an objection should be communicated to the Court and the petitioner. Generally, it is the County Prosecutor who will interpose objections on behalf of the State. If the objection is based upon a prior or subsequent criminal conviction, then the State can satisfy its burden of proof of that fact by simply submitting a certified copy of the Judgment of Conviction. "The burden is then on the petitioner to prove the conviction’s invalidity. A petitioner seeking expungement of a conviction, when his record shows another conviction, must do more than merely allege the [other] conviction’s invalidity to put the State to its proofs. [The petitioner] must present at least a prima facie case of invalidity. Otherwise the courts would become bogged down with excessive collateral matters and criminal verdicts would never have any finality." State v. H.G.G., 202 N.J. Super. 267, 273 (App. Div. 1985). If the objection is based upon other statutory reasons, the prosecutor should be prepared to offer documentary proof, such as a plea bargain agreement under N.J.S.A. 2C:52-4c, reference to a pending civil action by case name and docket number under N.J.S.A. 2C:52-14d, or petitioner’s participation in PTI or other supervisory treatment under N.J.S.A. 2C:52-14f. Wherever possible a prosecutor should attempt to obtain copies of official records when interposing these objections, but in the absence of official records a prosecutor is entitled to present, and the Court "is entitled to consider all facts that were available to both the State and the petitioner at the time the petitioner entered his original plea to determine if he is entitled to expungement.” State v. Merendino, 293 N.J. Super. at 455.

20.1.3.4 Entry of Order to Expunge

It is the responsibility of the petitioner to prepare and submit a form of Order to Expunge. Generally, a proposed form of Order to Expunge is filed with the Verified Petition. The substance of the Order to Expunge should repeat the relief sought, specifying the charges, dates of offenses, and disposition(s). It should also direct that the Order to Expunge be filed with the Clerk of the Court and a copy of the filed Order be served, by the petitioner, upon the same parties entitled to notice of
the petition to expunge (see, *N.J.S.A. 2C:52-10*). Model forms of an Order to Expunge can be found in Miller, 33A *New Jersey Practice, Criminal Law*, 2d Edition, §826, Order for Expungement - Form; 10B *New Jersey Pleading and Practice Forms, Criminal Procedure*, §95:35, Order of Expungement. 6 However, it is incumbent on the County Prosecutor to carefully and thoroughly review each Order to ensure that it is properly limited to the relief requested and does not otherwise include or incorporate matters not properly before the Court. This requirement applies whether there is an objection or not.

In cases where the State interposed an objection, but the Court granted the relief over the State’s objection, the Order to Expunge should reflect the State’s objection and that the Court granted the relief over the objection of the State. This will provide the necessary documentation to support a Notice of Appeal, should the prosecutor determine to that course of action is necessary.

In cases where an objection is interposed and the Court denies the expungement, then an Order should be entered reflecting the denial. That Order should be prepared by the County Prosecutor, as the prevailing party, and once entered the County Prosecutor should serve it on all parties entitled to notice, the petitioner and the Clerk of the Court.

The nature of an Order to Expunge is such that not only do the records of the petitioner become expunged, but the Order to Expunge becomes part of the expunged file. In other words, expungement is an all or nothing proposition. Therefore, it is entirely inappropriate, if not unlawful, for a Court to grant a partial or conditional Order to Expunge or to otherwise permit future access to an expunged record. Such Orders can not be entered, since their terms fall outside of the limits of the statute and are, therefore, *ultra vires*. In re *F.A.U.*, 190 *N.J. Super.* 245, 247-248 (App. Div. 1983). In fact, the provisions at *N.J.S.A. 2C:52-14c* support this view. Furthermore, partial or conditional Orders to Expunge leave the custodians of expunged records in the position of not being capable of complying with the specific requirements under the statute.

The holding in *State v. X.Y.Z. Corp.*, 119 *N.J. 416* (1990), affm’tg in part & rev’g in part on other grds, 232 *N.J. Super.* 423 (App. Div. 1989), appears to suggest that a petitioner can consent to the use of expunged records in civil proceedings. *State v. X.Y.Z. Corp.*, 119 *N.J.* at 424, citing *State v. X.Y.Z. Corp.*, 232 *N.J. Super.* at 432. This view, however, is unsupported by any statutory authority. While a petitioner may choose to disclose the existence of his/her expunged record, the provisions of the expungement statutes do not permit criminal justice entities or the judiciary who have been served with an Order to Expunge to release any information pertaining to the expungement, or for that matter to even acknowledge the existence of the expunged record. See, *N.J.S.A. 2C:52-15 & -16*. In the absence of a Court Order under *N.J.S.A. 2C:52-19*, any release of

6 Reference to these publications should not be considered as an endorsement of the publications or the forms contained therein. This reference is only for the purpose of providing illustrative examples.
information will expose the person involved to being charged as a disorderly person under the provisions of \(N.J.S.A.\ 2C:52-30\).

Should a petitioner attempt to get a Court to enter a partial or conditional Order to Expunge, it should be opposed. If the court grants such an Order, over the objection of the prosecutor, the prosecutor should immediately seek appellate review.

The State Police, as an agency required to be given notice, through the State Bureau of Identification, Expungement Unit, routinely review all final Orders to Expunge. Occasionally the Expungement Unit will find an error in a final Order to Expunge. In those circumstances, the State Police will communicate with the County Prosecutor and request the error be corrected or that the Order be modified. In anticipation of receipt of a corrected or modified Order, the State Police will withhold compliance with the Order to Expunge. Prosecutors upon receipt of a non-compliance letter from the State Police, should contact the petitioner or the attorney representing the petitioner to request the correction or modification. If the petitioner or attorney for the petitioner declines, then the County Prosecutor should promptly move to Vacate the Order to Expunge on the grounds the Order is inconsistent with the statute or for the reasons articulated by the State Police. The State Police form letters (SBI Forms 7T & 7T-1) for this type of non-compliance objection are found in Appendix G.

20.1.4 Statutory Requirements Governing Expungement

20.1.4.1 General

Every petitioner, regardless of the type of expungement being sought - an arrest or charge resulting in a non-conviction disposition, or an arrest or charge resulting in a conviction disposition - must disclose to the court: any other non-conviction or conviction dispositions; any pending charges for criminal or other offenses; if the petitioner is on probation, parole, under supervisory treatment or otherwise subject to judicial supervision (\(N.J.S.A.\ 2C:52-8a, \(2C:52-13\)); any related civil or administrative actions (\(N.J.S.A.\ 2C:52-14d\)); and if the petitioner is seeking to expunge a criminal conviction, any previous expungements for criminal offenses (\(N.J.S.A.\ 2C:52-8b\)). \textit{State v. DeMarco, 174 N.J. Super.} 411, 417 (Law Div. 1980). The burden initially falls to the petitioner to “demonstrate that he/she is entitled to the [expungement] relief sought.” \textit{State v. Merendino, 293 N.J. Super.} at 451. Failure to make such disclosures is a basis for the Court to deny the expungement relief. In the absence of Court or other official public records, the prosecutor is entitled to present, and the Court is “entitled to consider all facts that were available to both the State and the petitioner at the time the petitioner entered his original plea to determine if he is entitled to expungement.” \textit{Id.}, 293 \textit{N.J. Super.} at 455.
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eCourts Expungement Portal Notifications

- eCourts does not always notify all parties when a new document has been uploaded into the expungement portal. Sometimes, not even an objection by the State. If you are uploading a document after the initial filing, you may want to email or call the prosecutor or judge and let them know.

- We suggest you peruse all your “in progress” Petition for Expungements periodically. You do not want to miss an important notification that requires your attention. Uploaded documents can be found under “expungement case jacket” then “documents”.

- After the Expungement is granted there is a “view notification status” option. This allows you to see what recipients have acknowledged receipt of the final Order and processed it.

  - To view this status....

    - Go to the main page for your “in progress” expungements
    - Find your clients name and all the way to the right are 3 dots
    - Click those 3 dots and 2 options will appear
    - Click “view notification status”
When the State Objects to the Petition

• The prosecutor's objection requires a response. In a nutshell, possible responses are:

  1. Comply with the prosecutor's specifications;

  2. Proceed with the application as a contested proceeding, with the option to later take an appeal from any unfavorable rulings; or

  3. Abandon the application.

• You may want to discuss the State’s objections with your client first. Some objections require more work than just amending a Petition with missing information. (We will discuss amending petitions)

• If the State’s objection is a minor error on their part (or yours), you may want to call the prosecutor and discuss the issue with them. Sometimes they agree and remove their objections. Or determine a simpler way to comply with their concerns.

• Follow Up!! Some prosecutors are quick to remove objections and send the Petition to the appropriate judge. Others do not look at objection responses for months. Do not forget about it once you file a response to an objection.
Amending the Petition

The State’s objection to the Petition may require an amended version. Each County is requesting that Amended version differently...

- Edit/Amend the eCourts generated Petition through Word
  (instructions in the Skills and Methods page)
- Amend the Petition returned through eCourts from the Prosecutor
  (This is a new feature that we are still learning the ropes ourselves)
- Start all over-This is rare but has happened
*New eCourts Editing Feature to Amend Petitions*

- We recently learned... there is a new eCourts feature that allows a prosecutor to return a Petition for revision with their objection. The Petition will need to be revised and sent back to the Prosecutor- “pending prosecutor review” again. (Not “awaiting judicial review” as with amending the Petition using word and uploading it into eCourts with the response letter).

- Unfortunately, the revisable Petition may be missing a lot of the auto generated information from the original Petition. For example: the disposition. In order for the Amended Petition to adhere to the statute that information will need to be inputted manually.

- A response letter to the State’s objection should also be submitted into eCourts along with the Amended Petition sent back to the prosecutor for review.

- Also, mail a copy of all uploaded documents to the prosecutor who objected to the Petition.

- Our knowledge is... this way does not go to the judge for review....it returns to the prosecutor.

Again...LET THE WAITING CONTINUE!
In the experience of Expungement Lawyers of New Jersey™, over eighty percent of expungement petitions generated by eCourts require modification. eCourts itself has no mechanism by which such modifications may be made. Expungement Lawyers in New Jersey™ has established a simple (NOT!) workaround. Here is its fifteen-step program:

1. Open the eCourts-generated petition;

2. Download the eCourts-generated petition to your computer. This download will be in .pdf format;

3. Convert the downloaded .pdf file to a format that your word processor can handle. Both Word and Word Perfect can directly open the downloaded .pdf petition. If your word processor lacks this ability, you can copy the .pdf file, and paste it into text format, which your word processor can then read;

4. The conversion process from .pdf to your word processor distorts petition formatting. Correct all petition formatting errors;

5. Delete the filing information that eCourts inserted at the top of the document;

6. Change the title of the document from "PETITION FOR EXPUNGEMENT" to "AMENDED PETITION FOR EXPUNGEMENT". (Adapt as necessary for Clean Slate and for Marijuana expungements.) This step will be needed in all instances. eCourts disregards any change you may have made to its generated petition prior to your original "submit";

7. Make all desired wording changes to the petition;

8. Conform the font on all changes to match the font of the eCourts-generated petition;

9. Steps four through eight may have changed page breaks. Therefore, check and correct, if necessary, all page breaks and page numbers;

10. Change the date on the amended petition to the current date;

11. Using the "save as" function of your word processor, save the document in .pdf format. (We recommend also saving it in your word processing format in case further changes become needed);

12. Prepare a letter notifying the court that you have uploaded an amended petition that responds to the prosecutor's objection(s). (This step is needed only if these changes are responding to an objection. You may have gone through this procedure prophylactically, before any objections were posted. In that situation, you can skip this step);

13. Upload the saved .pdf Amended Petition and (if applicable) letter to the court, to eCourts;

14. If you have gone through the above steps in response to a prosecutorial objection (as opposed to prophylactically), notify the expungement prosecutor by phone or email that
you have uploaded an amended petition. As of the time this procedure is being written, eCourts does not notify the prosecutor of this uploading. Ask the prosecutor to withdraw his/her objection;

15. If you have gone through the above steps in response to a prosecutorial objection (as opposed to prophylactically), determine which judge is handling your client's expungement petition and notify his/her law clerk by phone or email that you have uploaded an amended petition. As of the time this procedure is being written, eCourts does not notify the court of this uploading. And then...

LET THE WAITING CONTINUE!
About the Panelists...

Danielle Keens is a paralegal with the Law Offices of Allan Marain in New Brunswick, New Jersey. She joined the firm in 2020.

Ms. Keens works with Mr. Marain on Petitions for Expungement, Megan’s Law issues, possession of firearm denials and other areas of law. She also oversees accounting for his trust and business accounts as well as payroll and taxes.

Ms. Keens attended Middlesex County College and is an honors graduate of its Paralegal Program.

Allan Marain is a solo practitioner in New Brunswick, New Jersey, where he concentrates his practice in criminal defense, including representing persons charged with firearms-related offenses and enabling persons with criminal convictions to expunge their criminal record. From 1989-1997 he was a staff attorney with the Office of the Public Defender, Middlesex Trial Region.

Mr. Marain has been admitted to practice in New Jersey and before the United States District Court for the District of New Jersey, the Federal and Third Circuit Court of Appeals, the United States Tax Court and the United States Supreme Court, as well as the Internal Revenue Service, the Federal Aviation Administration and the National Transportation Safety Board. Past Chair of the New Jersey State Bar Association Criminal Law Section, he is Past Chair of the Expungement Committee of the Association of Criminal Defense Lawyers of New Jersey (ACDL-NJ), a former Trustee of ACDL-NJ and has been a member of the National Association of Criminal Defense Lawyers, the National Rifle Association, the Association of New Jersey Rifle and Pistol Clubs, Inc. and the New Jersey Second Amendment Society.

The New Jersey Law Revision Commission (NJLRC) has invited Mr. Marain’s thoughts on proposed changes and revisions to the New Jersey expungement statutes. He is the author of “Expungement of Criminal Proceedings” (New Jersey Lawyer, February 2005), “Expungement and Sealing of Juvenile Records” (New Jersey Lawyer, October 2015) and “It’s Time to Fix the Expungement Process” (New Jersey Law Journal, February 4, 2019). He has lectured for ICLE, the New Jersey State Bar Association and the ACDL-NJ.

Mr. Marain received his law degree, with honors, from Seton Hall University School of Law.
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