



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report to Clarify “Satisfactory Completion” of Probation in the New Jersey’s Code of Criminal Justice N.J.S. 2C:52-2(a)**

**May 11, 2020**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.  
Please consult the New Jersey statutes in order to determine the law of the State.

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## Executive Summary

In *Matter of E.C.*, the Superior Court of New Jersey considered the meaning of the term “satisfactory” in the context of the state’s expungement statute N.J.S. 2C:52-2 et. seq.<sup>1</sup> The State alleged that the defendant failed to *satisfactorily* complete her probationary term and therefore opposed her application for an expungement.

The Appellate Division determined that the trial court’s denial of the defendant’s application for an expungement did not comport with “the Legislature’s purpose in enacting the expungement statute.”<sup>2</sup> In addition, the Appellate Court held that individuals discharged from probation – even with an imperfect record - who have paid all outstanding fees and fines, have “satisfactorily completed probation” within the meaning of the expungement statute.<sup>3</sup>

The Commission proposes modifications to the current expungement statute by defining the term “satisfactory completion” to clarify the eligibility requirement for filing an expungement application.

## Relevant Statute

The relevant portions of N.J.S. 2C:52-2(a)<sup>4</sup> state the following:

(a) 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. [Emphasis added].

\* \* \*

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:...

(2) [a]t 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; [Emphasis added].

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<sup>1</sup> *Matter of E.C.*, 454 N.J. Super. 48, 53 (App. Div. 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 57.

<sup>4</sup> N.J.S. 2C:52-2. See also N.J.S. 2C:52-2 as amended, effective Jun.15, 2020.

## Background

In 2002, E.C. was arrested for and convicted of third-degree possession of cocaine with intent to distribute, in violation of N.J.S. 2C:35-5(a)(1).<sup>5</sup> The charges were resolved by way of a plea bargain.<sup>6</sup> She pled guilty and was subsequently sentenced to three years of probation contingent on serving six days in jail and paying \$1,205 in fines and fees.<sup>7</sup>

In 2005, E.C. pled guilty to a violation of probation for her failure to report to her probation officer and advise the officer that she had moved.<sup>8</sup> E.C. was ultimately discharged from probation “without improvement.”<sup>9</sup> She paid all of the fines imposed by February 2010.<sup>10</sup>

In November 2015, E.C. filed a petition to expunge her 2002 arrest, conviction, and dismissed charges under the “early pathway” section of N.J.S. 2C:52-2(a).<sup>11</sup> She had suffered significant consequences as a result of her conviction: she was forced to drop out of college because she lost her federal aid, and she lost her public housing.<sup>12</sup> Further, despite E.C.’s desire to become a phlebotomist and medical assistant after graduating from college, she was unable to obtain certification and a full-time position in a hospital due to the conviction.<sup>13</sup> The Union County Prosecutor’s Office alleged that E.C. had not “satisfactorily completed” her term of probation within the meaning of N.J.S. 2C:52-2(a) and that she had been discharged from probation without improvement.<sup>14</sup> The trial court held that E.C.’s imperfect completion of probation served as a permanent bar to obtaining the expungement of her criminal record.<sup>15</sup> In June 2016, her petition to expunge her conviction was denied again.<sup>16</sup> E.C. appealed the denial of her expungement.<sup>17</sup>

## Analysis

The Appellate Division determined that the trial court erred in accepting the Prosecutor’s recommendation for denial of E.C.’s application for expungement because it was contrary to the Legislature’s intent in enacting N.J.S. 2C:52-2.<sup>18</sup> The Court also determined that the trial court’s construction of the statute was contrary to the meaning of the term “satisfactory” as it is ordinarily

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 52.

<sup>11</sup> *Id.* The early pathway section states that the court may grant expungement after five years if the applicant paid off the fines and persuades the court that it would be “in the public interest.” N.J.S. 2C:52-2(a). The newly amended statute that takes effect on June 15, 2020 allows the court to grant expungement after four years under the early pathway section.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 53.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 51.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

defined and as read in the context of the expungement statute.<sup>19</sup>

The Appellate Division stated that it must look to the plain meaning of the words of the statute, and apply them with the intent of the Legislature in mind.<sup>20</sup> The public policy objective of the statute was to provide relief to one-time offenders who subsequently dissociated themselves from “unlawful activity.”<sup>21</sup> Further, the statute’s purpose was to “address barriers that hinder offenders from obtaining employment and living law-abiding lives.”<sup>22</sup> The Court noted that the legislative history indicated that the reentry of ex-offenders into society is in the public interest since it improves those individuals’ lives and promotes public safety.<sup>23</sup>

The early pathway section of the expungement statute, N.J.S. 2C:52-2(a), provides that an applicant may apply for expungement if at least five years have passed since his or her conviction, and the applicant has paid all applicable fines and satisfactorily completed probation.<sup>24</sup> The trial court said that E.C. did not meet the standards of the statute because she was discharged from probation “without improvement.”<sup>25</sup> Both the trial court and the Prosecutor’s Office maintained that E.C.’s probation violations served as evidence that she failed to meet the “satisfactory standard” set forth in the statute.<sup>26</sup>

The term “satisfactory” is not defined in N.J.S. 2C:52-2. In the absence of a definition, the Appellate Division examined the definition of the term, noting that it was defined in The Oxford Dictionary as “[f]ulfilling expectations or needs; acceptable, though not outstanding or perfect.”<sup>27</sup> The Court explained that the probation statute itself

“[f]urther illustrates the meaning of the term. As part of a probationary sentence, a court may require a defendant to satisfy certain conditions, including paying a fine. N.J.S.A. 2C:45–1(b)(11). The court may sentence a defendant to a term of probation of up to five years. N.J.S.A. 2C:45–2(a). However, “[t]he court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time.” N.J.S.A. 2C:45–2(a) (emphasis added). *Upon the termination of the probationary period, “or the earlier discharge of the defendant,” the defendant “shall have satisfied his sentence for the offense” unless the defendant has failed to pay any fines imposed, in which case the probationary period may be extended. N.J.S.A. 2C:45–2(c)(1).* On the other hand, the court may revoke probation and resentence the defendant if she has failed to comply with a

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (citing *Leggette v. Govt’ Emps. Ins. Co.*, 450 N.J. Super. 261, 265 (App. Div. 2017)).

<sup>21</sup> *Id.* at 54.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 55.

<sup>24</sup> *Id.* at 54. *See supra* n. 11.

<sup>25</sup> *Id.* at 53.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 56 (noting Satisfactory Oxford Dictionaries Online, <https://en.oxforddictionaries.com/definition/satisfactory> (last visited Feb. 26, 2018)).

“substantial requirement” imposed as a condition of probation or has been convicted of another offense. N.J.S.A. 2C:45–3(a)(4) [emphasis added].<sup>28</sup>

The Appellate Division held that an individual who has been discharged from probation, even with an imperfect record, and has paid all fines, has satisfactorily completed probation as contemplated by the expungement statute.<sup>29</sup> The Court inferred that probation violations are not an absolute bar to expungement.<sup>30</sup>

The Court observed that amendments to the statute in 2017 to reduce the waiting period for an expungement application and increase the number of offenses that may be expunged, suggest “an intent to expand rather than restrict the opportunities available to first offenders to obtain expungement.”<sup>31</sup> The Court stated that in light of the legislative history of the statute, the trial court’s and the Prosecutor’s restrictive reading of the expungement statute was at odds with the underlying public-policy objectives.<sup>32</sup>

### 50 State Survey of “Satisfactory Completion”<sup>33</sup>

The term “satisfactory completion” is utilized twice in N.J.S. 2C:52-2 to specify the standard the courts should utilize in reviewing expungement applications. New Jersey, along with eleven other states, employs the term “satisfactory” in their probation and or expungement statutes.<sup>34</sup> Of these twelve states only California provides a statutory definition for this term.

The California Welfare and Institutions Code (the “Code”) defines “satisfactory completion” as “substantial compliance”.<sup>35</sup> The Code provides that “[s]atisfactory completion of probation or supervision has occurred if the person has no new findings of wardship, or a felony conviction, or a misdemeanor conviction involving moral turpitude, and he or she **has not failed to substantially comply** with the reasonable orders of supervision or probation that are within his or her capacity to perform.” [Emphasis added].

The term “substantial compliance” was subsequently defined by the California Court of Appeals. The Court in *In re A.V.*,<sup>36</sup> observed that “[s]ubstantial compliance is not perfect

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 57.

<sup>30</sup> *Id.* citing *In re Lobasso*, 423 N.J. Super. 475, 492 (App. Div. 2012).

<sup>31</sup> *Id.* at 55-56.

<sup>32</sup> *Id.* at 55.

<sup>33</sup> Staff conducted a fifty-state survey using the terms “satisfactory,” and “completion,” in the context of expungement of records and probation statutes.

<sup>34</sup> Ala. (§15-22-54); Cal. (Welf. & Inst. Code § 786 West); Idaho (§ 19-2604(1)(b)); La. (Art. 897); Neb. (§ 29-2264(2)); N.M. (§31-20-8); N.D. (§ 12.1-32-07); Tx (Art. 42A.701)); W.Va. (§ 62-12-10); Wis. (973.09(3)(d)); Wyo. (§ 7-13-301(b)).

<sup>35</sup> Cal. Welf. & Inst. Code § 786 (West).

<sup>36</sup> *In re A.V.*, 217 Cal. Rptr. 3d 704 (Cal. Ct. App. 2017) (Juvenile was charged with drug-related offenses. He sought dismissal of wardship petition and the sealing of his juvenile records. Though the juvenile violated his conditions of probation, the Superior Court dismissed his wardship petition based on his subsequent satisfactory completion of probation but refused to seal records and the juvenile appealed. The Court of Appeals found that the juvenile satisfactorily completed his probation and ordered the sealing of all records pertaining to the dismissed petition.)

compliance. [The Court found that] [s]ubstantial compliance is commonly understood to mean ‘compliance with the substantial or essential requirements of something (as a statute or contract) that satisfies its purpose or objective even though its formal requirements are not complied with.’”<sup>37</sup>

The New Jersey Appellate Division in *Matter of E.C.* and the California Court of Appeals in *In re A.V.* define “satisfactory completion” of probation as not requiring the applicant to have a perfect compliance, but substantial compliance with the conditions so that the intent of the probation and expungement statutes will be carried out.

The remaining ten states that use the term “satisfactory” in their statutes, but do not define it, give courts discretion to review the petitioner’s conduct while on probation to determine if it was satisfactory. There is a range of behavior that courts have established as conditions of probation that probationers must comply with before a court may discharge them from probation. The conditions have included prohibiting the use of intoxicating liquor;<sup>38</sup> restricting abortion protestors' access to women's health organization for one year;<sup>39</sup> revocation of probation;<sup>40</sup> or, not having violated any of the terms or conditions of the probation at any time.<sup>41</sup>

The remaining thirty-eight states do not use the term “satisfactory” in either their probation or expungement statutes.<sup>42</sup> The standards used by these states are the discretion of the court, strict statutory compliance, or a combination of both.

### Recent Legislative Enactment

During the 2018 -2019 legislative session, the bill that was enacted as P.L. 2019, c.269 passed the Legislature, on December 18, 2019. It revises expungement eligibility and procedures, including new automated process to render convictions and related records inaccessible. It creates an e-filing system for expungement of records and eliminates expungement filing fees.

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<sup>37</sup> Id. at \*709; (noting *Merriam–Webster Law Dict.*,

<https://www.merriamwebster.com/legal/substantial%20compliance> [as of May 12, 2017].)

<sup>38</sup> *Jent v. State*, 495 So.2d 123 (Ala. Crim. App. 1986). A requirement prohibiting the use of intoxicating liquors has been held to be a valid condition of probation.

<sup>39</sup> *State v. Sahr*, 470 N.W.2d 185 (N.D. Sup. Ct. 1991). The court determined that imposition of probation condition restricting abortion protestors' access to women's health organization for one year was reasonable and did not unduly restrain protestors' liberty because the condition did not prohibit all protest activity.

<sup>40</sup> *State v. Lara*, 129 N.M. 391 (N.M. Ct. App. 2000). When the term of probation ends without a revocation of probation, the trial court is mandated by statute to issue a certificate of satisfactory completion

<sup>41</sup> *State v. Hanes*, 79 P.3d 1070, 1072 (Idaho. Ct. App. 2003) – Idaho Code requires that, to be granted relief, a probationer must show that he or she has always complied with the terms of probation. Furthermore, the district court need not find that any noncompliance was willful.

<sup>42</sup> Alaska (§ 33.05.070); Ariz. (§ 13-901(E)); Ark. (§§ 16-93-314(a)(1)-(2)); Colo. (§ 16-11-206); Conn. (§ 53a-33); Del. (§ 4333); D.C. (§ 24-304(a)); Fla. (§ 948.06); Ga. (§42-8-341); Haw. (§706-623 and §706-630); Ill. (§ 907.9); Ind. (§35-38-2-3); Iowa (§ 907.9); Kan. (§ 21-66608); Ky. (§ § 533.020(4)); Md. (§ 6-220 and § 6-223); Mass. (§ 276 § 87B); Mich. (§ 771.5); Minn. (§ 609.135 and §609.375); Miss. (§ 47-7-37); Mo. (§ 559.036); Mont. (§ 46-18-203); Nev. (176A.850); N.H. (651:5); N.Y. (§ 410.90); N.C. (§ 15A-145); Ohio (2953.38); Okla. (22 § 991b); Or. (§ 137.540); Pa. (§ 9122); R.I. (§ 12-1.3-3); S.C. (§24-21-430); S.D. (§ 23A-27-14); Tenn. (§ 40-35-313); Utah (§ 77-16a-201); Vt. (§ 7041); Va. (§ 19.2-306); Wash. (§ 9.95.230);

Additionally, it appropriates \$15 million to the Department of Law and Public Safety to implement the provisions of this bill.<sup>43</sup> Nevertheless, the adopted legislation does not clarify the term “satisfactory” as discussed in *In Matter of E.C.*

### **Pending Legislation**

Four bills have been introduced in the Assembly to amend N.J.S. 2C:52-2, none of which address the ambiguity of the term “satisfactory completion” in N.J.S. 2C:52-2(a) and 2(a)(2).<sup>44</sup>

### **Outreach**

In connection with this Report, Staff sought comments from several knowledgeable individuals and organizations. These included: the Office of the Attorney General; the Administrative Office the Courts; the New Jersey State Municipal Prosecutor’s Association; the Association of Criminal Defense Lawyers; the leadership of the Criminal Practice Section of the New Jersey State Bar Association; the Office of the Public Defender; each of the twenty-one County Prosecutor; several criminal defense attorneys; the New Jersey League of Municipalities; the New Jersey Association of Counties; the New Jersey State Association of Chiefs of Police; the New Jersey County Prosecutor Association; and the Probation Association of New Jersey. In addition, members of the public were invited to view this report on the NLRC website.

During the comment period, no objections were received to the modifications proposed by the Commission.

### **Conclusion**

The current expungement statute under N.J.S. 2C:52-2 lacks a definition for “satisfactory completion.” Since it is contained in a criminal statute, the “satisfactory completion” requirement for an expungement application would benefit from a clear definition.

The Appendix, on the following pages, sets forth modifications to clarify “satisfactory completion” in the context of N.J.S. 2C:52-2(a) and N.J.S. 2C:52-2(a)(2). The modifications are based on the intent of the Legislature, and the determination of New Jersey Supreme Court case of *In Matter of E.C.*

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<sup>43</sup> S.B. 4154, 2018 Leg., 2<sup>nd</sup> Sess. (N.J. 2019) (codified as P.L. 2019, c.269, §2, eff. June 15, 2020).

<sup>44</sup> A.B. 2235, 2019 Leg., 1<sup>st</sup> Sess. (N.J. 2020); A.B. 1903, 2019 Leg., 1<sup>st</sup> Sess. (N.J. 2020); A.B. 1795, 2019 Leg., 1<sup>st</sup> Sess. (N.J. 2020) and A.B. 799, 2019 Leg., 1<sup>st</sup> Sess. (N.J. 2020).

## Appendix I

The proposed modifications to **N.J.S. 2C:52-2<sup>45</sup>, Indictable Offenses**, (shown with ~~strike~~through, and underlining), follow:

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

(1) the person has been convicted of one crime under the laws of this State, and does not otherwise have any prior or subsequent conviction for another crime, whether within this State or any other jurisdiction; or

(2) the person has been convicted of one crime and less than four disorderly persons or petty disorderly persons offenses under the laws of this State, and does not otherwise have any prior or subsequent conviction for another crime, or any prior or 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 ; or

(3) 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 prior or 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; or

(4) 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 prior or 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.

b. The person, if eligible, may present the expungement application after the expiration of a period of six years from the date of his most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later.

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<sup>45</sup> Please note that N.J.S. 2C:52-2 has been amended by the Legislature. The new provisions of the statute take effect June 15, 2020. If the modifications set forth in Appendix I are approved by the Commission, they will be imported into the newest version of the statute. Appendix II reflects the suggested modifications in the newest version of the statute that would be effective June 15, 2020.



(1) The term “fine” as used herein and throughout this section means and includes any fine, restitution, and other court-ordered financial assessment imposed by the court as part of the sentence for the conviction, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes.

(2) The term “satisfactory completion” as used in this section means that a person subject to sections (a)(1)-(4), inclusive, has been discharged from supervision or probation.

(3) Notwithstanding the provisions concerning the six-year time requirement, if a fine which is currently 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 six 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 under this paragraph, the court shall provide for the continued collection of any outstanding amount owed that is necessary to satisfy the fine or the entry of civil judgment for the outstanding amount in accordance with section 8 of P.L.2017, c. 244 (C.2C:52-23.1).

c. The person shall submit the expungement application to the Superior Court in the county in which the conviction for the crime was adjudged, which contains a separate, duly verified petition as provided in N.J.S.2C:52-7 for each conviction sought to be expunged, praying that the conviction, or convictions if applicable, and all records and information pertaining thereto be expunged. The petition for each conviction 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 six-year time requirement, if a fine which is currently 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 six 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 under this paragraph, the court shall provide for the continued collection of any outstanding amount owed that is necessary to satisfy the fine or the entry of civil judgment for the outstanding amount in accordance with section 8 of P.L.2017, c. 244 (C.2C:52-23.1).~~

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

(1) the fine is satisfied but less than six years have expired from the date of satisfaction , and the time requirement of six 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 fine; or

(2)(A) at least five but less than six years have expired from the date of the most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; and

(B) 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 expungement is in the public interest, giving due consideration to the nature of the offense or offenses, and the applicant's character and conduct since the conviction or convictions.

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

#### Comments

Except for the addition of section (b)(2), the proposed modifications to the statute are not substantive in nature but involve reordering and restructuring it to make the statute more accessible.

The language contained in section (b)(2) was derived in part from the definition found in the California Welfare Institution Code, Cal. (Welf. & Inst. Code §786 West) and is also based upon the language provided by the Court in *In the Matter of E.C.*, 454 N.J. Super. 48 (App. Div. 2018).

The language that now appears in section (b)(2) of the Draft Final Report is as a result of Commission discussion of this issue during the February 20, 2020, meeting.

Newly created section (b)(3) consists of an existing paragraph of the statute (shown in strikethrough below its new location) that was moved because it relates to the satisfactory completion of probation and addresses monetary issues.

## Appendix II

The proposed modifications to N.J.S. 2C:52-2<sup>46</sup>, **Indictable Offenses**, (shown with ~~strike~~through, and underlining), follow:

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

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

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

(3) the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, all of which are listed in a single judgment of conviction, and does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction. ~~Subject to the provision of subsection e. of N.J.S. 2C:52-14 requiring denial of an expungement petition when a person has had a previous criminal conviction expunged~~, A prior conviction for another crime, disorderly persons offense, or petty disorderly persons offense that is not listed in a single judgment of conviction shall not bar presenting an application seeking expungement relief for the

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<sup>46</sup> Please note that N.J.S. 2C:52-2 was amended by the Legislature and the new provisions of the statute take effect June 15, 2020. Appendix II reflects the suggested modifications in the newest version of the statute that would be effective June 15, 2020.

convictions listed in a single judgment of conviction that are the subject of the application;  
or

(4) 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.

b. For purposes of determining eligibility to present an expungement application to the Superior Court pursuant to this section:

(1) a conviction for unlawful distribution of, or possessing or having under control with intent to distribute the following shall not be considered a conviction 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 of offense within the other jurisdiction:

(A) marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S. 2C:35-5, or

(B) a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section, or

(C) a violation of either ~~of those~~ paragraphs (11) or (12) of subsection b. of N.J.S. 2C:35-5 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,~~

(2) and a conviction for the following shall not be considered a conviction within this State or any other jurisdiction:

(A) 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

(B) 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

(C) ~~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.~~

c. 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.

(1) 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.

(2) The term “satisfactory completion” as used in this section means that a person subject to sections (a)(1)-(4), inclusive, has been discharged from supervision or probation.

~~(3) 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;~~

~~(4) If an expungement is granted pursuant to subsection c.(3) of this section 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).~~

5) 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.

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

d. e. 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.~~

e. Additionally, an 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)(A) 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

(B) 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.

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

- (1) the amount of any court-ordered financial assessment imposed,
- (2) the person's age at the time of the offense or offenses,
- (3) the person's financial condition; and,
- (4) other relevant circumstances regarding the person's ability to pay.

g. 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.

h. Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement:

(1) 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);

(2) N.J.S. 2C:13-1 (Kidnapping);

(3) section 1 of P.L.1993, c. 291 (C.2C:13-6) (Luring or Enticing);

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

(5) N.J.S. 2C:14-2 (Sexual Assault or Aggravated Sexual Assault);

(6) subsection a. of N.J.S.2C:14-3 (Aggravated Criminal Sexual Contact);

(7) if the victim is a minor, subsection b. of N.J.S.2C:14-3 (Criminal Sexual Contact);

(8) 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);~~

(9) if the victim is a minor and the offender is not the parent of the victim, N.J.S.2C:13-3 (False Imprisonment);

(10) N.J.S. 2C:15-1 (Robbery);

(11) N.J.S. 2C:17-1 (Arson and Related Offenses);

(12) 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);

(13) 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);

(14) 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);

(15) 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);

(16) 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);

(17) section 8 of P.L.2017, c. 141 (C.2C:24-4.1) (Leader of a child pornography network);

(18) N.J.S. 2C:28-1 (Perjury);

(19) N.J.S. 2C:28-2 (False Swearing);

(20) paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly promoting the prostitution of the actor's child);

(21) section 2 of P.L.2002, c. 26 (C.2C:38-2) (Terrorism);

(22) 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

(23) conspiracies or attempts to commit such crimes.

i. 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.

j. ~~e~~ 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.

k. ~~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.

### Comments

Consistent with the mandate of NJLRC to clarify the statutes, the proposed modifications to N.J.S. 2C:52-2 in Appendix II, are not substantive in nature but involve reordering and restructuring it to make the statute more accessible.

The language contained in section (a.) consists of existing language that has been reorganized to avoid redundancy. Each subsection of section (a.) is subject to subsection e. of N.J.S. 2C:52-14.

Newly created section (b.) consists of an existing paragraph of the amended statute. The one large block paragraph has been divided into subsections to bring clarity to the statute.

Except for the addition of sub-section (c.)(2), the proposed modification to the statute are not substantive. The section has been reformatted to make the statute more accessible. The language contained in section (c.)(2) was derived in part from the definition found in the California Welfare Institution Code, Cal. (Welf. & Inst. Code §786 West) and is also based upon the language provided by the Court in *In the Matter of E.C.*, 454 N.J. Super. 48 (App. Div. 2018). The language that now appears in this Draft Final Report is as a result of commission discussion held during the February 20, 2020 meeting.

Newly created sub-sections (c.)(3) through (c.)(6) consists of an existing paragraph of the amended statute (shown in strikethrough below its new location) that was moved and organized because it relates to the satisfactory completion of probation and addresses monetary issues.

In the newly created sections (d.) through (f.), the substance of these provisions has not been altered, they consist of an existing paragraph that have been subdivided.

Newly created sections (g.) through (k.) are reflective of the amendments approved by the Legislature. The language of the statute similarly sets forth into sections and subsections to make it more accessible.

