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## ***New Law Advisory***

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Issued: January 19, 2016

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To: Assignment Judges

Subject: P.L. 2015, c.261 – Revises laws regarding the expungement of crimes and disorderly persons offenses

Enacted: January 19, 2016

Effective: April 18, 2016

Area of Law: Criminal, Municipal, Probation

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On January 19, 2016, Governor Christie signed Assembly Committee Substitute for A-206, 471, 1663, 2879, 3060, and 3108 into law as P.L. 2015, c.261. The new law takes effect on April 18, 2016. A copy of the law is attached and is available on the Judiciary Infonet under Legal Reference/Legislation Affecting Courts. Below is a summary of the law.

**Section 1: “Drug Court” Expungement** – The new law amends N.J.S.A.2C:35-14 to authorize the Superior Court to order the expungement of all records relating to all prior arrests, detentions, convictions, and proceedings for any Title 2C offense upon a person’s successful discharge from a term of special probation, regardless of whether the person was sentenced to special probation under N.J.S.A.2C:35-14, 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 and was not convicted of any crime, or adjudged a disorderly person or petty disorderly person, during the term of special probation. Under the law, the procedural requirements for expungements in N.J.S.A.2C:52-7 through N.J.S.A.2C:52-14 do not apply to a “drug court” expungement (i.e., verified petition, service, denial). The law provides that no fee can be charged to a person who is eligible for expungement under section 1. The law requires that court grant the expungement 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 ineligible for expungement because the person’s records include a conviction for an offense barred from expungement. Under the law, the prosecutor must notify the court of any disqualifying convictions or public safety factors that should be considered by the court when deciding whether to grant a “drug court” expungement.

The law requires that the court provide a copy of a “drug court” expungement order to the prosecutor, the drug court graduate and, if the person was represented by the Public Defender, to the Public Defender. Thereafter, the drug court graduate or the Public Defender must promptly distribute copies of the expungement order to appropriate agencies who have custody and control of the records specified in the order.

Under the law, if a drug court graduate whose records are expunged upon discharge from special probation is convicted of any crime following the discharge, the full record of arrests and convictions may be restored to public access and the person is thereafter barred from any future expungement.

Finally, the new law provides that a person who, prior to the law's effective date, was successfully discharged from a term of special probation may seek an expungement of all records relating to all arrests, detentions, convictions, and proceedings for any Title 2C offense that existed at the time of discharge. Persons seeking a post-discharge expungement under this provision must 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 pursuant to N.J.S.A.2C:52-7 for each crime or offense sought to be expunged. Under the law, consideration of the petition would proceed pursuant to N.J.S.A.2C:52-1 et seq., except that the requirements related to the expiration of the time periods specified in N.J.S.A.2C:52-2 through N.J.S.A.2C:52-4.1 do not apply. This section of the law contains additional requirements related to the person's eligibility for expungement and the court's consideration of the expungement application. The law provides that no fee can be charged to a person seeking a post-discharge expungement under its provisions.

**Section 2 – Requirements for Expungement of Crimes** - The new law continues the five-year “public interest” exception (known as “early pathways”) to the standard 10-year eligibility time requirement for the expungement of a crime, but authorizes the court to order the expungement of up to two disorderly persons or petty disorderly persons convictions along with the expungement of a crime. Under the law, each conviction sought to be expunged must be supported by a separate verified petition and must comply with the requirements of N.J.S.A.2C:52-1 et seq. The law provides that when a person is seeking an expungement for a crime and disorderly persons convictions, the eligibility time standard is 10 years, or five years with a “public interest” finding, from the date of the “most recent” conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration for the crime and any disorderly persons offense, whichever is later.

**Section 3: Requirements for Expungement of Disorderly Persons Offenses** – The law provides that a person seeking expungement of a disorderly persons or petty disorderly persons conviction may do so by filing an expungement petition with the court. However, if the person has been convicted of a prior or subsequent crime, the person cannot proceed under N.J.S.A. 2C:52-3, but must seek expungement of all eligible convictions (including the crime) under N.J.S.A.2C:52-2, as amended by section 2 of the law. Additionally, the law allows a person to seek the expungement of up to three disorderly persons or petty disorderly persons convictions in a single application to the court, although a separate verified petition must be presented for each conviction and must comply with the requirements of N.J.S.A.2C:52-1 et seq. To parallel the “early pathways” exception in N.J.S.A.2C:52-2, the law provides that when a person is seeking the expungement of a disorderly persons or petty disorderly persons conviction under N.J.S.A. 2C:52-3, the eligibility time standard is five years, or three years with a “public interest” finding, from the date of the conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration for that crime or for any disorderly persons offense, whichever is later. The law clarifies that where the person is seeking the expungement of multiple disorderly persons convictions, the eligibility time standard tolls from the date of the “most recent” conviction.

**Section 4: Expungement of Arrests Not Resulting in Conviction** – The new law provides that when a person has been arrested or held to answer for a crime or any lesser offense and the proceedings against the person were dismissed, the person was acquitted, or the person was discharged without a conviction or finding of guilt, the Superior Court must upon application from the person, order the expungement of all records relating to the arrest or charge at the time of the dismissal, acquittal, or discharge. Under the law, if the proceedings took place in a municipal court, the municipal court must provide the person, upon request, with appropriate documentation to transmit to the Superior Court to

request expungement pursuant to procedures developed by the Administrative Office of the Courts. Upon receipt of such documentation, the Superior Court must enter an ex parte order expunging all records and information relating to the person's arrest or charge.

The law states that the provisions of N.J.S.A.2C:52-7 through N.J.S.A.2C:52-14 (verified petition, service, and denial) do not apply to an expungement pursuant to section 4. In addition, the law provides that no fee can be charged to a person making such an application. The law clarifies that an expungement related to a dismissal, acquittal, or discharge does not bar any future expungement.

The law provides that an expungement under section 4 shall not be ordered where the dismissal, acquittal, or discharge resulted from a plea bargaining agreement resulting in the conviction of other charges, but that this bar does not apply once the conviction resulting from the plea agreement is expunged.

The law requires that the court forward a copy of the expungement order to the appropriate court and to the prosecutor. Under the law, the prosecutor must promptly distribute copies of the expungement order to appropriate law enforcement agencies and correctional institutions who have custody and control of the records specified in the order.

Finally, the law permits a person who did not apply for the expungement of an arrest or charge not resulting in a conviction at the time of dismissal, acquittal or discharge to present, at any time following the court's disposition, a duly verified petition as provided in N.J.S.A.2C:52-7 to the Superior Court in the county in which the disposition occurred praying that the records of such arrest and proceedings be expunged. The law provides that no fee shall be charged to a person for applying for an expungement of an arrest or charge not resulting in a conviction where a petition is filed after the court's disposition.

**Section 6: Use of Expunged Records** – The law amends N.J.S.A.2C:52-21 to provide that, in addition to other authorized purposes, expunged or sealed records of prior arrests or convictions may be provided to the Probation Division of the Superior Court, the pretrial services agency, or the Attorney General when such records are requested for use in conjunction pretrial release determinations pursuant to N.J.S.A.2C:162-15 et seq.

**Section 9: Expungement Policy** – The law modernizes the overarching policy of the State's expungement laws to reflect the statutory revisions of Chapter 261.

Kindly advise appropriate staff of this new law. Please contact the appropriate Assistant Director named above if you have any questions regarding Chapter 261.

attachment

c: Glenn A. Grant

Criminal Division Judges

Municipal Court Presiding Judges

Trial Court Administrators

Directors

Assistant Directors

Clerks of the Court

Criminal Division Managers

Municipal Division Managers

Chief Probation Officers

Municipal Division Managers

Municipal Court Directors and Administrators

**P.L. 2015, c.261**  
**Approved January 19, 2016**

[Fourth Reprint]

**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, Nos. 206, 471, 1663, 2879, 3060, and 3108**  
**STATE OF NEW JERSEY**  
**216th LEGISLATURE**  
ADOPTED DECEMBER 11, 2014

**Sponsored by:**

**Assemblyman JERRY GREEN**  
District 22 (Middlesex, Somerset and Union)  
**Assemblywoman L. GRACE SPENCER**  
District 29 (Essex)  
**Assemblyman REED GUSCIORA**  
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District 15 (Hunterdon and Mercer)  
**Senator RAYMOND J. LESNIAK**  
District 20 (Union)  
**Senator NELLIE POU**  
District 35 (Bergen and Passaic)

**Co-Sponsored by: Assemblymen Coughlin, Diegnan, Senators Stack, Cunningham, Ruiz and Assemblywoman Tucker**

**SYNOPSIS**

Shortens waiting periods for expungement of criminal and other records and information; makes various changes to other expungement procedures and requirements.

**CURRENT VERSION OF TEXT**

As amended on January 11, 2016 by the General Assembly pursuant to the Governor's recommendations.

AN ACT concerning expungement of criminal <sup>2</sup>and other<sup>2</sup> records and <sup>2</sup>information, and<sup>2</sup> amending various sections of Title 2C of the New Jersey Statutes.

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

1. N.J.S.2C:35-14 is amended to read as follows:

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; Criteria for Imposing Special Probation; Ineligible Offenders; [Prosecutorial Objections;] 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, [and except as provided in subsection c. of this section,] 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 abuse treatment and monitoring will serve to benefit the person by addressing his 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, 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 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 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 his 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. A person who fails to comply with the terms of his 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.

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 his participation in any rehabilitation program, nonresidential treatment program or period of residential treatment 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 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. 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 his 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) did not commit a substantial violation of any term or condition of special probation, including but not limited to a positive urine test, within the preceding 12 months; and (4) is not likely to relapse or commit an offense if probation supervision and related services are discontinued.

m. (1) <sup>2</sup>[Notwithstanding any law to the contrary, the] The<sup>2</sup> Superior Court may order the expungement of all records and information relating to all prior <sup>2</sup>[criminal]<sup>2</sup> arrests, <sup>2</sup>[detention] detentions<sup>2</sup>, convictions, and proceedings <sup>2</sup>for any offense enumerated in Title 2C of the New Jersey Statutes<sup>2</sup> 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. <sup>2</sup>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.<sup>2</sup>

(2) A person shall not be eligible for expungement under <sup>2</sup>paragraph (1) of<sup>2</sup> 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 <sup>2</sup>paragraph (1) of<sup>2</sup> this subsection.

(3) The Superior Court shall provide a copy of the expungement order <sup>2</sup>granted pursuant to paragraph (1) of this subsection<sup>2</sup> 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 <sup>2</sup>whose records are expunged pursuant to paragraph (1) of this subsection<sup>2</sup> 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. \_\_\_\_\_, c. <sup>2</sup>[(C. \_\_\_\_\_)]<sup>2</sup> (pending before the Legislature as this bill), 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 <sup>2</sup>[prior criminal]<sup>2</sup> arrests, <sup>2</sup>[detention] detentions<sup>2</sup>, convictions <sup>2</sup>,<sup>2</sup> and proceedings <sup>2</sup>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<sup>2</sup> 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. <sup>2</sup>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.<sup>2</sup> The Superior Court shall consider the person's verified petition and may order the expungement of all records and information relating to all <sup>2</sup>[prior criminal]<sup>2</sup> arrests, <sup>2</sup>[detention] detentions<sup>2</sup>, convictions <sup>2</sup>,<sup>2</sup> and proceedings of the person <sup>2</sup>that existed at the time of discharge from special probation<sup>2</sup> as appropriate. <sup>2</sup>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 this paragraph.<sup>2</sup> No fee shall be charged to a person eligible for relief pursuant to this paragraph.

(cf: P.L.2012, c.23, s.5)

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

a. In all cases, except as herein provided, wherein a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and has not been <sup>2</sup>[adjudged] convicted of<sup>2</sup> a disorderly <sup>2</sup>[person] persons<sup>2</sup> or petty disorderly <sup>2</sup>[person] persons offense<sup>2</sup> on more than

<sup>1</sup>[two] <sup>2</sup>[<sup>1</sup>three] <sup>2</sup>two<sup>2</sup> occasions may, after the expiration of a period of [10] <sup>4</sup>[<sup>5</sup>five] <sup>10</sup>4 years from the date of his <sup>2</sup>[<sup>1</sup>last] <sup>2</sup>most recent<sup>2</sup> conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration <sup>2</sup>for that crime or for any disorderly persons or petty disorderly persons offense<sup>2</sup>, whichever is later, present <sup>2</sup>an expungement application to the Superior Court in the county in which the conviction for the crime was adjudged, which contains<sup>2</sup> a duly verified petition as provided in N.J.S.2C:52-7 <sup>2</sup>[to the Superior Court in the county in which the conviction was entered] for the criminal conviction sought to be expunged, and may also contain additional duly verified petitions for no more than two convictions for any disorderly persons or petty disorderly persons offenses,<sup>2</sup> praying that <sup>2</sup>[such] the<sup>2</sup> conviction <sup>2</sup>, or convictions if applicable,<sup>2</sup> and all records <sup>2</sup>[<sup>1</sup>, including the crime which is the subject of the petition and up to three disorderly persons offense or petty disorderly persons offenses,<sup>1</sup>]<sup>2</sup> and information pertaining thereto be expunged. <sup>2</sup>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.<sup>2</sup>

Notwithstanding the provisions of the preceding paragraph, a petition may be filed and presented, and the court may grant an expungement pursuant to this section, [although less than 10 years has expired in accordance with the requirements of the preceding paragraph where] <sup>4</sup>[when] although less than 10 years has expired in accordance with the requirements of the preceding paragraph where<sup>4</sup> the court finds <sup>4</sup>;<sup>4</sup> [:

(1) <sup>4</sup>(1)<sup>4</sup> less than [10] <sup>4</sup>[<sup>5</sup>five] <sup>10</sup>4 years has expired from the satisfaction of a fine, but the [10-year] <sup>4</sup>[<sup>5</sup>five-year] <sup>10</sup>ten-year<sup>4</sup> time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the fine <sup>4</sup>; or

(2) at least five years has expired from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction<sup>4</sup> [; or

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

In determining whether compelling circumstances exist for the purposes of <sup>4</sup>paragraph (1) of<sup>4</sup> [paragraph (1) of] this subsection, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

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

b. Records of conviction pursuant to statutes repealed by this Code for the crimes of murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, or a conspiracy or any attempt to commit any of the

foregoing, or aiding, assisting or concealing persons accused of the foregoing crimes, shall not be expunged.

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in N.J.S.2C:11-5; 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); <sup>2</sup>[N.J.S.2C:14-3a.] subsection a. of N.J.S.2C:14-3<sup>2</sup> (Aggravated Criminal Sexual Contact); if the victim is a minor, <sup>2</sup>[N.J.S.2C:14-3b.] subsection b. of N.J.S.2C:14-3<sup>2</sup> (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); <sup>2</sup>[N.J.S.2C:24-4a.] subsection a. of N.J.S.2C:24-4<sup>2</sup> (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child <sup>2</sup>, or causing the child other harm<sup>2</sup>); <sup>2</sup>[N.J.S.2C:24-4b.(4)] paragraph (4) of subsection b. of N.J.S.2C:24-4<sup>2</sup> (<sup>2</sup>[Endangering the welfare of] Photographing or filming<sup>2</sup> a child <sup>2</sup>in a prohibited sexual act<sup>2</sup>); <sup>2</sup>[N.J.S.2C:24-4b.(3)] paragraph (3) of subsection b. of N.J.S.2C:24-4<sup>2</sup> (Causing or permitting a child to engage in a prohibited sexual act); <sup>2</sup>[N.J.S.2C:24-4b.(5)(a)] subparagraph (a) of paragraph (5) of subsection b. of N.J.S.2C:24-4<sup>2</sup> (Distributing, possessing with intent to distribute or using a file-sharing program to store items depicting the sexual exploitation or abuse of a child); <sup>2</sup>[N.J.S.2C:24-4b.(5)(b)] subparagraph (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4<sup>2</sup> (Possessing <sup>2</sup>or viewing<sup>2</sup> items depicting the sexual exploitation or abuse of a child); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing); <sup>2</sup>[N.J.S.2C:34-1b.(4)] paragraph (4) of subsection b. of N.J.S.2C:34-1<sup>2</sup> (Knowingly promoting the prostitution of the actor's child); section 2 of P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical Weapons, Biological Agents or Nuclear or Radiological Devices); and conspiracies or attempts to commit such crimes.

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

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

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

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

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

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

(cf: P.L.2013, c.136, s.3)

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

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

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

<sup>b.</sup> Any person convicted of a disorderly persons offense or petty disorderly persons offense under the laws of this State who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, or <sup>2</sup>who has not been convicted<sup>2</sup> of <sup>2</sup>[another three] <sup>a</sup><sup>2</sup> disorderly persons or petty disorderly persons <sup>2</sup>[offenses] offense on more than two other occasions<sup>2</sup>, may, after the expiration of a period of [5] <sup>4</sup>[three] <sup>5</sup>years<sup>4</sup> from the date of his <sup>2</sup>most recent<sup>2</sup> conviction, payment of fine, satisfactory completion of probation or release from incarceration <sup>2</sup>for any disorderly persons or petty disorderly persons offense<sup>2</sup>, whichever is later, present <sup>2</sup>an expungement application to the Superior Court in the county in which the conviction for the most recent disorderly persons or petty disorderly persons offense was adjudged, which contains<sup>2</sup> a duly verified petition as provided in [section 2C:52-7 hereof] N.J.S.2C:52-7 <sup>2</sup>[to the Superior Court in the county in which the conviction was entered] for the disorderly persons or petty disorderly persons conviction sought to be expunged, and which may also contain additional duly verified petitions for no more than two other convictions for disorderly persons or petty disorderly persons offenses,<sup>2</sup> praying that <sup>2</sup>[such] the<sup>2</sup> conviction<sup>2</sup>, or convictions if applicable,<sup>2</sup> and all records and information pertaining thereto be expunged. <sup>2</sup>The petition for each conviction appended to an application shall comply with the requirements of N.J.S.2C:52-1 et seq.<sup>2</sup>

Notwithstanding the provisions of the preceding paragraph, a petition may be filed and presented, and the court may grant an expungement pursuant to this section, when the court finds <sup>4</sup>:

(1) <sup>4</sup>less than <sup>4</sup>[three years] <sup>5</sup>five years<sup>4</sup> has expired from the satisfaction of a fine, but the <sup>4</sup>[three-] <sup>5</sup>five-<sup>4</sup> year time requirement is otherwise satisfied, and the court finds that the person substantially complied with any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to compelling circumstances affecting his ability to satisfy the fine <sup>4</sup>; or

(2) at least three years have expired from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later; the person has not been convicted of a crime, disorderly persons offense, or petty disorderly persons offense since the time of the conviction; and the court finds in its discretion that expungement is in the public interest, giving due consideration to the nature of the offense, and the applicant's character and conduct since conviction<sup>4</sup>.

In determining whether compelling circumstances exist for the purposes of <sup>4</sup>paragraph (1) of<sup>4</sup> this <sup>2</sup>[section] subsection<sup>2</sup>, a court may consider the amount of the fine or fines imposed, the person's age at the time of the offense, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

(cf: P.L.1981, c.290, s.43)

4. N.J.S.2C:52-6 is amended to read as follows:

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

a. [In all cases, except as herein provided, wherein] When a person has been arrested or held to answer for a crime, disorderly persons offense, petty disorderly persons offense, or municipal ordinance violation under the laws of this State or of any governmental entity thereof and [against whom] proceedings against the person were dismissed, [or who] the person was acquitted, or [who] the person was discharged without a conviction or finding of guilt, the Superior Court shall, at the time of dismissal, acquittal, or discharge, or, in any case set forth in paragraph (1) of this subsection, upon receipt of an application from the person, order the expungement of all records and information relating to the arrest or charge.

(1) If proceedings took place in municipal court, the municipal court shall provide the person, upon request, with appropriate documentation to transmit to the Superior Court to request expungement pursuant to procedures developed by the Administrative Office of the Courts. Upon receipt of the documentation, the Superior Court shall enter an ex parte order expunging all records and information relating to the person's arrest or charge.

(2) The provisions of N.J.S.2C:52-7 through N.J.S.2C:52-14 shall not apply to an expungement pursuant to this subsection and no fee shall be charged to the person making such application.

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

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

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

b. When <sup>3</sup>[the] a person did not apply for an<sup>3</sup> expungement of an arrest or charge not resulting in a conviction <sup>3</sup>[was not ordered by the court]<sup>3</sup> pursuant to subsection a. of this section, <sup>3</sup>[a] the<sup>3</sup> person may at any time following the disposition of proceedings, present a duly verified petition as provided in N.J.S.2C:52-7 to the Superior Court in the county in which the disposition occurred praying that records of such arrest and all records and information pertaining thereto be expunged. No fee shall be charged to the person for applying for an expungement of an arrest or charge not resulting in a conviction pursuant to this subsection.

[b.] c. Any person who has had charges dismissed against him pursuant to [P.L.1970, c.226, s.27 (C.24:21-27) or pursuant to] a program of supervisory treatment pursuant to N.J.S.2C:43-12, or conditional discharge pursuant to N.J.S.2C:36A-1, or conditional dismissal pursuant to P.L.2013, c.158 (C.2C:43-13.1 et al.), shall be barred from the relief provided in this section until six months after the entry of the order of dismissal.

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

(cf: P.L.2013, c.158, s.13)

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

2C:52-20. Use of Expunged Records In Conjunction with Supervisory Treatment or Diversion Programs.

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

(cf: P.L.1979, c.178, s.127)

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

2C:52-21. Use of Expunged Records in Conjunction with Setting Bail or Authorizing Pretrial Release, Presentence Report, or Sentencing.

Expunged records, or sealed records under prior law, of prior arrests or convictions shall be provided to any [judge] court, county prosecutor, [probation department] the Probation Division of the Superior Court, the pretrial services agency, or the Attorney General when same are requested for use in conjunction with a bail hearing, pretrial release determination pursuant to sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.), [or] for the preparation of a presentence report, or for purpose of sentencing.

(cf: P.L.1979, c.178, s.128)

7. N.J.S.2C:52-24 is amended to read as follows:

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

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

(cf: P.L.1979, c. 178, s. 131)

8. N.J.S.2C:52-27 is amended to read as follows:

2C:52-27. Effect of expungement.

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

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

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

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

(cf: P.L.1981, c.290, s.45)



<sup>2</sup>9. N.J.S.2C:52-32 is amended to read as follows:

This chapter shall be construed with the primary objective of providing relief to the [one-time] reformed offender who has led a life of rectitude and disassociated himself with unlawful activity, but not to create a system whereby [periodic] 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.<sup>2</sup>

(cf: N.J.S.2C:52-32)

<sup>2</sup>[9.] 10.<sup>2</sup> This act shall take effect on the 90<sup>th</sup> day following enactment.