

ASSEMBLY, No. 2342

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED FEBRUARY 6, 2006

Sponsored by:

Assemblyman RICHARD A. MERKT

District 25 (Morris)

SYNOPSIS

Creates procedure for destruction of all records pertaining to juveniles who are arrested but subsequently not charged with delinquency.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain juvenile records and revising various
2 parts of the statutory law.

3

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

6

7 1. Section 1 of P.L.1980, c.163 (C.2C:52-4.1) is amended to
8 read as follows:

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

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

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

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

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

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

25 (1) Five years have elapsed since the final discharge of the
26 person from legal custody or supervision or 5 years have elapsed
27 after the entry of any other court order not involving custody or
28 supervision;

29 (2) He has not been convicted of a crime, or a disorderly or petty
30 disorderly persons offense, or adjudged a delinquent, or in need of
31 supervision, during the 5 years prior to the filing the petition, and
32 no proceeding or complaint is pending seeking such a conviction or
33 adjudication;

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

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

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

40 c. Any person who has been charged with an act of delinquency
41 and against whom proceedings were dismissed may have the filing
42 of those charges expunged pursuant to the provisions of N.J.S.
43 2C:52-6.

44 d. Any juvenile who has been arrested or detained but not
45 charged with an act of delinquency may have all complaints,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 warrants, arrests, processing records, police reports, index cards,
2 fingerprint records and photographs destroyed pursuant to section 5
3 of P.L. c. (C.)(pending before the Legislature as section 5
4 of this bill).

5 (cf: P.L.1981, c.290, s.44)

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

8 2C:52-6. Arrests Not Resulting in Conviction.

9 a. In all cases, except as herein provided, wherein a person has
10 been arrested or held to answer for a crime, disorderly persons
11 offense, petty disorderly persons offense or municipal ordinance
12 violation under the laws of this State or of any governmental entity
13 thereof and against whom proceedings were dismissed, or who was
14 acquitted, or who was discharged without a conviction or finding of
15 guilt, may at any time following the disposition of proceedings,
16 present a duly verified petition as provided in [section]
17 N.J.S.2C:52-7 to the Superior Court in the county in which the
18 disposition occurred praying that records of such arrest and all
19 records and information pertaining thereto be expunged.

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

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

30 d. Any juvenile who has been arrested or detained but not
31 charged with an act of delinquency may have all complaints,
32 warrants, arrests, processing records, police reports, index cards,
33 fingerprint records and photographs destroyed pursuant to section 5
34 of P.L. c. (C.)(pending before the Legislature as section 5
35 of this bill).

36 (cf: N.J.S. 2C:52-6)

37
38 3. Section 1 of P.L.1982, c.79 (C.2A:4A-60) is amended to read
39 as follows:

40 1. Disclosure of juvenile information; penalties for disclosure.

41 a. Social, medical, psychological, legal and other records of the
42 court and probation division, and records of law enforcement
43 agencies, pertaining to juveniles who have been arrested or detained
44 but not charged with an act of delinquency, charged as a delinquent
45 or found to be part of a juvenile-family crisis, shall be strictly
46 safeguarded from public inspection. Such records shall be made
47 available only to:

- 1 (1) Any court or probation division;
- 2 (2) The Attorney General or county prosecutor;
- 3 (3) The parents or guardian and to the attorney of the juvenile;
- 4 (4) The Department of Human Services, if providing care or
- 5 custody of the juvenile;
- 6 (5) Any institution or facility to which the juvenile is currently
- 7 committed or in which the juvenile is placed;
- 8 (6) Any person or agency interested in a case or in the work of
- 9 the agency keeping the records, by order of the court for good cause
- 10 shown, except that information concerning adjudications of
- 11 delinquency, records of custodial confinement, payments owed on
- 12 assessments imposed pursuant to section 2 of P.L.1979, c.396
- 13 (C.2C:43-3.1) or restitution ordered following conviction of a crime
- 14 or adjudication of delinquency, and the juvenile's financial
- 15 resources, shall be made available upon request to the Victims of
- 16 Crime Compensation Board established pursuant to section 3 of
- 17 P.L.1971, c.317 (C.52:4B-3), which shall keep such information
- 18 and records confidential;
- 19 (7) The Juvenile Justice Commission established pursuant to
- 20 section 2 of P.L.1995, c.284 (C.52:17B-170);
- 21 (8) Law enforcement agencies for the purpose of reviewing
- 22 applications for a permit to purchase a handgun or firearms
- 23 purchaser identification card;
- 24 (9) Any potential party in a subsequent civil action for damages
- 25 related to an act of delinquency committed by a juvenile, including
- 26 the victim or a member of the victim's immediate family, regardless
- 27 of whether the action has been filed against the juvenile; provided,
- 28 however, that records available under this paragraph shall be
- 29 limited to official court documents, such as complaints, pleadings
- 30 and orders, and that such records may be disclosed by the recipient
- 31 only in connection with asserting legal claims or obtaining
- 32 indemnification on behalf of the victim or the victim's family and
- 33 otherwise shall be safeguarded from disclosure to other members of
- 34 the public. Any potential party in a civil action related to the
- 35 juvenile offense may file a motion with the civil trial judge seeking
- 36 to have the juvenile's social, medical or psychological records
- 37 admitted into evidence in a civil proceeding for damages;
- 38 (10) Any potential party in a subsequent civil action for damages
- 39 related to an act of delinquency committed by a juvenile, including
- 40 the victim or a member of the victim's immediate family, regardless
- 41 of whether the action has been filed against the juvenile; provided,
- 42 however, that records available under this paragraph shall be
- 43 limited to police or investigation reports concerning acts of
- 44 delinquency, which shall be disclosed by a law enforcement agency
- 45 only with the approval of the County Prosecutor's Office or the
- 46 Division of Criminal Justice. Prior to disclosure, all personal
- 47 information regarding all individuals, other than the requesting
- 48 party and the arresting or investigating officer, shall be redacted.

1 Such records may be disclosed by the recipient only in connection
2 with asserting legal claims or obtaining indemnification on behalf
3 of the victim or the victim's family, and otherwise shall be
4 safeguarded from disclosure to other members of the public;

5 (11) The Office of the Child Advocate established pursuant to
6 P.L.2005, c.155 (C.52:27EE-1 et al.). Disclosure of juvenile
7 information received by the child advocate pursuant to this
8 paragraph shall be in accordance with the provisions of section 76
9 of P.L.2005, c.155 (C.52:27EE-76); and

10 (12) Law enforcement agencies with respect to information
11 available on the juvenile central registry maintained by the courts
12 pursuant to subsection g. of this section, including, but not limited
13 to: records of official court documents, such as complaints,
14 pleadings and orders for the purpose of obtaining juvenile arrest
15 information; juvenile disposition information; juvenile pretrial
16 information; and information concerning the probation status of a
17 juvenile.

18 b. Records of law enforcement agencies may be disclosed for
19 law enforcement purposes, or for the purpose of reviewing
20 applications for a permit to purchase a handgun or a firearms
21 purchaser identification card to any law enforcement agency of this
22 State, another state or the United States, and the identity of a
23 juvenile under warrant for arrest for commission of an act that
24 would constitute a crime if committed by an adult may be disclosed
25 to the public when necessary to execution of the warrant.

26 c. At the time of charge, adjudication or disposition,
27 information as to the identity of a juvenile charged with an offense,
28 the offense charged, the adjudication and disposition shall, upon
29 request, be disclosed to:

30 (1) The victim or a member of the victim's immediate family;

31 (2) (Deleted by amendment P.L.2005, c.165).

32 (3) On a confidential basis, the principal of the school where the
33 juvenile is enrolled for use by the principal and such members of
34 the staff and faculty of the school as the principal deems
35 appropriate for maintaining order, safety or discipline in the school
36 or to planning programs relevant to the juvenile's educational and
37 social development, provided that no record of such information
38 shall be maintained except as authorized by regulation of the
39 Department of Education; or

40 (4) A party in a subsequent legal proceeding involving the
41 juvenile, upon approval by the court.

42 d. A law enforcement or prosecuting agency shall, at the time
43 of a charge, adjudication or disposition, advise the principal of the
44 school where the juvenile is enrolled of the identity of the juvenile
45 charged, the offense charged, the adjudication and the disposition
46 if:

47 (1) The offense occurred on school property or a school bus,
48 occurred at a school-sponsored function or was committed against

1 an employee or official of the school; or

2 (2) The juvenile was taken into custody as a result of
3 information or evidence provided by school officials; or

4 (3) The offense, if committed by an adult, would constitute a
5 crime, and the offense:

6 (a) resulted in death or serious bodily injury or involved an
7 attempt or conspiracy to cause death or serious bodily injury; or

8 (b) involved the unlawful use or possession of a firearm or other
9 weapon; or

10 (c) involved the unlawful manufacture, distribution or
11 possession with intent to distribute a controlled dangerous
12 substance or controlled substance analog; or

13 (d) was committed by a juvenile who acted with a purpose to
14 intimidate an individual or group of individuals because of race,
15 color, religion, sexual orientation or ethnicity; or

16 (e) would be a crime of the first or second degree.

17 Information provided to the principal pursuant to this subsection
18 shall be treated as confidential but may be made available to such
19 members of the staff and faculty of the school as the principal
20 deems appropriate for maintaining order, safety or discipline in the
21 school or for planning programs relevant to a juvenile's educational
22 and social development, and no record of such information shall be
23 maintained except as authorized by regulation of the Department of
24 Education.

25 e. Nothing in this section prohibits a law enforcement or
26 prosecuting agency from providing the principal of a school with
27 information identifying one or more juveniles who are under
28 investigation or have been taken into custody for commission of any
29 act that would constitute an offense if committed by an adult when
30 the law enforcement or prosecuting agency determines that the
31 information may be useful to the principal in maintaining order,
32 safety or discipline in the school or in planning programs relevant
33 to the juvenile's educational and social development. Information
34 provided to the principal pursuant to this subsection shall be treated
35 as confidential but may be made available to such members of the
36 staff and faculty of the school as the principal deems appropriate for
37 maintaining order, safety or discipline in the school or for planning
38 programs relevant to the juvenile's educational and social
39 development. No information provided pursuant to this section
40 shall be maintained.

41 f. Information as to the identity of a juvenile adjudicated
42 delinquent, the offense, the adjudication and the disposition shall be
43 disclosed to the public where the offense for which the juvenile has
44 been adjudicated delinquent if committed by an adult, would
45 constitute a crime of the first, second or third degree, or aggravated
46 assault, destruction or damage to property to an extent of more than
47 \$500.00, unless upon application at the time of disposition the
48 juvenile demonstrates a substantial likelihood that specific and

1 extraordinary harm would result from such disclosure in the specific
2 case. Where the court finds that disclosure would be harmful to the
3 juvenile, the reasons therefor shall be stated on the record.

4 g. (1) Nothing in this section shall prohibit the establishment and
5 maintaining of a central registry of the records of law enforcement
6 agencies relating to juveniles for the purpose of exchange between
7 State and local law enforcement agencies and prosecutors of this
8 State, another state, or the United States. These records of law
9 enforcement agencies shall be available on a 24-hour basis.

10 (2) Certain information and records relating to juveniles in the
11 central registry maintained by the courts, as prescribed in paragraph
12 (12) of subsection a. of this section, shall be available to State and
13 local law enforcement agencies and prosecutors on a 24-hour basis.

14 h. Whoever, except as provided by law, knowingly discloses,
15 publishes, receives, or makes use of or knowingly permits the
16 unauthorized use of information concerning a particular juvenile
17 derived from records listed in subsection a. or acquired in the
18 course of court proceedings, probation, or police duties, shall, upon
19 conviction thereof, be guilty of a disorderly persons offense.

20 i. Juvenile delinquency proceedings.

21 (1) Except as provided in paragraph (2) of this subsection, the
22 court may, upon application by the juvenile or his parent or
23 guardian, the prosecutor or any other interested party, including the
24 victim or complainant or members of the news media, permit public
25 attendance during any court proceeding at a delinquency case,
26 where it determines that a substantial likelihood that specific harm
27 to the juvenile would not result. The court shall have the authority
28 to limit and control attendance in any manner and to the extent it
29 deems appropriate;

30 (2) The court or, in cases where the county prosecutor has
31 entered an appearance, the county prosecutor shall notify the victim
32 or a member of the victim's immediate family of any court
33 proceeding involving the juvenile and the court shall permit the
34 attendance of the victim or family member at the proceeding except
35 when, prior to completing testimony as a witness, the victim or
36 family member is properly sequestered in accordance with the law
37 or the Rules Governing the Courts of the State of New Jersey or
38 when the juvenile or the juvenile's family member shows, by clear
39 and convincing evidence, that such attendance would result in a
40 substantial likelihood that specific harm to the juvenile would result
41 from the attendance of the victim or a family member at a
42 proceeding or any portion of a proceeding and that such harm
43 substantially outweighs the interest of the victim or family member
44 to attend that portion of the proceeding;

45 (3) The court shall permit a victim, or a family member of a
46 victim to make a statement prior to ordering a disposition in any
47 delinquency proceeding involving an offense that would constitute a
48 crime if committed by an adult.

1 j. The Department of Education, in consultation with the
2 Attorney General, shall adopt, pursuant to the "Administrative
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
4 regulations concerning the creation, maintenance and disclosure of
5 pupil records including information acquired pursuant to this
6 section.

7 k. Any juvenile who has been arrested or detained but not
8 charged with an act of delinquency may have all complaints,
9 warrants, arrests, processing records, police reports, index cards,
10 fingerprint records and photographs destroyed pursuant to section 5
11 of P.L. c. (C.)(pending before the Legislature as section 5
12 of this bill).

13 (cf: P.L. 2005, c.165)

14

15 4. Section 2 of P.L.1982, c.79 (C.2A:4A-61) is amended to read
16 as follows:

17 2. Fingerprint records; photographs of juveniles.

18 a. Fingerprints of a juvenile may be taken only in the following
19 circumstances:

20 (1) Where latent fingerprints are found during the investigation
21 of an offense and a law enforcement officer has reason to believe
22 that they are those of a juvenile, he may, with the consent of the
23 court or juvenile and his parent or guardian fingerprint the juvenile
24 for the purpose of comparison with the latent fingerprints.
25 Fingerprint records taken pursuant to this paragraph may be
26 retained by the department or agency taking them and shall be
27 destroyed when the purpose for the taking of fingerprints has been
28 fulfilled.

29 (2) Where a juvenile is detained in or committed to an
30 institution, that institution may fingerprint the juvenile for the
31 purpose of identification. Fingerprint records taken pursuant to this
32 paragraph may be retained by the institution taking them and shall
33 be destroyed when the purpose for taking them has been fulfilled,
34 except that if the juvenile was detained or committed as the result of
35 an adjudication of delinquency, the fingerprint records may be
36 retained by the institution.

37 (3) Where a juvenile 14 years of age or older is charged with
38 delinquency on the basis of an act which, if committed by an adult,
39 would constitute a crime, fingerprint records taken pursuant to this
40 paragraph may be retained by a law enforcement agency for
41 criminal identification purposes.

42 b. No juvenile under the age of 14 shall be photographed for
43 criminal identification purposes without the consent of the court or
44 of the juvenile and his parent or guardian.

45 c. Fingerprints of a juvenile shall be taken if the juvenile is
46 adjudicated delinquent on the basis of an act which, if committed by
47 an adult, would constitute a crime.

48 d. Fingerprints taken pursuant to subsection c. of this section

1 shall be taken according to the fingerprint system of identification
2 established by the Superintendent of State Police on the forms
3 prescribed and shall be forwarded without delay to the State Bureau
4 of Identification together with such information concerning the
5 juvenile and the adjudication as the superintendent may require.
6 The State Bureau of Identification shall retain records received
7 pursuant to this subsection for the sole purpose of exchange
8 between State or local law enforcement agencies of this State, and
9 law enforcement agencies of another state or the United States.

10 e. Any juvenile who has been arrested or detained but not
11 charged with an act of delinquency may have all complaints,
12 warrants, arrests, processing records, police reports, index cards,
13 fingerprint records and photographs destroyed pursuant to section 5
14 of P.L. c. (C.)(now pending before the Legislature as
15 section 5 of this bill).

16 (cf: P.L.1994,c.56,s.2)

17

18 5. (New section) a. Any juvenile who has been arrested or
19 detained by a law enforcement agency but not charged with an act
20 of delinquency may have all complaints, warrants, arrests,
21 processing records, police reports, index cards, fingerprint records
22 and photographs destroyed pursuant to the procedure set forth in
23 this section.

24 b. The juvenile shall present a duly verified petition as provided
25 in subsection c. of this section to the Superior Court in the county in
26 which the arrest occurred asking that all records and information
27 pertaining thereto be destroyed.

28 c. Every petition for destruction filed pursuant to this section
29 shall be verified and include:

30 (1) Petitioner's date of birth.

31 (2) Petitioner's date of arrest.

32 (3) The statute or statutes and offense or offenses for which
33 petitioner was arrested, if applicable.

34 (4) The original summons number or any other pertinent
35 information which may be available, if applicable.

36

37 6. (New section) a. The procedure for destruction of records set
38 forth in section 5 of P.L. c. (C.)(pending before the
39 Legislature as section 5 of this bill) shall be available to a juvenile
40 who is arrested but not subsequently charged as a juvenile
41 delinquent for any number of those types of arrests.

42 b. Utilizing the procedure for destruction of records set forth in
43 section 5 of P.L. c. (C.)(pending before the Legislature as
44 section 5 of this bill) shall not preclude a juvenile from utilizing the
45 procedure for expungement under the provisions of chapter 52 of
46 Title 2C of the New Jersey Statutes if the juvenile is arrested and
47 subsequently adjudged a juvenile delinquent.

48

