

SENATE, No. 906

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JANUARY 17, 2006

Sponsored by:
Senator ANTHONY R. BUCCO
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.



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1 AN ACT concerning certain juvenile records, revising various parts
2 of the statutory law, and supplementing Title 2A of the New
3 Jersey Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

41 c. Any person who has been charged with an act of delinquency
42 and against whom proceedings were dismissed may have the filing
43 of those charges expunged pursuant to the provisions of N.J.S.
44 2C:52-6.

45 d. Any juvenile who has been arrested or detained but not

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.

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

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

7

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

9 2C:52-6. Arrests Not Resulting in Conviction.

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

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

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

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

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

38

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

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

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

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1 available only to:

2 (1) Any court or probation division;

3 (2) The Attorney General or county prosecutor;

4 (3) The parents or guardian and to the attorney of the juvenile;

5 (4) The Department of Human Services, if providing care or
6 custody of the juvenile;

7 (5) Any institution or facility to which the juvenile is currently
8 committed or in which the juvenile is placed;

9 (6) Any person or agency interested in a case or in the work of
10 the agency keeping the records, by order of the court for good cause
11 shown, except that information concerning adjudications of
12 delinquency, records of custodial confinement, payments owed on
13 assessments imposed pursuant to section 2 of P.L.1979, c.396
14 (C.2C:43-3.1) or restitution ordered following conviction of a crime
15 or adjudication of delinquency, and the juvenile's financial
16 resources, shall be made available upon request to the Victims of
17 Crime Compensation Board established pursuant to section 3 of
18 P.L.1971, c.317 (C.52:4B-3), which shall keep such information
19 and records confidential;

20 (7) The Juvenile Justice Commission established pursuant to
21 section 2 of P.L.1995, c.284 (C.52:17B-170);

22 (8) Law enforcement agencies for the purpose of reviewing
23 applications for a permit to purchase a handgun or firearms
24 purchaser identification card;

25 (9) Any potential party in a subsequent civil action for damages
26 related to an act of delinquency committed by a juvenile, including
27 the victim or a member of the victim's immediate family, regardless
28 of whether the action has been filed against the juvenile; provided,
29 however, that records available under this paragraph shall be
30 limited to official court documents, such as complaints, pleadings
31 and orders, and that such records may be disclosed by the recipient
32 only in connection with asserting legal claims or obtaining
33 indemnification on behalf of the victim or the victim's family and
34 otherwise shall be safeguarded from disclosure to other members of
35 the public. Any potential party in a civil action related to the
36 juvenile offense may file a motion with the civil trial judge seeking
37 to have the juvenile's social, medical or psychological records
38 admitted into evidence in a civil proceeding for damages;

39 (10) Any potential party in a subsequent civil action for
40 damages related to an act of delinquency committed by a juvenile,
41 including the victim or a member of the victim's immediate family,
42 regardless of whether the action has been filed against the juvenile;
43 provided, however, that records available under this paragraph shall
44 be limited to police or investigation reports concerning acts of
45 delinquency, which shall be disclosed by a law enforcement agency
46 only with the approval of the County Prosecutor's Office or the
47 Division of Criminal Justice. Prior to disclosure, all personal
48 information regarding all individuals, other than the requesting

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

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

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

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

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

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

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

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

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

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

48 (1) The offense occurred on school property or a school bus,

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1 occurred at a school-sponsored function or was committed against
2 an employee or official of the school; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 i. Juvenile delinquency proceedings.

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

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

47 (3) The court shall permit a victim, or a family member of a
48 victim to make a statement prior to ordering a disposition in any

1 delinquency proceeding involving an offense that would constitute a
2 crime if committed by an adult.

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

9 k. Any juvenile who has been arrested or detained but not
10 charged with an act of delinquency may have all complaints,
11 warrants, arrests, processing records, police reports, index cards,
12 fingerprint records and photographs destroyed pursuant to section 5
13 of P.L. , c. (C.)(pending before the Legislature as section 5
14 of this bill).
15 (cf: P.L.2005, c.165, s.1)

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

19 2. Fingerprint records; photographs of juveniles.

20 a. Fingerprints of a juvenile may be taken only in the following
21 circumstances:

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

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

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

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

47 c. Fingerprints of a juvenile shall be taken if the juvenile is
48 adjudicated delinquent on the basis of an act which, if committed by

1 an adult, would constitute a crime.

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

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

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

19

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

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

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

32 (1) Petitioner's date of birth.

33 (2) Petitioner's date of arrest.

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

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

38

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

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

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- 1 subsequently adjudged a juvenile delinquent.

1 7. This act shall take effect on the 60th day after enactment.

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STATEMENT

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6 This bill creates a procedure for juveniles who have been
7 arrested but not charged subsequent to that arrest with juvenile
8 delinquency to have all records of any type related to the arrest
9 destroyed. This newly created procedure parallels as appropriate
10 the current procedure for expungement of records found in chapter
11 52 of Title 2C of the New Jersey Statutes. Any juvenile who has
12 been arrested or detained by a law enforcement agency but not
13 charged with an act of delinquency may have all complaints,
14 warrants, arrests, processing records, police reports, index cards,
15 fingerprint records and photographs destroyed by presenting a duly
16 verified petition to the Superior Court in the county in which the
17 arrest occurred asking that all records and information pertaining
18 thereto be destroyed. These petitions at a minimum shall be
19 verified and include: (1) Petitioner's date of birth; (2) Petitioner's
20 date of arrest; (3) The statute or statutes and offense or offenses for
21 which petitioner was arrested; (4) The original summons number or
22 any other pertinent information which may be available.

23 The bill amends two existing sections in the expungement
24 statutes: N.J.S.A.2C:52-4.1, concerning juvenile expungement, and
25 N.J.S.A.2C:52-6, concerning arrests not resulting in conviction, to
26 reference this new procedure. The bill makes similar references in
27 the Juvenile Code in N.J.S.A.2A:4A-60 concerning disclosure of
28 juvenile information and N.J.S.A.2A:4A-61 concerning fingerprints
29 and photographs of juveniles.

30 The procedure for destruction of records shall be available to a
31 juvenile who is arrested but not subsequently charged as a juvenile
32 delinquent for any number of those types of arrests. Utilizing the
33 procedure for destruction of records shall not preclude a juvenile
34 from utilizing the procedure for expungement under the provisions
35 of chapter 52 of Title 2C of the New Jersey Statutes if the juvenile
36 is arrested and subsequently adjudged a juvenile delinquent.

37 The sponsor's intent is to address an existing gap in the statutory
38 law that fails to address these situations where the juvenile has been
39 arrested but not charged with juvenile delinquency. The current
40 expungement statutes only address the juvenile "adjudged a juvenile
41 delinquent" in subsection a. of N.J.S.A.2C:52-4.1 and a "person
42 charged with an act of delinquency and against whom proceedings
43 were dismissed" as in subsection c. of N.J.S.A.2C:52-4.1. This bill
44 is intended to provide recourse to juveniles who are arrested but
45 subsequently not charged with delinquency who wish to have all
46 references to them removed from the files of law enforcement
47 agencies.