LEGISLATIVE FISCAL ESTIMATE
[First Reprint]

ASSEMBLY, No. 5981
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 18, 2019

SUMMARY

Synopsis: Revises expungement eligibility and procedures, including new “clean slate” automated process to render convictions and related records inaccessible; creates e-filing system for expungements; eliminates expungement filing fees; appropriates $15 million to DLPS for implementation.

Type of Impact: Annual State expenditure increase and revenue decrease.

Agencies Affected: The Judiciary; Department of Law and Public Safety; Local governments.

Office of Legislative Services Estimate

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- The Office of Legislative Services (OLS) estimates that the Judiciary would incur a substantial annual expenditure increase due to review of additional expungement requests in order to determine eligibility and to process the requests. However, OLS does not have sufficient information to forecast the number of additional applications. According to data provided by the Administrative Office of the Courts (AOC) in 2018, 11,707 expungements were filed. On average, approximately 9,000 expungements were filed annually in last five years.

- The OLS anticipates the bill would result in substantial cost increase for the Judiciary in the short term, as the AOC would need to develop an expungement e-filing system, to be used for all expungement filings and to provide for electronic processing and document management. According to the AOC, upgrading technology to implement the sealing of records provision and to build the e-filing system would cost approximately $10 million.
The bill establishes an automated “clean slate” process and makes other changes to the expungement process that will increase applications and the related workload of the Department of Law and Public Safety. The bill appropriates $15 million to the department to fund the bill’s cost impact. The full cost impact on the department is indeterminate.

The OLS projects an indeterminate reduction in annual State revenue as the bill eliminates the existing $75 court filing fees for all expungement applications.

The impact of the bill on local law enforcement agencies, county detention facilities, and municipal courts is not known but is likely to consist of higher administrative and compliance costs.

BILL DESCRIPTION

This bill concerns several reforms to expungement eligibility and procedures, some focused on the treatment of various marijuana or hashish possession, distribution, and drug paraphernalia crimes and offenses and others being more generally applicable to any expungement. Notably, the bill would: establish a new “clean slate” process to generally clear a person’s entire criminal history, initially by expungement petition and later replaced by an automated “clean slate” process; create a new electronic filing system for all expungements; and appropriate $15,000,000 to the Department of Law and Public Safety to assist with implementation of the reforms. The bill’s provisions are almost entirely based upon a combination of the Second Reprint of Senate Bill No. 3205, which passed both Houses of the Legislature on June 10, 2019, and the suggested changes presented in the Governor’s Conditional Veto of the bill, which was received by the Senate on August 23, 2019.

The bill broadens eligibility for the “standard” expungement process for criminal convictions, by permitting a person to seek to expunge convictions on the basis of any of the following categories, regardless of any prior conviction of record:

- one crime, and the person does not otherwise have any subsequent criminal conviction;
- one crime and no more than three disorderly persons or petty disorderly persons offenses, and the person does not otherwise have any subsequent conviction for another crime or offense;
- multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses, all listed in a single judgment of conviction, and the person does not otherwise have any subsequent conviction for another crime or offense; or
- multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses that occurred as part of a one-time “crime spree,” and the person does not otherwise have any subsequent conviction for another crime or offense.

The bill also expands eligibility based on waiting periods by reducing the current six-year time period to five years and modifying other current requirements.

Also subject to reduction by one year, from five years to four years, would be the waiting period for when a person who, having satisfied the financial assessment and all other aspects of sentencing, could make an early application by proving to the court that there are “compelling circumstances” for granting such early expungement (this is currently known as an early, “public interest” expungement).

The bill also expands eligibility under the “standard” expungement process by modifying the impact of certain marijuana and hashish distribution, possession, and drug paraphernalia crimes and offenses.
In addition, the “standard” expungement application process would be simplified by no longer requiring a separate, duly verified petition for each individual conviction for which expungement relief is sought.

The bill also creates an additional category of expungement, as well as a new, court-initiated sealing of records upon disposition of a case (i.e., at sentencing) as a means of more quickly clearing or rendering unavailable a person’s record with respect to certain marijuana or hashish possession, distribution, or drug paraphernalia crimes and offenses.

Furthermore, the bill would establish a new “clean slate” expungement which would permit a person, who is not otherwise eligible to present an expungement application pursuant to any other category of expungement, to expunge any number of convictions for crimes, disorderly persons offenses, petty disorderly persons offenses, or a combination thereof, unless the person has a conviction for more serious or violent crimes not subject to expungement. An eligible person could file for “clean slate” expungement relief even if that person had a previous criminal conviction expunged, which is normally a disqualifier for expungement pursuant to subsection e. of N.J.S.2C:52-14. An application for this broad form of expungement relief could be filed after the expiration of a period of ten years from the date of the person’s most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later.

Eventually, an automated “clean slate” process would commence, based upon recommendations of a task force established by the bill. The task force would be responsible for identifying, analyzing, and recommending solutions to “any technological, fiscal, resource, and practical issues that may arise in the development and implementation of the automated process.” It would issue its final report of findings and recommendations to the Governor and Legislature no later than 180 days after it first organized (and thereafter it would expire). Upon establishment of the automated “clean slate” process, no more “clean slate” expungement petitions could be filed in court, and any pending petitions would be rendered moot and be withdrawn or dismissed in accordance with procedures established by the Supreme Court.

The bill eliminates the existing court filing fees for all expungement applications (currently $75). It further requires, the Administrative Office of the Courts to develop an expungement e-filing system, that also provides for electronic service of process and document management. Electronic distribution of notices for expungement relief and copies of expungement orders to appropriate law enforcement and criminal justice agencies would also be done by the courts.

Lastly, with respect to the on-going collection of court-ordered financial assessments following the granting of an expungement, when applicable, the bill would transfer responsibility for such collection and disbursement efforts to the State Treasurer. Under current law, the Judiciary continues as the primary collector of monies post-expungement through its comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). The bill also removes the willful non-payment of court-ordered financial assessments through the comprehensive enforcement program as a reason to nullify an expungement granted by a court, since this program would no longer be involved in the post-expungement collection efforts.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received. However, information on a similar version of this bill was informally provided by both the Department of Law and Public Safety and the Administrative Office of the Courts, which the OLS took into consideration in its conclusions.
The OLS estimates that the bill’s enactment will increase State expenditures annually by indeterminate amounts. The bill appropriates $15 million to fund increased costs which will be incurred by the Department of Law and Public Safety (LPS), including costs to the Division of State Police to review and process a higher volume of expungement applications. The provisions of the bill related to clean slate expungements and expedited expungement for certain marijuana and hashish offenses could potentially result in approximately two million new expungement applications within the first year after the bill goes into effect (based on figures provided by the LPS and the Judiciary), which compares to 9,426 applications that were reviewed by the State Police last year according to LPS. Other bill provisions regarding reduced waiting periods to file an application and the elimination of filing fees could also potentially increase the number of applications going forward as well. However, it is not known how many individuals eligible for expungement under this bill would go through the requisite process to have their records expunged or how many would do so within their first year of eligibility.

The OLS estimates that the Judiciary would incur a substantial annual expenditure increase due to review of additional expungement requests in order to determine eligibility and to process the requests. However, OLS does not have sufficient information to forecast a more accurate increase in the number of applications. On average, approximately 9,000 expungements were filed annually in last five years. The Judiciary was unable to determine the cost for administering an expungement request.

The OLS anticipates the bill would also result in a substantial cost increase for the Judiciary in the short term, to develop an expungement e-filing system to provide for electronic processing and document management. The AOC would also be responsible for electronic distribution of notices for expungement relief and copies of expungement orders to appropriate law enforcement and criminal justice agencies. According to the AOC, technology upgrades to implement the sealing of records provision and to build the e-filing system would cost approximately $10 million. The AOC had previously indicated that it was working toward the development of an e-filing solution for expungements. It is thus unclear the extent to which the Judiciary’s expenditures to implement the bill’s provisions will duplicate what it would spend on information technology enhancements absent the enactment of the bill. The OLS notes that the Judiciary annually collects revenue earmarked for information technology investment and improvement.

The OLS projects an indeterminate reduction in annual State revenue because the bill eliminates the existing $75 court filing fee for all expungement applications. Based on information informally provided by the Judiciary, the OLS estimates the revenue loss to be no greater than $500,000.

The impact of the bill on local law enforcement agencies, county detention facilities, and municipal courts is not known but is likely to result in higher administrative and compliance costs as these entities coordinate with the State Police to ensure that expunged records include all complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, rap sheets, and judicial docket records.