The Assembly Appropriations Committee reports favorably Assembly Bill No. 5981, with committee amendments.

As amended, 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 largely 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.

“Standard” Expungement Process

Concerning the “standard” expungement process for criminal convictions, a person’s eligibility based upon the number or types of convictions would be broadened in several ways. Under current law, any prior conviction which would cause a person to exceed the numerical cap on convictions to be expunged or which would fall outside the types of “grouped” eligible convictions to be expunged would render a person ineligible to pursue expungement relief. The bill would eliminate ineligibility stemming from any such prior conviction, thereby permitting a person to proceed with an application in the Superior Court seeking to expunge a conviction or 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.

As to eligibility based on waiting periods, the current law’s six-year time period after which a person may first file an expungement application that includes any criminal conviction or convictions, measured from the date of the most recent conviction, payment of any court-ordered financial assessment (such as a fine or restitution), satisfactory completion of probation or parole, or release from incarceration, whichever is later, would be reduced to five years. This five-year waiting period would also apply to any person who at the time of application had not completed paying all financial assessments, but otherwise satisfied the waiting period, as is currently permitted based on the existing six-year period – any such outstanding financial assessment post-expungement (for this category and other categories of expungement as detailed throughout the statement) would be subject to collection and disbursement by the State Treasurer as described at the end of the statement under the heading Reforms Applicable to All Categories of Expungement).

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).

For an application only containing disorderly persons or petty disorderly persons convictions, such application could be filed in any court designated by the Rules of Court, instead of being limited to only being filed in the Superior Court. Such an application could include requests for expungement relief addressing up to five convictions, which is one conviction greater than what is currently permitted under the law (if the application is not based upon multiple convictions being entered on the same day or multiple offenses making up a one-time “crime spree,” for which no numerical caps exist). Additionally, the general five-year waiting period applicable to the appropriate timing for filing an application addressing only disorderly persons and petty disorderly persons offenses would not prevent a person from filing an application, if at the time of submission, any court-ordered financial assessment was not paid-off, but all other aspects of sentencing were
satisfied for at least five years. Doing so makes consistent all of the various categories of expungement, both under current law and those created by the bill that may involve convictions for disorderly persons and petty disorderly persons offenses, with respect to the potential earlier filing of an expungement application, regardless of outstanding financial assessments. Doing so also clarifies the State Treasurer’s authority to engage in post-expungement collection and disbursement of any such outstanding assessments.

A person’s eligibility under the “standard” expungement process for convictions of either crimes, offenses, or both crimes and offenses based upon not exceeding the aforementioned numerical caps on convictions would be modified concerning how certain marijuana and hashish possession, distribution, and drug paraphernalia crimes and offenses are counted. Any conviction for the following crimes would be considered a lesser conviction of a disorderly persons offense instead of a criminal conviction for purposes of determining eligibility, and thus would only count against the cap on convictions for disorderly persons or petty disorderly persons offenses:

- unlawful distribution of, or possessing or having under control with intent to distribute, less than five pounds of marijuana, or less than one pound of hashish, in violation of paragraph (11) or (12) of subsection b. of N.J.S.2C:35-5, or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1), for distributing, or possessing or having under control with intent to distribute, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building; and

- obtaining or possessing marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10.

And any conviction for the following disorderly persons offenses would not be counted at all towards any numerical cap:

- obtaining or possessing a small amount of marijuana or hashish in violation of paragraph (4) of subsection a. of N.J.S.2C:35-10, or using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of subsection b. or subsection c. of that section; and

- any violation involving marijuana or hashish as described above concerning distribution or possession with intent to distribute, or obtaining or possessing marijuana or hashish, and using or possessing with intent to use drug paraphernalia with that marijuana or hashish in violation of N.J.S.2C:36-2.

The “standard” expungement application process concerning convictions for either crimes, offenses, or both crimes and offenses would be simplified by no longer requiring a separate, duly verified petition for each individual conviction for which expungement relief is sought. The current law already requires a person to list all
of the person’s convictions for crimes and offenses within each petition, so all such information, which can be readily contained in just one petition, need not be repeated in multiple petitions as currently required.

Lastly, for an expungement concerning proceedings in municipal court when no conviction is entered, due to the proceedings being dismissed, the person being acquitted, or the person being discharged without a conviction or finding of guilt, the bill would place responsibility on the municipal court to follow procedures developed by the Administrative Director of the Courts to assist with the expungement. Under the current law, a person involved in such a municipal court proceeding is given documentation which the person could use to later file for an expungement in the Superior Court.

Faster Expungement Petition Process and Court-Initiated Records Sealing for Various Possession, Distribution, and Drug Paraphernalia Crimes and Offenses

An additional category of expungement, as well as a new, court-initiated sealing of records upon disposition of a case (i.e., at sentencing) would be available as a means of more quickly clearing or generally rendering unavailable a person’s record with respect to any number of the above described marijuana or hashish possession, distribution, or drug paraphernalia crimes and offenses:

- for any person, who prior to the development of the record sealing system, was arrested, convicted, or adjudicated delinquent for any number of such marijuana or hashish crimes or offenses, other than a larger amount distribution crime in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, there would be no waiting period before expungement applications could be filed, so long as the person has satisfied payment of any court-ordered financial assessment (with an exception noted below), satisfactorily completed probation or parole, been released from incarceration, or been discharged from legal custody or supervision at the time of application. If a financial assessment is still subject to collection, the person could proceed with the application and be granted relief so long as the remaining factors associated with the conviction are satisfied;

- for any person, who on and after the development of the record sealing system, was arrested, convicted, or adjudicated delinquent for any number of such marijuana or hashish crimes or offenses, other than a larger amount distribution crime, the court would order, on its own initiative, the sealing of all records through an “order of nondisclosure to the public” concerning these offenses. The order would be issued immediately upon the disposition of the associated case, and would cover relevant court and probation records, and law enforcement records. The general unavailability of sealed records would be similar to the legal effect of rendering expunged records unavailable. Any court-ordered financial assessments due at the time of sealing the records would be subject to post-sealing
collection and disbursement by the State Treasurer in the same
fashion as if the records were instead expunged; and

-for any person, concerning a larger amount distribution crime in
violation of paragraph (11) of subsection b. of N.J.S.2C:35-5,
regardless of when arrested, convicted, or adjudicated delinquent, that
person would only be permitted to apply for an expungement after a
period of three years, although with the ability to file even if all court-
ordered financial assessments were not completely paid off at the time
of filing. There would be no authority for a court to issue an order
sealing the relevant records immediately upon disposition of a case
involving a larger amount distribution crime.

“Clean Slate” Process – By Petition, Then Automated

The bill would initially 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 a more
serious or violent crime which is not subject to expungement
pursuant to subsection b. of N.J.S.2C:52-2, or pursuant to
subsection c. of that section because the conviction involved a
larger amount controlled dangerous substance distribution offense
graded as a first or second degree crime. 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

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. As with the other
categories of expungement, a person could still apply for a “clean
slate” expungement even though at the time of application the
court-ordered financial assessments were not completely paid off,
so long as that person had otherwise satisfied the “clean slate” ten-
year waiting period.

The petition-based process would be subsequently replaced by
an automated “clean slate” process using the same eligibility
criteria concerning the types of convictions that can be expunged.
The automated process would be designed to restore a person’s
entire criminal record if the person was subsequently convicted of a
more serious, violent, or distribution crime for which expungement
relief is not permitted pursuant to subsection b. or c. of
N.J.S.2C:52-2 as described above.

The automated process would be developed and implemented, to
the greatest extent practicable, following the recommendations of a
task force established by the bill. The task force would include at least 18 members, including several cabinet members serving ex-officio, such as the Attorney General and Commissioner of Corrections, the Administrative Director of the Courts, two Senators and two members of the General Assembly, and four public members. The executive and judicial branch representatives could assign one or more designees to participate in the task force in their place.

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 then withdrawn or dismissed in accordance with procedures established by the Supreme Court.

Reforms Applicable to All Categories of Expungement

The bill eliminates the existing court filing fee for all expungement applications (currently $75).

To assist with expungement applications, the Administrative Office of the Courts would develop an expungement e-filing system, to be used in the future for all expungement filings, and upon implementation would additionally provide for electronic service of process and document management. The e-filing system would also be used to electronically distribute notices for expungement relief, copies of expungement petitions and all supporting documents, and copies of expungement orders to appropriate law enforcement and criminal justice agencies.

Upon receipt of information presented through the e-filing system, the Superintendent of State Police, Attorney General, and the county prosecutor of any county in which a person seeking expungement relief was convicted would, within 60 days, review and confirm, as appropriate, the information against their own records and notify the court of any inaccurate or incomplete data contained in the information received, as well as any other basis for the person’s ineligibility.

Lastly, with respect to the on-going collection of court-ordered financial assessments following the granting of an expungement or sealing of records, 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 through its comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). Since the
Judiciary’s enforcement program would no longer be involved in any collection efforts, the bill also removes the willful non-payment of court-ordered financial assessments through the program as a reason to nullify an expungement granted by a court.

**COMMITTEE AMENDMENTS:**

The committee amendments to the bill:

- clarify that a person who at any time had a previous criminal conviction expunged is still disqualified from seeking an expungement of additional convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses under the “standard” expungement process set forth in N.J.S.2C:52-2 and -3, even under the expanded eligibility criteria established by the bill;

- clarify that the term “court-ordered financial assessment” means and includes all forms of financial assessment imposed as part of the sentence for the conviction or convictions for which expungement is sought, or for which expungement or sealing has been granted;

- permit any court, as specified by court rule, to handle expungement petitions under the “standard” expungement process when that petition only involves convictions for disorderly persons or petty disorderly persons offenses, or under the faster expungement process that addresses various marijuana and hashish possession, distribution, and drug paraphernalia offenses as described above;

- eliminate all references to expunging or sealing any charges, both in the current statutory law and new sections set forth in the bill, based upon information provided by the Administrative Office of the Courts indicating that charges are not expungable;

- provide a period of nine months for the Administrative Office of the Courts to develop and maintain the system for sealing records from the public, upon order of a court, which pertain to offenses or delinquent acts involving the various marijuana and hashish possession, distribution, and drug paraphernalia offenses eligible for sealing as described above (the nine-month period is calculated as the relevant provisions taking effect 180 days after enactment, plus language stating that the system be developed “no later than three months” after the provisions take effect);

- include provisions regarding the post-sealing collection and disbursement of court-ordered financial assessments by the State Treasurer, which would be carried out in the same manner as the collection and disbursement of post-expungement financial assessments;

- provide a consistent time period for transitioning from expunging, in a more expedited fashion, those offenses or delinquent acts involving the various marijuana and hashish possession, distribution, and drug paraphernalia offenses eligible for faster expungement, as described above, to the new record sealing system.
which will address those same offenses once the system begins operating;
- make language pertaining to marijuana and hashish drug paraphernalia offenses that are eligible for expungement or sealing consistent throughout the bill;
- eliminate the 180-day waiting period before the provisions establishing the automated “clean slate” process take effect; although they would now take effect immediately, the automated process would still be subject to development and implementation in the future based on recommendations of the task force created by the bill to support the automated process;
- include references to a person’s criminal history as “criminal history record information” in order to maintain consistency for such references within the expungement statutes and other relevant sections of statutory law dealing with criminal histories;
- provide for the forthcoming e-filing system for expungement applications to serve copies of an expungement petition and all supporting documents upon the Superintendent of State Police, the Attorney General, and the county prosecutor of any county in which the person seeking expungement relief was convicted (the e-filing system would be established within a period of 18 months (calculated as the relevant provisions taking effect 180 days after enactment, plus language stating that the system be developed “no later than twelve months” after the provisions take effect)); and
- require that a court, following the issuance of a court order granting expungement, provide proof of the expungement to the person whose records have been expunged or to that person’s representative.

**FISCAL IMPACT:**

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 a more accurate increase in the number of 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 Judiciary was unable to determine the cost for administering an expungement request.

The OLS anticipates the bill would result in a 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, technology upgrades
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.