

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 3205 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 29, 2019

### SUMMARY

**Synopsis:** Revises certain procedures for expungement of records of conviction.

**Type of Impact:** Annual State expenditure increase; General Fund.

**Agencies Affected:** The Judiciary.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Expenditure Increase</b>		Indeterminate	

- The Office of Legislative Services (OLS) estimates that if this bill is enacted, the Judiciary would incur indeterminate cost increases to review additional expungement requests in order to determine eligibility and to process the requests. According to data provided by the Administrative Office of the Courts (AOC) in 2017, about 8,400 expungements are filed annually. The bill would increase this number by an indeterminate amount.
- The AOC commented that while funding is not sought for the increase in expungement requests, the IT staff is expanding rapidly and it is anticipated that physical space will become an issue. The AOC further commented that the elimination of filing fees should have no significant fiscal impact as many of the individuals who file seek waiver as indigent.
- No data is available to the OLS on the current cost to the Judiciary of administering expungement requests. In addition, it is likely that the Judiciary would be required to make modifications to its automated systems in order to accommodate the bill's provisions, but a precise estimate of the additional cost to make these modifications is not feasible without analysis by the Judiciary.

### BILL DESCRIPTION

This bill, as amended, would revise procedures for expunging criminal and other records and information.

This bill concerns various procedures that would apply to the expungement of all eligible crimes but also includes provisions that pertain specifically to certain controlled dangerous substance offenses.

The bill amends N.J.S.A.2C:52-2 to eliminate references to “prior” convictions and reduce the period of eligibility from the current six-year period to a five-year period.

The following categories of persons are eligible for expungement:

- a person who has been convicted of one crime, and does not otherwise have any subsequent conviction for another crime;
- a person who has been convicted of one crime and less than four disorderly persons or petty disorderly persons offenses, and does not otherwise have any subsequent conviction for another crime or for another disorderly persons or petty disorderly persons offense such that the total number of convictions for offenses exceeds three;
- a person who has been convicted of multiple crimes, or a combination of multiple crimes and disorderly persons or petty disorderly persons offenses, all of which are listed in a single judgment of conviction, and the person does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the person’s expungement application; or
- a person who has been convicted of multiple crimes or a combination of multiple crimes and disorderly persons or petty disorderly persons offenses, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time (a so-called “crime spree”), regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any subsequent conviction for another crime or offense in addition to those convictions included in the person’s expungement application.

If a person with one or more criminal convictions is eligible as described above for expungement relief, the expungement application may generally proceed so long as one of the following time period requirements is met:

- five years have passed with respect to all aspects of satisfying the most recent conviction (five years from the date of conviction, payment of fine, satisfactory completion of probation or parole, and release from incarceration);
- the payment of a fine, which is currently subject to collection under the State’s comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et seq.), is not yet satisfied due to reasons other than willful misconduct, but the five-year time requirement is otherwise met.
- the fine is satisfied, but five years have not passed since doing so, and the five-year time requirement is otherwise met; or
- at least four but less than five years have passed with respect to all aspects of satisfying the conviction (this expedited expungement would also require the person to show that it is in the public interest to permit such expungement). Under the bill, in that instance, the court shall provide for the entry of civil judgment in the name of the State Treasurer and transfer the collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c. 244 (C.2C:52-23.1).

The committee amendments restore to N.J.S.A.2C:52-2 most of the language of subsection c. which was deleted by the bill as introduced. The current statutory language concerning “public interest” is changed to a finding of “compelling circumstances” and permits the prosecutor to object. The restored language limits the expungement of convictions for the sale and distribution of a controlled dangerous substance, and possession with intent to distribute except in cases involving small amounts of marijuana and hashish, or any controlled dangerous substance where the conviction is of the third or fourth degree under certain circumstances. The limitations would

remain in effect until the effective date of the Assembly Committee Substitute for Assembly. No. 4497 or the Senate Committee Substitute for Senate Bill 2703 (1R), legalizing the sale, possession, distribution and use of small amounts of cannabis. Thereafter, the expedited expungement process that will be established shall apply to the eligible class of cases involving marijuana and hashish related crimes and offenses.

The bill amends N.J.S.A.2C:52-3 to increase from four to five the number of disorderly or petty disorderly offenses eligible for expungement.

The following categories of persons are eligible for expungement:

- a person who has been convicted on the same or separate occasions of no more than five disorderly persons offenses, no more than five petty disorderly persons offenses, or a combination of no more than five disorderly persons and petty disorderly persons offenses, and the person does not otherwise have any prior or subsequent conviction for a disorderly persons or petty disorderly persons offense such that the total number of convictions for such offenses exceeds five;
- a person who has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses, or a combination of multiple disorderly persons and petty disorderly persons offenses, which convictions were entered the same day, and the person does not otherwise have any prior or subsequent conviction for another offense in addition to those convictions included in the person's expungement application; or
- a person who has been convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses, or a combination of multiple disorderly persons and petty disorderly persons offenses, all of which were part of a "crime spree" (described in the same manner as above with respect to a spree which resulted in multiple criminal convictions).

The bill does not change the five-year time requirement for expungements for disorderly persons and petty disorderly persons convictions.

The bill provides for a "clean slate" expungement under which, in applicable cases, a person may present an expungement application to the Superior Court if the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses, but is not eligible for an expungement under the established criteria. Under this new provision, the person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of his most recent conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The committee amendments include this now as a new section 9 of the bill. This new section is intended to be applicable to convictions for both indictable and disorderly persons offenses and petty disorderly persons offenses.

Under the bill, notwithstanding the provisions concerning the ten-year time requirement under the "clean slate" expungement, if a fine which is currently subject to collection under the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than willful noncompliance, but the time requirement of ten years is otherwise satisfied, the person may submit the expungement application and the court may grant an expungement. Under the bill, if expungement is granted, the court shall provide for the entry of civil judgment in the name of the State Treasurer and transfer the collection and disbursement responsibility to the State Treasurer for the outstanding amount in accordance with section 8 of P.L.2017, c.244 (C.2C:52-23.1).

Section 7 of the bill amends N.J.S.A. 2C:52-15 to provide that certain restricted-access records concerning financial assessments shall be removed from the Judiciary's automated system and be transferred to the New Jersey Department of Treasury for the collection and disbursement of future payments and satisfaction of judgments. Various other statutory sections are amended to make procedural modifications.

The committee amendments repeal N.J.S.2C:52-29 which provided for an application fee to defer administrative costs in processing an expungement application.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

#### **Administrative Office of the Courts**

The AOC commented that while funding is not sought for the increase in expungement requests, the IT staff is expanding rapidly and it is anticipated that physical space will become an issue. The AOC further commented that the elimination of the \$75 filing fee should have no significant fiscal impact as many of the individuals who file seek waiver as indigent.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that if this bill is enacted, the Judiciary would incur indeterminate cost increases to review additional expungement requests in order to determine eligibility and to process the requests. According to data provided by the AOC in 2017, about 8,400 expungements are filed annually. The bill would increase this number by an indeterminate amount. No data is available to the OLS on the current cost to the Judiciary of administering expungement requests. In addition, it is likely that the Judiciary would be required to make modifications to its automated systems in order to accommodate the bill's provisions, but a precise estimate of the additional cost to make these modifications is not feasible without analysis by the Judiciary.

*Section: Judiciary*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).