

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 3205

# STATE OF NEW JERSEY

DATED: NOVEMBER 26, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3205.

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

The bill amends N.J.S.A.2C:52-2 to provide that 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 bill further amends N.J.S.A.2C:52-2 to provide for a "clean slate" expungement. Under this provision, 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 above provisions.

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 term "fine" means and includes any fine, restitution, and other court-ordered financial assessment imposed by the court as part of the sentence for the conviction, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the conviction for the most recent crime was adjudged, which contains a separate, duly verified petition as provided in N.J.S.2C:52-7 for each conviction sought to be expunged, praying that the conviction or convictions, and all records and information pertaining thereto, be expunged. The petition for each conviction appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

Under the bill, notwithstanding the provisions concerning the ten-year time requirement, 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).

The bill deletes the provision in N.J.S.A.2C:52-2 concerning the expungement of convictions for the sale and distribution of a controlled dangerous substance, and possession with intent to distribute. This subsection barred expungement in these categories 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. The effect of deleting this provision is that for purposes of expungement, convictions for controlled dangerous substance crimes will be treated the same as other crimes and offenses in terms of eligibility.

The bill amends N.J.S.A.2C:52-3 to provide that 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's provisions provide for an automatic expungement of disorderly persons and petty disorderly person offenses as follows:

For any eligible person who files an application for expungement, the Superior Court in the county in which the most recent conviction was adjudged would, within 30 days of the person filing the application, notify relevant law enforcement and criminal justice agencies, including the Superintendent of State Police and the Attorney General, and the Administrative Office of the Courts would include the information required by N.J.S.2C:52-7 for each conviction eligible to be expunged. Upon receipt of the information from the

Administrative Office of the Courts the relevant law enforcement and criminal justice agencies would, within 30 days, notify the Administrative Office of the Courts of any inaccurate or incomplete data contained in the information provided by the Administrative Office of the Courts or of any other basis for ineligibility under the bill. Unless the relevant law enforcement and criminal justice agencies provide information about any inaccurate or incomplete data, or any other basis for ineligibility, the Administrative Office of the Courts would promptly provide notice of the person's eligibility and the Superior Court would issue an order listing the conviction or convictions to be expunged.

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

The bill would revise the requirements for the statement which accompanies a petition for expungement in N.J.S. 2C:52-8, and the grounds for denial of an application in N.J.S. 2C:52-14, consistent with the revisions to N.J.S.A.2C:52-2 and N.J.S.A.2C:52-3.

The bill would transfer fine collection and disbursement functions to the State Treasurer in instances where expungement is granted under N.J.S.A.2C:52-2, but a fine has not been paid in full.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the Judiciary would likely incur indeterminate costs to process additional expungement petitions. According to data provided by the Administrative Office of the Courts (AOC) in 2017, about 8,400 expungement requests 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. The OLS notes that the bill provides for expungement of certain records without the need for a petition to be filed, which will reduce the workload of the Judiciary to an indeterminate extent. The net impact of these changes on costs of administering expungements is unclear due to the absence of detailed information from the AOC.

The OLS also estimates an indeterminate decrease in revenue from expungement petition filing fees, which would be eliminated by the bill. Information available to the OLS on revenue collected by the Judiciary does not disclose current revenue from expungement petition filing fees. The current filing fee is \$75.00; the fee is not charged for certain expungement petitions. If the fee were collected for all petitions reported to have been filed in 2017, revenue would have

totaled about \$630,000, an amount suggestive of the maximum revenue loss that could result from this bill.

The Department of Law and Public Safety and local law enforcement agencies will also experience a workload increase to perform their respective roles in reviewing expungement petitions submitted to the AOC, and may thus incur additional expenditures, indeterminate in amount, as a result.