

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3205

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3205.

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).

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.

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 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. 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).

As amended, this bill is identical to Assembly Bill No. 4498 (1R).

The committee amendments to the bill:

- eliminate from N.J.S.2C:52-2 the “clean slate” amendatory language and constitute those provisions in new section 9 of the bill. This new section is intended to be applicable to both indictable and disorderly persons offenses and petty disorderly persons offenses. The amendments restore to N.J.S.2C:52-2 most of the language of subsection c. which the bill as introduced would have eliminated. The current statutory language concerning “public interest” is changed to a finding of “compelling circumstances” and permits the prosecutor to object. The language limited 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. The limitations would remain in effect until the effective date of Senate Bill 2703, legalizing the sale, possession, distribution and use of small amounts of cannabis. Thereafter, the expedited expungement process set forth in paragraph (2) of subsection c. of this section shall apply to cases involving marijuana and hashish related crimes and offenses.

- amend N.J.S.2C:52-3 to alter the court discretion portion of disorderly persons offense or petty disorderly persons offense expungements, to establish a compelling circumstances requirement, but permitting prosecutorial objection to the finding of compelling circumstances. That language is now included in N.J.S.2C:52-2 as

discussed above. It is also amended to make reference to Senate Bill No. 2703 concerning cannabis. Beginning on the effective date of that act provisions pertaining to eligibility for expungement for convictions concerning certain amounts of marijuana and hashish shall be applicable.

Certain procedural provisions are removed and constitute new section 10 of the bill because this section is more general in applicability and may pertain to both indictable and disorderly persons offenses and petty disorderly persons offenses.

- restore language to N.J.S.2C:52-14 that requires the court to consider whether the need and availability of the records outweighs the desirability of having a person freed from disabilities except in cases involving third or fourth degree drug offenses, without regard to whether an objection was raised by a noticed party.

- amend N.J.S.2C:52-23.1 to eliminate the provision permitting the court to nullify a granted expungement upon failure by a person to comply with a payment plan which was subsection b. of the bill as introduced.

- add a new section 11, amending N.J.S.22A:2-25, to eliminate filing fees for an expungement document filing.

- require person seeking expungement to provide a copy of any court order authorizing a name change.

- amend the effective date to provide that filing fees for expungement are eliminated effective immediately and the remainder of this bill shall take effect 90 days following enactment.