

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5458

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2021

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 5458.

This bill would allow the expungement of a criminal record of unlawful possession or distribution of a hypodermic syringe or needle in cases where the person has had a previous expungement. The amended bill provides that it is not unlawful for a person to use, or possess with the intent to use, a hypodermic needle or syringe for the personal use of a controlled substance or if the hypodermic syringe or needle contains a residual amount of a controlled dangerous substance or controlled substance analog and also repeals the statute concerning unlawful possession of a hypodermic syringe or needle, N.J.S.2C:36-6.

Under current law, a person who has had a previous criminal conviction expunged is generally barred from expungement on a second occasion, with several exceptions. The bill as introduced provides that a person with a previous expungement may expunge a conviction for possession or distribution of hypodermic syringe or needle pursuant to N.J.S.2C:36-6. The amended bill would expand this exception and permit expungement for a conviction for possession with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2, when same is a hypodermic syringe or needle; or possession with the intent to distribute drug paraphernalia pursuant to N.J.S.2C:36-3.

The amendments also revise eligibility requirements for presenting an expungement application to the court for these lower-level crimes or offenses. A conviction for unlawful distribution or dispensing of, possession with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia in violation of N.J.S.2C:36-3 when the paraphernalia is a hypodermic syringe or needle, or for an equivalent crime involving a hypodermic syringe or needle in another jurisdiction, regardless of when the conviction occurred, would not be considered a conviction of a crime within this State or any other jurisdiction but would instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction. In

addition, a conviction for using or possessing with intent to use drug paraphernalia in violation of N.J.S.2C:36-2 when the paraphernalia is a hypodermic syringe or needle, or possession with intent to use or to distribute a hypodermic syringe or needle in violation of N.J.S.2C:36-6, of for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, would not be considered a conviction within this State or any other jurisdiction.

The committee also amended N.J.S.2C:36-1 concerning drug paraphernalia to provide that it is not unlawful for a person to use, or possess with the intent to use, a hypodermic needle or syringe for the personal use of a controlled substance or if the hypodermic syringe or needle contains a residual amount of a controlled dangerous substance or controlled substance analog. In addition, “drug paraphernalia” would not include fentanyl test strips.

This bill is identical to S3493 (1R), which was also released by the committee on this date.

COMMITTEE AMENDMENTS

(1) Provide for purposes of determining eligibility to present an expungement application to the court that a conviction for unlawful distribution or dispensing of, possession with intent to distribute or dispense, or manufacture with intent to distribute or dispense, drug paraphernalia in violation of N.J.S.2C:36-3 when the paraphernalia is a hypodermic syringe or needle, or for an equivalent crime involving a hypodermic syringe or needle in another jurisdiction, regardless of when the conviction occurred, would not be considered a conviction of a crime within this State or any other jurisdiction but would instead be considered a conviction of a disorderly persons offense within this State or an equivalent category of offense within the other jurisdiction, and a conviction for using or possessing with intent to use drug paraphernalia in violation of N.J.S.2C:36-2 when the paraphernalia is a hypodermic syringe or needle, or possession with intent to use or to distribute a hypodermic syringe or needle in violation of N.J.S.2C:36-6, of for an equivalent crime or offense in another jurisdiction, regardless of when the conviction occurred, would not be considered a conviction within this State or any other jurisdiction;

(2) Provide that a person with a previous expungement may also expunge a conviction for possession with intent to use drug paraphernalia pursuant to N.J.S.2C:36-2, when same is a hypodermic syringe or needle; or possession with the intent to distribute drug paraphernalia pursuant to N.J.S.2C:36-3, when same is a hypodermic syringe or needle;

(3) Provide that it is not unlawful for a person to use, or possess with the intent to use, a hypodermic needle or syringe for the personal use of a controlled substance or if the hypodermic syringe or needle contains a residual amount of a controlled dangerous substance or controlled substance analog;

(4) Clarify that “drug paraphernalia” under N.J.S.2C:36-1 would not include fentanyl test strips;

(5) and the bill’s title.