

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3205

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Senate Health, Human Services and Senior Citizens Committee reports favorably with committee amendments Senate Bill No. 3205 (1R).

As amended by the committee, this bill concerns several reforms to expungement eligibility and procedures, some focused on the treatment of various marijuana or hashish possession, distribution, or drug paraphernalia crimes and offenses and others being more generally applicable to any expungement.

“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 (not associated with an expungement application) which would cause a person to exceed the numerical cap on convictions to be expunged or which would fall outside the types of 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 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 less than four 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. 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 fine 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, it would be permitted to 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).

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 distribution, possession, 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 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 is readily contained in just one petition, need not be repeated in multiple petitions as currently required.

For those situations in municipal court when no conviction is entered, due to 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 for transmitting necessary documentation to the Superior Court so that the latter court could grant an ex parte expungement order. Under the current law, the person involved in the municipal court proceeding is given documentation which the person could use to later file for an expungement; such an individual filing would no longer be necessary for this person to be granted expungement relief.

Expedited Expungement

An additional category of expungement, referred to as an “expedited” expungement, would be available as a means of more quickly clearing 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 effective date of the bill*, was charged with, convicted of, 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 applications could be filed. For any person, *who on or after the effective date*, was charged, convicted, or adjudicated delinquent for any number of such marijuana or hashish crimes or offenses, other than a larger amount distribution crime, there would be an 18-month waiting period measured from the date of the most recent conviction, payment of any court-ordered financial

assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later; however, a person could still apply for an expedited expungement, even though at the time of application the financial assessments were not completely paid off, so long as that person had otherwise satisfied the 18-month waiting period.

Concerning a larger amount distribution crime in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, a person, regardless of when charged, convicted, or adjudicated delinquent, 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.

“Clean Slate” Expungement

The bill would establish a new “clean slate” expungement which would permit a person with multiple convictions, based on the commission of multiple crimes or a combination of one or more crimes and one or more disorderly or petty disorderly offenses, to expunge all such convictions, regardless of the number or types of convictions involved. 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 “standard” and “expedited” expungement waiting periods, 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.

Reforms Applicable to All Categories of Expungement

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

The bill additionally assists with the application process by having the Superior Court provide notices of an expungement application to the appropriate law enforcement and criminal justice agencies as set forth in N.J.S.2C:52-10, which include information contained in the duly verified petition prepared by the person seeking expungement relief. Such notices would be distributed within 30 days of an application filing. Unless a noticed agency provided information back to the court concerning any inaccuracy or missing information, or any other basis for expungement ineligibility, the court hearing the matter would grant the expungement relief sought in the application.

Lastly, with respect to the on-going collection of court-ordered financial assessments following the granting of an expungement, when applicable, the bill would transfer responsibility for such collection efforts to the State Treasurer. Under current law, the Judiciary continues as the primary collector of monies post-expungement

through its comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). The bill also removes the willful non-payment of court-ordered financial assessments through the comprehensive enforcement program as a reason to nullify an expungement granted by a court, since this program would no longer be involved in the post-expungement collection efforts.

COMMITTEE AMENDMENTS

The committee amendments to the bill:

- add language that would modify how convictions for marijuana or hashish distribution, possession, and drug paraphernalia crimes and offenses would be counted towards a person's eligibility to expunge criminal convictions based upon the statutory numerical caps on convictions, as described above in the statement, in the same manner that the bill already provided for determining expungement eligibility based on disorderly persons and petty disorderly persons convictions;

- remove the enactment of Senate Committee Substitute for the First Reprint of Senate Bill No. 2703, the "New Jersey Cannabis Regulatory and Expungement Modernization Act," as a necessary condition in order to modify how convictions for marijuana or hashish distribution, possession, and drug paraphernalia crimes and offenses would be counted towards a person's expungement eligibility;

- create a separate section for the "expedited" expungement process, and delete the redundant "expedited" expungement provisions from section 2 of the bill, which addresses "standard" expungements of criminal convictions;

- rearrange the order of the sections as to where the "clean slate" expungement process, and the new requirement for the Superior Court to assist with notifying law enforcement and criminal justice agencies about expungement applications, appear in the bill;

- add clarifying language that references any expungement application fee which may appear in the Rules of Court as being void, to ensure that no fee, whether previously based in statute or in court rule, is charged for an expungement; and

- update the bill's title and synopsis to more accurately reflect the contents of the bill as amended by the committee.