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Memorandum to the New Jersey Law Revision Commission re: provisions governing expungement of juvenile adjudications - N.J.S. 2C:52-4.1 : September 11, 2017.

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HEARINGS: No

NEWSPAPER ARTICLES: Yes

"State briefs," Burlington County Times, December 21, 2017

"Christie signs bills to help ex-cons clear records, get jobs," The Jersey Journal, December 21, 2017

"Laws will help former convicts get fresh start," The Star-Ledger, December 21, 2017

"Christie signs criminal record bills - says they offer 'second chances'" the Record, December 21, 2017

"Christie signs criminal record expungement bills, calling them 'life-saving' measures," northjersey.com, December 20, 2017

"Christie signs bills easing restriction on expunging records" Associated Press State Wire: New Jersey, December 20, 2017

"In parting Christmas gift, Christie signs bills to ease expungement of criminal records," Politico, December 20, 2017

"NJ Politics Digest: Christie Signs Expungement Overhaul Bills," Observer, December 21, 2017

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P.L.2017, CHAPTER 244, *approved December 20, 2017*

Senate, No. 3307 (*First Reprint*)

1 AN ACT revising procedures for expunging criminal and other
2 records and information, amending various parts of the statutory
3 law and supplementing chapter 52 of Title 2C of the New Jersey
4 Statutes.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. N.J.S.2C:52-2 is amended to read as follows:

10 2C:52-2. Indictable Offenses.

11 a. In all cases, except as herein provided, **[wherein]** a person
12 may present an expungement application to the Superior Court
13 pursuant to this section if:

14 the person has been convicted of ¹**[a]** one¹ crime under the laws
15 of this State **[and who has not]** ¹, and does not otherwise have any
16 prior or subsequent conviction for another crime, whether within
17 this State or any other jurisdiction;¹ or

18 ¹**[a combination]** the person has been convicted¹ of one crime
19 and less than four disorderly persons or petty disorderly persons
20 offenses under the laws of this State ¹**[which were not closely**
21 related in circumstances or in time, provided that the person has],
22 and does¹ not otherwise ¹**[been convicted of]** have¹ any prior or
23 subsequent ¹conviction for another¹ crime, or any prior or
24 subsequent ¹conviction for another¹ disorderly persons or petty
25 disorderly persons offense ¹**[or offenses]**¹ such that the total
26 number of convictions for disorderly persons and petty disorderly
27 persons offenses would exceed three, whether any such crime or
28 offense conviction was within this State or any other jurisdiction **[,**
29 and has not been convicted of a disorderly persons or petty
30 disorderly persons offense on more than two occasions]; or

31 ¹the person has been convicted of multiple crimes or a
32 combination of one or more crimes and one or more disorderly
33 persons or petty disorderly persons offenses under the laws of this
34 State, all of which are listed in a single judgment of conviction, and
35 does not otherwise have any prior or subsequent conviction for
36 another crime or offense in addition to those convictions included in
37 the expungement application, whether any such conviction was
38 within this State or any other jurisdiction; or¹

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SJU committee amendments adopted June 29, 2017.

1 the person has been convicted of ¹**["more than one crime under**
2 the laws of this State,] multiple crimes¹ or a combination of one or
3 more crimes and ¹one or more¹ disorderly persons or petty
4 disorderly persons offenses under the laws of this State, which
5 crimes or combination of crimes and offenses were ¹interdependent
6 or¹ closely related in circumstances ¹**["or in]** and were committed
7 as part of a sequence of events that took place within a
8 comparatively short period of¹ time, ¹regardless of the date of
9 conviction or sentencing for each individual crime or offense,¹ and
10 the person ¹**["has]** does¹ not otherwise ¹**["been convicted of]** have¹
11 any prior or subsequent ¹conviction for another¹ crime or offense
12 in addition to those convictions included in the expungement
13 application¹ , whether ¹any such conviction was¹ within this State
14 or any other jurisdiction.

15 The person, if eligible, may **[,]** present the expungement
16 application after the expiration of a period of **[10]** six years from
17 the date of his most recent conviction, payment of fine, satisfactory
18 completion of probation or parole, or release from incarceration
19 **["for that crime or for any disorderly persons or petty disorderly**
20 **persons offense],** whichever is later **[,]** present an**].** ¹The term
21 "fine" as used herein and throughout this section means and
22 includes any fine, restitution, and other court-ordered financial
23 assessment imposed by the court as part of the sentence for the
24 conviction, for which payment of restitution takes precedence in
25 accordance with chapter 46 of Title 2C of the New Jersey Statutes.¹
26 The person shall submit the expungement application to the
27 Superior Court in the county in which the conviction for the crime
28 was adjudged, which contains a separate, duly verified petition as
29 provided in N.J.S.2C:52-7 for **["the criminal]** each conviction
30 sought to be expunged, [and may also contain additional duly
31 verified petitions for no more than two convictions for any
32 disorderly persons or petty disorderly persons offenses,] praying
33 that the conviction, or convictions if applicable, and all records and
34 information pertaining thereto be expunged. The petition for each
35 conviction appended to an application shall comply with the
36 requirements set forth in N.J.S.2C:52-1 et seq.

37 Notwithstanding the provisions ¹**["of the preceding paragraph, a**
38 **petition]** concerning the six-year time requirement, if a fine which
39 is currently subject to collection under the comprehensive
40 enforcement program established pursuant to P.L.1995, c.9
41 (C.2B:19-1 et al.) is not yet satisfied due to reasons other than
42 willful noncompliance, but the time requirement of six years is
43 otherwise satisfied, the person may submit the expungement
44 application and the court may grant an expungement, provided,
45 however, that if expungement is granted under this paragraph, the
46 court shall provide for the continued collection of any outstanding
47 amount owed that is necessary to satisfy the fine or the entry of

1 civil judgment for the outstanding amount in accordance with
 2 section 8 of P.L. , c. (C.) (pending before the Legislature as
 3 this bill).

4 Additionally, an application¹ may be filed and presented, and the
 5 court may grant an expungement pursuant to this section, although
 6 less than **[10]** six years **[has]** have expired in accordance with the
 7 'time' requirements ¹**[of the preceding paragraph]**¹ **[where]** when
 8 the court finds:

9 (1) 'the fine is satisfied but' less than **[10]** six years **[has]** have
 10 expired from the 'date of' satisfaction ¹**[of a fine]**¹, ¹**[but]** and¹ the
 11 **[ten-year]** time requirement of six years is otherwise satisfied, and
 12 the court finds that the person substantially complied with any
 13 payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could
 14 not do so due to compelling circumstances affecting his ability to
 15 satisfy the fine ¹**[, provided that appropriate arrangements are in**
 16 **place for the person to satisfy any outstanding obligation to pay**
 17 **restitution to a victim]**¹; or

18 (2) ¹**[less than six years have expired from the satisfaction of a**
 19 **fine, but]**¹ at least five 'but less than six' years **[has]** have expired
 20 from the date of **[his]** the most recent conviction, **[payment of**
 21 **fine,]** 'payment of fine,' satisfactory completion of probation or
 22 parole, or release from incarceration, whichever is later ¹**[, and the**
 23 **court finds that the person substantially complied with any payment**
 24 **plan ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so**
 25 **due to compelling circumstances affecting his ability to satisfy the**
 26 **fine, provided that appropriate arrangements are in place for the**
 27 **person to satisfy any outstanding obligation to pay restitution to a**
 28 **victim]**¹; ¹and¹

29 the person has not been otherwise convicted of a crime,
 30 disorderly persons offense, or petty disorderly persons offense since
 31 the time of the most recent conviction; and the court finds in its
 32 discretion that expungement is in the public interest, giving due
 33 consideration to the nature of the offense or offenses, and the
 34 applicant's character and conduct since the conviction or
 35 convictions.

36 ¹**[If the person qualifies for expungement under this subsection,**
 37 **but there remains an outstanding balance of restitution, a fine, or**
 38 **other court-ordered financial assessment ordered by the court as**
 39 **part of the sentence for a criminal conviction, the court shall**
 40 **provide for the continued collection of any outstanding restitution**
 41 **and may order the continued collection of other financial**
 42 **assessments in accordance with section 8 of P.L. , c. (C.)**
 43 **(pending before the Legislature as this bill).]**¹

44 In determining whether compelling circumstances exist for the
 45 purposes of **[paragraph]** ¹**[paragraphs]** paragraph¹ (1) ¹**[or (2)]**¹
 46 of this subsection, a court may consider the amount of the fine or
 47 fines imposed, the person's age at the time of the offense or

1 offenses, the person's financial condition and other relevant
2 circumstances regarding the person's ability to pay.

3 **【Although subsequent convictions for no more than two**
4 **disorderly or petty disorderly persons offenses shall not be an**
5 **absolute bar to relief, the nature of those conviction or convictions**
6 **and the circumstances surrounding them shall be considered by the**
7 **court and may be a basis for denial of relief if they or either of them**
8 **constitute a continuation of the type of unlawful activity embodied**
9 **in the criminal conviction for which expungement is sought.】**

10 b. Records of conviction pursuant to statutes repealed by this
11 Code for the crimes of murder, manslaughter, treason, anarchy,
12 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
13 robbery, embracery, or a conspiracy or any attempt to commit any
14 of the foregoing, or aiding, assisting or concealing persons accused
15 of the foregoing crimes, shall not be expunged.

16 Records of conviction for the following crimes specified in the
17 New Jersey Code of Criminal Justice shall not be subject to
18 expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except
19 death by auto as specified in N.J.S.2C:11-5; N.J.S.2C:13-1
20 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or
21 Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human
22 Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual
23 Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal
24 Sexual Contact); if the victim is a minor, subsection b. of
25 N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor
26 and the offender is not the parent of the victim, N.J.S.2C:13-2
27 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment);
28 N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related
29 Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare
30 of a child by engaging in sexual conduct which would impair or
31 debauch the morals of the child, or causing the child other harm);
32 paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or
33 filming a child in a prohibited sexual act); paragraph (3) of
34 subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to
35 engage in a prohibited sexual act); subparagraph (a) of paragraph
36 (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with
37 intent to distribute or using a file-sharing program to store items
38 depicting the sexual exploitation or abuse of a child); subparagraph
39 (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing
40 or viewing items depicting the sexual exploitation or abuse of a
41 child); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing);
42 paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly
43 promoting the prostitution of the actor's child); section 2 of
44 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
45 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
46 Weapons, Biological Agents or Nuclear or Radiological Devices);
47 and conspiracies or attempts to commit such crimes.

48 Records of conviction for any crime committed by a person
49 holding any public office, position or employment, elective or

1 appointive, under the government of this State or any agency or
2 political subdivision thereof and any conspiracy or attempt to
3 commit such a crime shall not be subject to expungement if the
4 crime involved or touched such office, position or employment.

5 c. In the case of conviction for the sale or distribution of a
6 controlled dangerous substance or possession thereof with intent to
7 sell, expungement shall be denied except where the crimes involve:

8 (1) Marijuana, where the total quantity sold, distributed or
9 possessed with intent to sell was **[25 grams or]** less than one ounce;

10 (2) Hashish, where the total quantity sold, distributed or
11 possessed with intent to sell was **[five grams or]** less than five
12 grams; or

13 (3) Any controlled dangerous substance provided that the
14 conviction is of the third or fourth degree, where the court finds that
15 expungement is consistent with the public interest, giving due
16 consideration to the nature of the offense and the petitioner's
17 character and conduct since conviction.

18 d. In the case of a State licensed physician or podiatrist
19 convicted of an offense involving drugs or alcohol or pursuant to
20 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
21 court shall notify the State Board of Medical Examiners upon
22 receipt of a petition for expungement of the conviction and records
23 and information pertaining thereto.

24 (cf: P.L.2015, c.261, s.2)

25

26 2. N.J.S.2C:52-3 is amended to read as follows:

27 2C:52-3. Disorderly persons offenses and petty disorderly
28 persons offenses.

29 a. Any person who has been convicted of **[a]** one or more
30 disorderly persons **[offense]** or petty disorderly persons **[offense]**
31 offenses under the laws of this State who has not been convicted of
32 any **[prior or subsequent]** crime, whether within this State or any
33 other jurisdiction, may present an expungement application to the
34 Superior Court pursuant to this section. Any person who has been
35 convicted of **[a]** one or more disorderly persons **[offense]** or petty
36 disorderly persons **[offense]** offenses under the laws of this State
37 who has also been convicted of **[a prior or subsequent crime]** one
38 or more crimes shall not be eligible to apply for an expungement
39 pursuant to this section, but may present an expungement
40 application to the Superior Court pursuant to N.J.S.2C:52-2.

41 b. Any person who has been convicted of **[a]** one or more
42 disorderly persons **[offense]** or petty disorderly persons **[offense]**
43 offenses under the laws of this State who has not been convicted of
44 any **[prior or subsequent]** crime, whether within this State or any
45 other jurisdiction, **[or who has not been convicted of a disorderly**
46 **persons or petty disorderly persons offense on more than two other**

1 occasions,] may present an expungement application to the
2 Superior Court pursuant to this section if:

3 the person has been convicted ¹, under the laws of this State, ¹ on
4 'the same or' separate occasions of no more than four disorderly
5 persons offenses, no more than four petty disorderly persons
6 offenses, or a combination of no more than four disorderly persons
7 and petty disorderly persons offenses, ¹【provided that】 and' the
8 person ¹【has】 does' not otherwise ¹【been convicted of any
9 additional】 have any' prior or subsequent ¹【offenses】 conviction
10 for a disorderly persons or petty disorderly persons offense' ,
11 whether within this State or any other jurisdiction, such that the
12 total number of convictions for disorderly persons and petty
13 disorderly persons offenses would exceed four; or

14 ¹the person has been convicted of multiple disorderly persons
15 offenses or multiple petty disorderly persons offenses under the
16 laws of this State, or a combination of multiple disorderly persons
17 and petty disorderly persons offenses under the laws of this State,
18 which convictions were entered on the same day, and does not
19 otherwise have any prior or subsequent conviction for another
20 offense in addition to those convictions included in the
21 expungement application, whether any such conviction was within
22 this State or any other jurisdiction; or'

23 the person has been convicted of multiple disorderly persons
24 offenses or multiple petty disorderly persons offenses under the
25 laws of this State, or a combination of multiple disorderly persons
26 and petty disorderly persons offenses under the laws of this State,
27 which offenses or combination of offenses were ¹interdependent or'
28 closely related in circumstances ¹【or in】 and were committed as
29 part of a sequence of events that took place within a comparatively
30 short period of' time, ¹regardless of the date of conviction or
31 sentencing for each individual offense,' and the person ¹【has】
32 does' not otherwise ¹【been convicted of】 have' any prior or
33 subsequent ¹conviction for another' offense ¹in addition to those
34 convictions included in the expungement application' , whether
35 within this State or any other jurisdiction.

36 The person, if eligible, may **【,】** present the expungement
37 application after the expiration of a period of five years from the
38 date of his most recent conviction, payment of fine, satisfactory
39 completion of probation or release from incarceration **【for any**
40 disorderly persons or petty disorderly persons offense】, whichever
41 is later **【, present an】**. ¹The term “fine” as used herein and
42 throughout this section means and includes any fine, restitution, and
43 other court-ordered financial assessment imposed by the court as
44 part of the sentence for the conviction, for which payment of
45 restitution takes precedence in accordance with chapter 46 of Title
46 2C of the New Jersey Statutes.' ¹ The person shall submit the
47 expungement application to the Superior Court in the county in

1 which the most recent conviction for **the most recent** a disorderly
2 persons or petty disorderly persons offense was adjudged, which
3 contains a separate, duly verified petition as provided in
4 N.J.S.2C:52-7 for **the disorderly persons or petty disorderly**
5 **persons** each conviction sought to be expunged, **and which may**
6 also contain additional duly verified petitions for no more than two
7 other convictions for disorderly persons or petty disorderly persons
8 offenses, **praying that the conviction, or convictions if applicable,**
9 and all records and information pertaining thereto be expunged.
10 The petition for each conviction appended to an application shall
11 comply with the requirements of N.J.S.2C:52-1 et seq.

12 Notwithstanding the provisions of the ¹**preceding paragraph, a**
13 **petition** five-year time requirement, an application¹ may be filed
14 and presented, and the court may grant an expungement pursuant to
15 this section, when the court finds:

16 (1) ¹the fine is satisfied but¹ less than five years **has** have
17 expired from the ¹date of¹ satisfaction ¹**of a fine**¹, ¹**but** ¹**and**¹ the
18 five-year time requirement is otherwise satisfied, and the court finds
19 that the person substantially complied with any payment plan
20 ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to
21 compelling circumstances affecting his ability to satisfy the fine ¹**,**
22 provided that appropriate arrangements are in place for the person
23 to satisfy any outstanding obligation to pay restitution to a victim¹;
24 or

25 (2) ¹**less than five years have expired from the satisfaction of a**
26 **fine, but**¹ at least three ¹but less than five¹ years have expired from
27 the date of **his** the most recent conviction, **payment of fine,**
28 ¹payment of fine,¹ satisfactory completion of probation or parole, or
29 release from incarceration, whichever is later ¹**,** and the court finds
30 that the person substantially complied with any payment plan
31 ordered pursuant to N.J.S.2C:46-1 et seq., or could not do so due to
32 compelling circumstances affecting his ability to satisfy the fine,
33 provided that appropriate arrangements are in place for the person
34 to satisfy any outstanding obligation to pay restitution to a victim¹;
35 ¹**and**¹

36 the person has not been otherwise convicted of a crime,
37 disorderly persons offense, or petty disorderly persons offense since
38 the time of the most recent conviction; and the court finds in its
39 discretion that expungement is in the public interest, giving due
40 consideration to the nature of the offense or offenses, and the
41 applicant's character and conduct since the conviction or
42 convictions.

43 In determining whether compelling circumstances exist for the
44 purposes of **paragraph** ¹**paragraphs** **paragraph**¹ (1) ¹**or (2)**¹ of
45 this subsection, a court may consider the amount of the fine or fines
46 imposed, the person's age at the time of the offense or offenses, the

1 person's financial condition and other relevant circumstances
2 regarding the person's ability to pay.

3 (cf: P.L.2015, c.261, s.3)

4

5 3. N.J.S.2C:52-5 is amended to read as follows:

6 2C:52-5. Expungement of Records of Young Drug Offenders.
7 Notwithstanding the provisions of **[sections]** N.J.S.2C:52-2 and
8 N.J.S.2C:52-3, after a period of not less than one year following
9 conviction, termination of probation or parole or discharge from
10 custody, whichever is later, any person convicted of an offense
11 under chapters 35 or 36 of this title for the possession or use of a
12 controlled dangerous substance, convicted of violating P.L. 1955, c.
13 277, s. 3 (C. 2A:170-77.5), or convicted of violating P.L. 1962, c.
14 113, s. 1 (C. 2A:170-77.8), and who at the time of the offense was
15 21 years of age or younger, may apply to the Superior Court in the
16 county wherein the matter was disposed of for the expungement of
17 such person's conviction and all records pertaining thereto. The
18 relief of expungement under this section shall be granted only if
19 said person has not, prior to the time of hearing, violated any of the
20 conditions of his probation or parole, albeit subsequent to discharge
21 from probation or parole, has not been convicted of any previous or
22 subsequent criminal act or any subsequent or previous violation of
23 chapters 35 or 36 of this title or of P.L. 1955, c. 277, s. 3 (C.
24 2A:170-77.5) or of P.L. 1962, c. 113, s. 1 (C. 2A:170-77.8), or who
25 has not had a prior or subsequent criminal matter dismissed because
26 of acceptance into a supervisory treatment or other diversion
27 program.

28 This section shall not apply to any person who has been
29 convicted of the sale or distribution of a controlled dangerous
30 substance or possession with the intent to sell any controlled
31 dangerous substance except:

32 (1) Marihuana, where the total sold, distributed or possessed
33 with intent to sell was **[25 grams or]** less than one ounce, or

34 (2) Hashish, where the total amount sold, distributed or
35 possessed with intent to sell was **[5 grams or]** less than five grams.

36 (cf: P.L.1987, c.106, s.16)

37

38 4. N.J.S.2C:52-8 is amended to read as follows:

39 2C:52-8. Statements to accompany petition. There shall be
40 attached to a petition for expungement:

41 a. A statement with the affidavit or verification that there are no
42 disorderly persons, petty disorderly persons or criminal charges
43 pending against the petitioner at the time of filing of the petition for
44 expungement.

45 b. In those instances where the petitioner is seeking the
46 expungement of a criminal conviction, or the expungement of
47 convictions pursuant to N.J.S.2C:52-3 for multiple disorderly
48 persons or petty disorderly persons offenses ¹, all of which were

1 entered the same day, or¹ which were ¹interdependent or¹ closely
2 related in circumstances ¹【or in】 and were committed as part of a
3 sequence of events that took place within a comparatively short
4 period of¹ time. a statement with affidavit or verification that he has
5 never been granted expungement, sealing or similar relief regarding
6 a criminal conviction or convictions for multiple disorderly persons
7 or petty disorderly persons offenses ¹, all of which were entered the
8 same day, or¹ which were ¹interdependent or¹ closely related in
9 circumstances ¹【or in】 and were committed as part of a sequence of
10 events that took place within a comparatively short period of¹ time
11 by any court in this State or other state or by any Federal court.
12 "Sealing" refers to the relief previously granted pursuant to
13 P.L.1973, c.191 (C.2A:85-15 et seq.).

14 c. In those instances where a person has received a dismissal of
15 a criminal charge because of acceptance into a supervisory
16 treatment or any other diversion program, a statement with affidavit
17 or verification setting forth the nature of the original charge, the
18 court of disposition and date of disposition.
19 (cf: N.J.S.2C:52-8)

20

21 5. N.J.S.2C:52-14 is amended to read as follows:

22 2C:52-14. A petition for expungement filed pursuant to this
23 chapter shall be denied when:

24 a. Any statutory prerequisite, including any provision of this
25 chapter, is not fulfilled or there is any other statutory basis for
26 denying relief.

27 b. The need for the availability of the records outweighs the
28 desirability of having a person freed from any disabilities as
29 otherwise provided in this chapter. An application may be denied
30 under this subsection only following objection of a party given
31 notice pursuant to N.J.S.2C:52-10 and the burden of asserting such
32 grounds shall be on the objector, except that in regard to
33 expungement sought for third or fourth degree drug offenses
34 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
35 court shall consider whether this factor applies regardless of
36 whether any party objects on this basis.

37 c. In connection with a petition under **【section】** N.J.S.2C:52-6,
38 the acquittal, discharge or dismissal of charges resulted from a plea
39 bargaining agreement involving the conviction of other charges.
40 This bar, however, shall not apply once the conviction is itself
41 expunged.

42 d. The arrest or conviction sought to be expunged is, at the
43 time of hearing, the subject matter of civil litigation between the
44 petitioner or his legal representative and the State, any
45 governmental entity thereof or any State agency and the
46 representatives or employees of any such body.

47 e. A person has had a previous criminal conviction expunged
48 regardless of the lapse of time between the prior expungement, or

1 sealing under prior law, and the present petition. This provision
2 shall not apply:

3 (1) When the person is seeking the expungement of a municipal
4 ordinance violation or,

5 (2) When the person is seeking the expungement of records
6 pursuant to **[section]** N.J.S.2C:52-6.

7 f. **[The person seeking the relief of expungement of a**
8 **conviction for a disorderly persons, petty disorderly persons, or**
9 **criminal offense has prior to or subsequent to said conviction been**
10 **granted the dismissal of criminal charges following completion of a**
11 **supervisory treatment or other diversion program.]** (Deleted by
12 amendment, P.L. , c.) (pending before the Legislature as this
13 bill)

14 (cf: P.L.2009, c.188, s.3)

15

16 6. N.J.S.2C:52-15 is amended to read as follows:

17 2C:52-15. **[If]** a. Except as provided in subsection b. of this
18 section, if an order of expungement of records of arrest or
19 conviction under this chapter is granted by the court, all the records
20 specified in said order shall be removed from the files of the
21 agencies which have been noticed of the pendency of petitioner's
22 motion and which are, by the provisions of this chapter, entitled to
23 notice, and shall be placed in the control of a person who has been
24 designated by the head of each such agency which, at the time of
25 the hearing, possesses said records. That designated person shall,
26 except as otherwise provided in this chapter, **[insure]** ensure
27 that such records or the information contained therein are not released
28 for any reason and are not utilized or referred to for any purpose.
29 In response to requests for information or records of the person who
30 was arrested or convicted, all noticed officers, departments and
31 agencies shall reply, with respect to the arrest, conviction or related
32 proceedings which are the subject of the order, that there is no
33 record information.

34 b. Records of the Probation Division of the Superior Court
35 related to restitution, a fine, or other court-ordered financial
36 assessment that remains due at the time the court grants an
37 expungement may be retained as confidential, restricted-access
38 records in the Judiciary's automated system to facilitate the
39 collection and distribution of any outstanding assessments by the
40 comprehensive enforcement program established pursuant to
41 P.L.1995, c.9 (C.2B:19-1 et al.) as ordered by the court. The
42 Administrative Director of the Courts shall ensure that such records
43 are not released to the public. Such records shall be removed from
44 the Judiciary's automated system upon satisfaction of court-ordered
45 financial assessments or by order of the court.

46 (cf: N.J.S.2C:52-15)

47

48 7. N.J.S.2C:52-18 is amended to read as follows:

1 2C:52-18. Information contained in expunged records may be
2 supplied to the Violent Crimes Compensation **Board** Office, in
3 conjunction with any claim which has been filed with said **board**
4 office ¹], or to the Administrative Office of the Courts in
5 conjunction with the obligation to pay restitution to a victim¹.
6 (cf: N.J.S.2C:52-18)
7

8 8. ¹a.¹ (New Section) Notwithstanding any provision in this
9 act to the contrary, expunged records may be used by the
10 comprehensive enforcement program established pursuant to
11 P.L.1995, c.9 (C.2B:19-1 et al.) to collect restitution, fines and
12 other court-ordered financial assessments that remain due at the
13 time an expungement is granted by the court. Information
14 regarding the nature of such financial assessments or their
15 derivation from expunged criminal convictions shall not be
16 disclosed to the public. Any record of a civil judgment for the
17 unpaid portion of court-ordered financial obligations that may be
18 docketed after the court has granted an expungement of the
19 underlying criminal conviction shall be entered in the name of the
20 Treasurer, State of New Jersey. The State Treasurer shall thereafter
21 administer such judgments in cooperation with the comprehensive
22 enforcement program without disclosure of any information related
23 to the underlying criminal nature of the assessments.

24 ¹b. The court, after providing appropriate due process, may
25 nullify an expungement granted to a person pursuant to subsection
26 a. of N.J.S.2C:52-2 if the person willfully fails to comply with an
27 established payment plan or otherwise cooperate with the
28 comprehensive enforcement program to facilitate the collection of
29 any outstanding restitution, fines, and other court-ordered
30 assessments, provided that prior to nullifying the expungement the
31 person shall be afforded an opportunity to comply with or
32 restructure the payment plan, or otherwise cooperate to facilitate the
33 collection of outstanding restitution, fines, and other court-ordered
34 assessments. In the event of nullification, the court may restore the
35 previous expungement granted if the person complies with the
36 payment plan or otherwise cooperates to facilitate the collection of
37 any outstanding restitution, fines, and other court-ordered
38 assessments.¹
39

40 9. This act shall take effect on the first day of the ¹**third**
41 tenth¹ month next following enactment.
42
43
44

45
46 _____
47 Revises procedures for expunging criminal and other records and
information, including shortening of certain waiting periods for

S3307 [1R]

12

- 1 expungement eligibility and increasing number of convictions
- 2 which may be expunged.

SENATE, No. 3307

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 15, 2017

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

Revises procedures for expunging criminal and other records and information, including shortening of certain waiting periods for expungement eligibility and increasing number of convictions which may be expunged.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/23/2017)

1 AN ACT revising procedures for expunging criminal and other
2 records and information, amending various parts of the statutory
3 law and supplementing chapter 52 of Title 2C of the New Jersey
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. N.J.S.2C:52-2 is amended to read as follows:
10 2C:52-2. Indictable Offenses.

11 a. In all cases, except as herein provided, **[wherein]** a person
12 may present an expungement application to the Superior Court
13 pursuant to this section if:

14 the person has been convicted of a crime under the laws of this
15 State **[and who has not]** or a combination of one crime and less
16 than four disorderly persons or petty disorderly persons offenses
17 under the laws of this State which were not closely related in
18 circumstances or in time, provided that the person has not otherwise
19 been convicted of any prior or subsequent crime, or any prior or
20 subsequent disorderly persons or petty disorderly persons offense or
21 offenses such that the total number of convictions for disorderly
22 persons and petty disorderly persons offenses would exceed three,
23 whether any such crime or offense conviction was within this State
24 or any other jurisdiction **[,** and has not been convicted of a
25 disorderly persons or petty disorderly persons offense on more than
26 two occasions**];** or

27 the person has been convicted of more than one crime under the
28 laws of this State, or a combination of one or more crimes and
29 disorderly persons or petty disorderly persons offenses under the
30 laws of this State, which crimes or combination of crimes and
31 offenses were closely related in circumstances or in time, and the
32 person has not otherwise been convicted of any prior or subsequent
33 crime or offense, whether within this State or any other jurisdiction.

34 The person, if eligible, may **[,]** present the expungement
35 application after the expiration of a period of **[10]** six years from
36 the date of his most recent conviction, payment of fine, satisfactory
37 completion of probation or parole, or release from incarceration
38 **[for that crime or for any disorderly persons or petty disorderly**
39 **persons offense],** whichever is later **[,** present an**].** The person
40 shall submit the expungement application to the Superior Court in
41 the county in which the conviction for the crime was adjudged,
42 which contains a separate, duly verified petition as provided in
43 N.J.S.2C:52-7 for **[the criminal]** each conviction sought to be
44 expunged, **[and may also contain additional duly verified petitions**

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 for no more than two convictions for any disorderly persons or petty
2 disorderly persons offenses,] praying that the conviction, or
3 convictions if applicable, and all records and information pertaining
4 thereto be expunged. The petition for each conviction appended to
5 an application shall comply with the requirements set forth in
6 N.J.S.2C:52-1 et seq.

7 Notwithstanding the provisions of the preceding paragraph, a
8 petition may be filed and presented, and the court may grant an
9 expungement pursuant to this section, although less than **[10]** six
10 years **[has]** have expired in accordance with the requirements of the
11 preceding paragraph **[where]** when the court finds:

12 (1) less than **[10]** six years **[has]** have expired from the
13 satisfaction of a fine, but the **[ten-year]** time requirement of six
14 years is otherwise satisfied, and the court finds that the person
15 substantially complied with any payment plan ordered pursuant to
16 N.J.S.2C:46-1 et seq., or could not do so due to compelling
17 circumstances affecting his ability to satisfy the fine, provided that
18 appropriate arrangements are in place for the person to satisfy any
19 outstanding obligation to pay restitution to a victim; or

20 (2) less than six years have expired from the satisfaction of a
21 fine, but at least five years [has] have expired from the date of
22 [his] the most recent conviction, [payment of fine,] satisfactory
23 completion of probation or parole, or release from incarceration,
24 whichever is later, and the court finds that the person substantially
25 complied with any payment plan ordered pursuant to N.J.S.2C:46-1
26 et seq., or could not do so due to compelling circumstances
27 affecting his ability to satisfy the fine, provided that appropriate
28 arrangements are in place for the person to satisfy any outstanding
29 obligation to pay restitution to a victim; the person has not been
30 otherwise convicted of a crime, disorderly persons offense, or petty
31 disorderly persons offense since the time of the most recent
32 conviction; and the court finds in its discretion that expungement is
33 in the public interest, giving due consideration to the nature of the
34 offense or offenses, and the applicant's character and conduct since
35 the conviction or convictions.

36 If the person qualifies for expungement under this subsection,
37 but there remains an outstanding balance of restitution, a fine, or
38 other court-ordered financial assessment ordered by the court as
39 part of the sentence for a criminal conviction, the court shall
40 provide for the continued collection of any outstanding restitution
41 and may order the continued collection of other financial
42 assessments in accordance with section 8 of P.L. , c. (C.)
43 (pending before the Legislature as this bill).

44 In determining whether compelling circumstances exist for the
45 purposes of **[paragraph]** paragraphs (1) or (2) of this subsection, a
46 court may consider the amount of the fine or fines imposed, the
47 person's age at the time of the offense or offenses, the person's

1 financial condition and other relevant circumstances regarding the
2 person's ability to pay.

3 **【Although subsequent convictions for no more than two**
4 **disorderly or petty disorderly persons offenses shall not be an**
5 **absolute bar to relief, the nature of those conviction or convictions**
6 **and the circumstances surrounding them shall be considered by the**
7 **court and may be a basis for denial of relief if they or either of them**
8 **constitute a continuation of the type of unlawful activity embodied**
9 **in the criminal conviction for which expungement is sought.】**

10 b. Records of conviction pursuant to statutes repealed by this
11 Code for the crimes of murder, manslaughter, treason, anarchy,
12 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
13 robbery, embracery, or a conspiracy or any attempt to commit any
14 of the foregoing, or aiding, assisting or concealing persons accused
15 of the foregoing crimes, shall not be expunged.

16 Records of conviction for the following crimes specified in the
17 New Jersey Code of Criminal Justice shall not be subject to
18 expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except
19 death by auto as specified in N.J.S.2C:11-5; N.J.S.2C:13-1
20 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or
21 Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human
22 Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual
23 Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal
24 Sexual Contact); if the victim is a minor, subsection b. of
25 N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor
26 and the offender is not the parent of the victim, N.J.S.2C:13-2
27 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment);
28 N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related
29 Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare
30 of a child by engaging in sexual conduct which would impair or
31 debauch the morals of the child, or causing the child other harm);
32 paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or
33 filming a child in a prohibited sexual act); paragraph (3) of
34 subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to
35 engage in a prohibited sexual act); subparagraph (a) of paragraph
36 (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with
37 intent to distribute or using a file-sharing program to store items
38 depicting the sexual exploitation or abuse of a child); subparagraph
39 (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing
40 or viewing items depicting the sexual exploitation or abuse of a
41 child); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing);
42 paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly
43 promoting the prostitution of the actor's child); section 2 of
44 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
45 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
46 Weapons, Biological Agents or Nuclear or Radiological Devices);
47 and conspiracies or attempts to commit such crimes.

48 Records of conviction for any crime committed by a person
49 holding any public office, position or employment, elective or

1 appointive, under the government of this State or any agency or
2 political subdivision thereof and any conspiracy or attempt to
3 commit such a crime shall not be subject to expungement if the
4 crime involved or touched such office, position or employment.

5 c. In the case of conviction for the sale or distribution of a
6 controlled dangerous substance or possession thereof with intent to
7 sell, expungement shall be denied except where the crimes involve:

8 (1) Marijuana, where the total quantity sold, distributed or
9 possessed with intent to sell was **[25 grams or]** less than one ounce;

10 (2) Hashish, where the total quantity sold, distributed or
11 possessed with intent to sell was **[five grams or]** less than five
12 grams; or

13 (3) Any controlled dangerous substance provided that the
14 conviction is of the third or fourth degree, where the court finds that
15 expungement is consistent with the public interest, giving due
16 consideration to the nature of the offense and the petitioner's
17 character and conduct since conviction.

18 d. In the case of a State licensed physician or podiatrist
19 convicted of an offense involving drugs or alcohol or pursuant to
20 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
21 court shall notify the State Board of Medical Examiners upon
22 receipt of a petition for expungement of the conviction and records
23 and information pertaining thereto.

24 (cf: P.L.2015, c.261, s.2)

25

26 2. N.J.S.2C:52-3 is amended to read as follows:

27 2C:52-3. Disorderly persons offenses and petty disorderly
28 persons offenses.

29 a. Any person who has been convicted of **[a]** one or more
30 disorderly persons **[offense]** or petty disorderly persons **[offense]**
31 offenses under the laws of this State who has not been convicted of
32 any **[prior or subsequent]** crime, whether within this State or any
33 other jurisdiction, may present an expungement application to the
34 Superior Court pursuant to this section. Any person who has been
35 convicted of **[a]** one or more disorderly persons **[offense]** or petty
36 disorderly persons **[offense]** offenses under the laws of this State
37 who has also been convicted of **[a prior or subsequent crime]** one
38 or more crimes shall not be eligible to apply for an expungement
39 pursuant to this section, but may present an expungement
40 application to the Superior Court pursuant to N.J.S.2C:52-2.

41 b. Any person who has been convicted of **[a]** one or more
42 disorderly persons **[offense]** or petty disorderly persons **[offense]**
43 offenses under the laws of this State who has not been convicted of
44 any **[prior or subsequent]** crime, whether within this State or any
45 other jurisdiction, **[or who has not been convicted of a disorderly**
46 persons or petty disorderly persons offense on more than two other

1 occasions,】 may present an expungement application to the
2 Superior Court pursuant to this section if:

3 the person has been convicted on separate occasions of no more
4 than four disorderly persons offenses, no more than four petty
5 disorderly persons offenses, or a combination of no more than four
6 disorderly persons and petty disorderly persons offenses, provided
7 that the person has not otherwise been convicted of any additional
8 prior or subsequent offenses, whether within this State or any other
9 jurisdiction, such that the total number of convictions for disorderly
10 persons and petty disorderly persons offenses would exceed four; or

11 the person has been convicted of multiple disorderly persons
12 offenses or multiple petty disorderly persons offenses under the
13 laws of this State, or a combination of multiple disorderly persons
14 and petty disorderly persons offenses under the laws of this State,
15 which offenses or combination of offenses were closely related in
16 circumstances or in time, and the person has not otherwise been
17 convicted of any prior or subsequent offense, whether within this
18 State or any other jurisdiction.

19 The person, if eligible, may [.] present the expungement
20 application after the expiration of a period of five years from the
21 date of his most recent conviction, payment of fine, satisfactory
22 completion of probation or release from incarceration **[for any**
23 **disorderly persons or petty disorderly persons offense]**, whichever
24 is later **[, present an]**. The person shall submit the expungement
25 application to the Superior Court in the county in which the most
26 recent conviction for [the most recent] a disorderly persons or petty
27 disorderly persons offense was adjudged, which contains a separate,
28 duly verified petition as provided in N.J.S.2C:52-7 for [the
29 disorderly persons or petty disorderly persons] each conviction
30 sought to be expunged, [and which may also contain additional
31 duly verified petitions for no more than two other convictions for
32 disorderly persons or petty disorderly persons offenses,] praying
33 that the conviction, or convictions if applicable, and all records and
34 information pertaining thereto be expunged. The petition for each
35 conviction appended to an application shall comply with the
36 requirements of N.J.S.2C:52-1 et seq.

37 Notwithstanding the provisions of the preceding paragraph, a
38 petition may be filed and presented, and the court may grant an
39 expungement pursuant to this section, when the court finds:

40 (1) less than five years **[has] have** expired from the satisfaction
41 of a fine, but the five-year time requirement is otherwise satisfied,
42 and the court finds that the person substantially complied with any
43 payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could
44 not do so due to compelling circumstances affecting his ability to
45 satisfy the fine, provided that appropriate arrangements are in place
46 for the person to satisfy any outstanding obligation to pay
47 restitution to a victim; or

1 (2) less than five years have expired from the satisfaction of a
2 fine, but at least three years have expired from the date of [his] the
3 most recent conviction, [payment of fine,] satisfactory completion
4 of probation or parole, or release from incarceration, whichever is
5 later, and the court finds that the person substantially complied with
6 any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or
7 could not do so due to compelling circumstances affecting his
8 ability to satisfy the fine, provided that appropriate arrangements
9 are in place for the person to satisfy any outstanding obligation to
10 pay restitution to a victim; the person has not been otherwise
11 convicted of a crime, disorderly persons offense, or petty disorderly
12 persons offense since the time of the most recent conviction; and
13 the court finds in its discretion that expungement is in the public
14 interest, giving due consideration to the nature of the offense or
15 offenses, and the applicant's character and conduct since the
16 conviction or convictions.

17 In determining whether compelling circumstances exist for the
18 purposes of [paragraph] paragraphs (1) or (2) of this subsection, a
19 court may consider the amount of the fine or fines imposed, the
20 person's age at the time of the offense or offenses, the person's
21 financial condition and other relevant circumstances regarding the
22 person's ability to pay.

23 (cf: P.L.2015, c.261, s.3)

24

25 3. N.J.S.2C:52-5 is amended to read as follows:

26 2C:52-5. Expungement of Records of Young Drug Offenders.
27 Notwithstanding the provisions of [sections] N.J.S.2C:52-2 and
28 N.J.S.2C:52-3, after a period of not less than one year following
29 conviction, termination of probation or parole or discharge from
30 custody, whichever is later, any person convicted of an offense
31 under chapters 35 or 36 of this title for the possession or use of a
32 controlled dangerous substance, convicted of violating P.L. 1955, c.
33 277, s. 3 (C. 2A:170-77.5), or convicted of violating P.L. 1962, c.
34 113, s. 1 (C. 2A:170-77.8), and who at the time of the offense was
35 21 years of age or younger, may apply to the Superior Court in the
36 county wherein the matter was disposed of for the expungement of
37 such person's conviction and all records pertaining thereto. The
38 relief of expungement under this section shall be granted only if
39 said person has not, prior to the time of hearing, violated any of the
40 conditions of his probation or parole, albeit subsequent to discharge
41 from probation or parole, has not been convicted of any previous or
42 subsequent criminal act or any subsequent or previous violation of
43 chapters 35 or 36 of this title or of P.L. 1955, c. 277, s. 3 (C.
44 2A:170-77.5) or of P.L. 1962, c. 113, s. 1 (C. 2A:170-77.8), or who
45 has not had a prior or subsequent criminal matter dismissed because
46 of acceptance into a supervisory treatment or other diversion
47 program.

1 This section shall not apply to any person who has been
2 convicted of the sale or distribution of a controlled dangerous
3 substance or possession with the intent to sell any controlled
4 dangerous substance except:

5 (1) Marihuana, where the total sold, distributed or possessed
6 with intent to sell was **【25 grams or】** less than one ounce, or

7 (2) Hashish, where the total amount sold, distributed or
8 possessed with intent to sell was **【5 grams or】** less than five grams.
9 (cf: P.L.1987, c.106, s.16)

10

11 4. N.J.S.2C:52-8 is amended to read as follows:

12 2C:52-8. Statements to accompany petition. There shall be
13 attached to a petition for expungement:

14 a. A statement with the affidavit or verification that there are no
15 disorderly persons, petty disorderly persons or criminal charges
16 pending against the petitioner at the time of filing of the petition for
17 expungement.

18 b. In those instances where the petitioner is seeking the
19 expungement of a criminal conviction, or the expungement of
20 convictions pursuant to N.J.S.2C:52-3 for multiple disorderly
21 persons or petty disorderly persons offenses which were closely
22 related in circumstances or in time, a statement with affidavit or
23 verification that he has never been granted expungement, sealing or
24 similar relief regarding a criminal conviction or convictions for
25 multiple disorderly persons or petty disorderly persons offenses
26 which were closely related in circumstances or in time by any court
27 in this State or other state or by any Federal court. "Sealing" refers
28 to the relief previously granted pursuant to P.L.1973, c.191
29 (C.2A:85-15 et seq.).

30 c. In those instances where a person has received a dismissal of
31 a criminal charge because of acceptance into a supervisory
32 treatment or any other diversion program, a statement with affidavit
33 or verification setting forth the nature of the original charge, the
34 court of disposition and date of disposition.

35 (cf: N.J.S.2C:52-8)

36

37 5. N.J.S.2C:52-14 is amended to read as follows:

38 2C:52-14. A petition for expungement filed pursuant to this
39 chapter shall be denied when:

40 a. Any statutory prerequisite, including any provision of this
41 chapter, is not fulfilled or there is any other statutory basis for
42 denying relief.

43 b. The need for the availability of the records outweighs the
44 desirability of having a person freed from any disabilities as
45 otherwise provided in this chapter. An application may be denied
46 under this subsection only following objection of a party given
47 notice pursuant to N.J.S.2C:52-10 and the burden of asserting such
48 grounds shall be on the objector, except that in regard to
49 expungement sought for third or fourth degree drug offenses

1 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
2 court shall consider whether this factor applies regardless of
3 whether any party objects on this basis.

4 c. In connection with a petition under **[section]** N.J.S.2C:52-6,
5 the acquittal, discharge or dismissal of charges resulted from a plea
6 bargaining agreement involving the conviction of other charges.
7 This bar, however, shall not apply once the conviction is itself
8 expunged.

9 d. The arrest or conviction sought to be expunged is, at the
10 time of hearing, the subject matter of civil litigation between the
11 petitioner or his legal representative and the State, any
12 governmental entity thereof or any State agency and the
13 representatives or employees of any such body.

14 e. A person has had a previous criminal conviction expunged
15 regardless of the lapse of time between the prior expungement, or
16 sealing under prior law, and the present petition. This provision
17 shall not apply:

18 (1) When the person is seeking the expungement of a municipal
19 ordinance violation or,

20 (2) When the person is seeking the expungement of records
21 pursuant to **[section]** N.J.S.2C:52-6.

22 f. **[The person seeking the relief of expungement of a**
23 **conviction for a disorderly persons, petty disorderly persons, or**
24 **criminal offense has prior to or subsequent to said conviction been**
25 **granted the dismissal of criminal charges following completion of a**
26 **supervisory treatment or other diversion program.]** (Deleted by
27 amendment, P.L. , c.) (pending before the Legislature as this
28 bill)

29 (cf: P.L.2009, c.188, s.3)

30
31 6. N.J.S.2C:52-15 is amended to read as follows:

32 2C:52-15. **[If]** a. Except as provided in subsection b. of this
33 section, if an order of expungement of records of arrest or
34 conviction under this chapter is granted by the court, all the records
35 specified in said order shall be removed from the files of the
36 agencies which have been noticed of the pendency of petitioner's
37 motion and which are, by the provisions of this chapter, entitled to
38 notice, and shall be placed in the control of a person who has been
39 designated by the head of each such agency which, at the time of
40 the hearing, possesses said records. That designated person shall,
41 except as otherwise provided in this chapter, **[insure]** ensure that
42 such records or the information contained therein are not released
43 for any reason and are not utilized or referred to for any purpose.
44 In response to requests for information or records of the person who
45 was arrested or convicted, all noticed officers, departments and
46 agencies shall reply, with respect to the arrest, conviction or related
47 proceedings which are the subject of the order, that there is no
48 record information.

1 b. Records of the Probation Division of the Superior Court
2 related to restitution, a fine, or other court-ordered financial
3 assessment that remains due at the time the court grants an
4 expungement may be retained as confidential, restricted-access
5 records in the Judiciary’s automated system to facilitate the
6 collection and distribution of any outstanding assessments by the
7 comprehensive enforcement program established pursuant to
8 P.L.1995, c.9 (C.2B:19-1 et al.) as ordered by the court. The
9 Administrative Director of the Courts shall ensure that such records
10 are not released to the public. Such records shall be removed from
11 the Judiciary’s automated system upon satisfaction of court-ordered
12 financial assessments or by order of the court.

13 (cf: N.J.S.2C:52-15)

14
15 7. N.J.S.2C:52-18 is amended to read as follows:

16 2C:52-18. Information contained in expunged records may be
17 supplied to the Violent Crimes Compensation **【Board】** Office, in
18 conjunction with any claim which has been filed with said **【board】**
19 office, or to the Administrative Office of the Courts in conjunction
20 with the obligation to pay restitution to a victim.

21 (cf: N.J.S.2C:52-18)

22
23 8. (New Section) Notwithstanding any provision in this act to
24 the contrary, expunged records may be used by the comprehensive
25 enforcement program established pursuant to P.L.1995, c.9
26 (C.2B:19-1 et al.) to collect restitution, fines and other court-
27 ordered financial assessments that remain due at the time an
28 expungement is granted by the court. Information regarding the
29 nature of such financial assessments or their derivation from
30 expunged criminal convictions shall not be disclosed to the public.
31 Any record of a civil judgment for the unpaid portion of court-
32 ordered financial obligations that may be docketed after the court
33 has granted an expungement of the underlying criminal conviction
34 shall be entered in the name of the Treasurer, State of New Jersey.
35 The State Treasurer shall thereafter administer such judgments in
36 cooperation with the comprehensive enforcement program without
37 disclosure of any information related to the underlying criminal
38 nature of the assessments.

39
40 9. This act shall take effect on the first day of the third month
41 next following enactment.

42
43
44 STATEMENT

45
46 This bill would revise procedures for expunging criminal and
47 other records and information, including the shortening of certain
48 waiting periods for expungement eligibility and increasing the
49 number of convictions which may be expunged.

1 Under the bill, a person who has been convicted of a crime, or a
2 combination of one crime and less than four disorderly persons or
3 petty disorderly persons offenses which were not closely related in
4 circumstances or in time would be eligible to seek expungement
5 relief. Alternatively, the person could seek expungement relief if
6 convicted of more than one crime or a combination of crimes and
7 disorderly persons or petty disorderly persons offenses which were
8 closely related in circumstances or in time. Under the current law, a
9 person is generally limited to expunging one criminal conviction
10 and up to two additional convictions for disorderly persons or petty
11 disorderly persons offenses, and there is no ability to expunge a
12 potentially higher number of convictions based on crimes or
13 offenses that were closely related in circumstances or in time.

14 The bill would also decrease the standard time period, from 10
15 years to six years, before which a person with criminal convictions,
16 or convictions for both crimes and offenses, could submit an
17 expungement application to the Superior Court. There is a shorter
18 waiting period of five years, unchanged by the bill, under which a
19 person may seek the expungement of such convictions, if the person
20 can show that it is in the public interest to permit the more
21 expedited expungement.

22 While the above time periods are normally measured from the
23 date of the most recent conviction, payment of fine, completion of
24 probation or parole, or release from incarceration, whichever date is
25 later in time, the bill would permit a person to proceed with either a
26 standard or expedited, “public interest”-based expungement
27 application if the applicable time period has not expired with
28 respect to the satisfaction of a fine, but the time period for all other
29 conditions is satisfied and appropriate arrangements are in place for
30 the person to satisfy any outstanding obligation to pay restitution to
31 a victim. The current law only permits the consideration of a
32 standard expungement application by a person under such
33 circumstances; there is no such consideration permitted on an
34 expedited application, meaning the fine must be satisfied in full for
35 a minimum of five years before a person may proceed with an
36 expedited application.

37 With respect to criminal convictions for the sale, distribution, or
38 possession with intent to sell marijuana or hashish, the bill amends
39 the expungement law to establish general expungement eligibility as
40 described above for a low-level offender consistent with how such
41 an offender’s crime is graded under the State’s Criminal Code.
42 This consistency would also apply to a young low-level offender
43 (21 years of age or less at the time of the offense) who is granted
44 special eligibility to make an expungement application after one
45 year from the date of the conviction, termination of probation or
46 parole, or discharge from custody, whichever date is later in time.
47 Eligibility would be extended to all such convicted offenders when
48 the crime is graded as a crime of the fourth degree, based on the
49 amount of the drug being:

1 - less than one ounce of marijuana (the current law provides
2 eligibility for a smaller amount, 25 grams (0.89 ounce) or less); or
3 - less than five grams (less than 0.17 ounce) of hashish (the
4 current law provides eligibility for a slightly higher amount of five
5 grams (0.17 ounce) or less).

6 The new amounts set forth in the bill are derived from the
7 amounts used to grade the crime as a crime of the fourth degree
8 under the State's Criminal Code. See N.J.S.2C:35-5, subsection b.,
9 paragraph (12). As such, this would create a legal consistency
10 between expungement law eligibility and grading under the
11 Criminal Code, such that any fourth degree crime involving the
12 sale, distribution, or possession with intent to sell marijuana or
13 hashish would be generally eligible for expungement, and in the
14 case of a young offender, the special eligibility for expungement
15 after a one-year time period would consistently apply. This is not
16 currently the case, because the amounts set forth in the
17 expungement law are different than the amounts used to grade the
18 crime.

19 The current difference in the amounts used for expungement
20 eligibility and the grading of the crime causes fourth degree crimes
21 involving marijuana weighing more than 25 grams (more than 0.89
22 ounce) to only be eligible for expungement if the person can prove
23 it is in the public interest to permit the expungement (a burden not
24 faced when the amount involved is less), and young offenders are
25 not afforded special eligibility for expungement after a one-year
26 period. Additionally, the current inconsistency permits more
27 serious third degree crimes involving hashish (if the amount
28 involved is five grams exactly) to be generally eligible without the
29 heightened burden on the person to show that expungement is in the
30 public interest, and third-degree young offenders may seek the
31 relief of expungement after a one-year period. The bill's proposed
32 consistency between the expungement law and criminal grading
33 would result in all fourth degree crimes and fourth degree young
34 offenders being treated the same under the expungement law, and
35 all third degree crimes and third degree young offenders being
36 treated not just the same but subject to the more burdensome
37 requirements concerning public interest proofs in order to obtain the
38 relief of expungement.

39 If a person who qualifies for the expungement of one or more
40 criminal convictions has an outstanding balance of restitution, a
41 fine, or other court-ordered financial assessment ordered by the
42 court as part of a criminal sentence, the court would provide for the
43 continued collection of any outstanding restitution and could order
44 the continued collection of court-ordered financial obligations
45 through the comprehensive enforcement program established
46 pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). Once the person's
47 records and information was expunged, information regarding the
48 nature of such financial assessments or their derivation from
49 expunged criminal convictions would not be disclosed to the public.

1 Any record of a civil judgment for the unpaid portion of court-
2 ordered financial obligations that may be docketed after the court
3 has granted an expungement of an underlying criminal conviction
4 would be entered in the name of the Treasurer, State of New Jersey.
5 The State Treasurer would thereafter administer such judgments in
6 cooperation with the comprehensive enforcement program without
7 disclosure of any information related to the underlying criminal
8 nature of the assessments.

9 The bill also updates the expungement law with respect to a
10 person who has only been convicted of one or more disorderly
11 persons or petty disorderly persons offenses, mostly in a similar
12 manner to the updates concerning a person who has been convicted
13 of one or more crimes, or a combination of convictions for crimes
14 and disorderly persons or petty disorderly persons offenses. A
15 person would be eligible for expungement relief if the person has
16 been convicted on separate occasions of no more than four
17 disorderly persons offenses, no more than four petty disorderly
18 persons offenses, or a combination of no more than four disorderly
19 persons and petty disorderly persons offenses. Alternatively, the
20 person could seek expungement relief if convicted of multiple
21 disorderly persons offenses or multiple petty disorderly persons
22 offenses, or a combination of multiple disorderly persons and petty
23 disorderly persons offenses, all of which were closely related in
24 circumstances or in time. Under the current law, a person is limited
25 to expunging no more than three convictions for disorderly persons
26 or petty disorderly persons offenses, and there is no option to
27 expunge a potentially higher number of such convictions based on
28 offenses that were closely related in circumstances or in time.

29 The current standard waiting period of five years before seeking
30 to expunge convictions for disorderly persons or petty disorderly
31 persons offenses would remain, as would the waiting period of three
32 years before seeking an expedited, "public interest"-based
33 expungement. However, the expedited expungement application
34 could be made if the three-year time period has not expired with
35 respect to the satisfaction of a fine, but the time period for all other
36 conditions of the conviction is satisfied and appropriate
37 arrangements are in place for the person to satisfy any outstanding
38 obligation to pay restitution to a victim. As with expungement
39 applications that include criminal convictions, the current law only
40 permits the consideration of a standard expungement application by
41 a person who has not previously satisfied a fine; there is no such
42 consideration permitted on an expedited application, meaning the
43 fine must be satisfied in full for a minimum of three years before a
44 person may proceed with an expedited application.

45 Finally, the bill would remove a bar on expungement eligibility
46 for any person with one or more convictions for crimes, disorderly
47 persons offenses, or petty disorderly persons offenses, who, prior or
48 subsequent to the conviction or convictions for which expungement
49 is sought had criminal charges dismissed following the completion

1 of a supervisory treatment or other diversion program. The
2 dismissal of criminal charges in such manner would no longer be an
3 automatic bar to the person seeking and obtaining the relief of
4 expungement. However, even if the person is successful in
5 expunging any convictions, the expunged records would remain
6 available for subsequent review for purposes of determining
7 whether to grant or deny the person another entry into a supervisory
8 treatment or diversion program for new charges. See N.J.S.2C:52-
9 20 and 2C:52-27, subsection b.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 3307

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 29, 2017

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3307.

This bill, as amended, would revise procedures for expunging criminal and other records and information, including the shortening of certain waiting periods before a person may seek an expungement and increasing the number of convictions which may be expunged.

Concerning the expungement of one or more criminal convictions, the bill sets forth the following categories of eligible persons:

- a person who has been convicted of one crime, and does not otherwise have any prior or 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 prior or 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 prior or 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 prior or 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:

- six years have passed with respect to all aspects of satisfying the most recent conviction (six 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 six-year time requirement is otherwise met.

- the fine is satisfied, but six years have not passed since doing so, and the six-year time requirement is otherwise met; or

- at least five but less than six years have passed with respect to all aspects of satisfying the conviction (this expedited expungement would also require, as it does under current law, the person to show that it is in the public interest to permit such expungement).

As expressed in the bill, the term "fine," in reference to measuring any applicable time period requirement for determining the satisfaction thereof, 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 applicable law.

Whenever the court granted expungement relief to a person with an outstanding fine, the court would, utilizing the comprehensive enforcement program, provide for the continued collection of any amount owed that is necessary to satisfy the fine or for the entry of civil judgment for the outstanding amount. Once the person's records and information was expunged, information regarding the nature of such financial assessments or their derivation from expunged criminal convictions would not be disclosed to the public. Any record of a civil judgment would be entered in the name of the State Treasurer, and administered by the State Treasurer in cooperation with the comprehensive enforcement program without disclosure of any information related to the underlying criminal nature of the assessments.

The court, after providing appropriate due process, could nullify an expungement granted to a person with an outstanding fine if the person willfully fails to comply with an established payment plan or otherwise cooperate with the comprehensive enforcement program to facilitate the collection of any amounts that remain due. In the event of nullification, the court could restore the previous expungement granted after the person complies with the payment plan or otherwise cooperates with the comprehensive enforcement program to facilitate the collection of any outstanding amounts owed.

With respect to criminal convictions for the sale, distribution, or possession with intent to sell marijuana or hashish, the bill amends

the expungement law to establish general expungement eligibility for a low-level offender consistent with how such an offender's crime is graded under the State's Criminal Code. This consistency would also apply to a young low-level offender (21 years of age or less at the time of the offense) who is granted special eligibility to make an expungement application after one year from the date of the conviction, termination of probation or parole, or discharge from custody, whichever date is later in time. Eligibility would be extended to all such convicted offenders when the crime is graded as a crime of the fourth degree, based on the amount of the drug being:

- less than one ounce of marijuana (the current law provides eligibility for a smaller amount, 25 grams (0.89 ounce) or less); or
- less than five grams (less than 0.17 ounce) of hashish (the current law provides eligibility for a slightly higher amount of five grams (0.17 ounce) or less).

The new amounts set forth in the bill are derived from the amounts used to grade the crime as a crime of the fourth degree under the State's Criminal Code. See N.J.S.2C:35-5, subsection b., paragraph (12). As such, this would create a legal consistency between expungement law eligibility and grading under the Criminal Code, such that any fourth degree crime involving the sale, distribution, or possession with intent to sell marijuana or hashish would be generally eligible for expungement, and in the case of a young offender, the special eligibility for expungement after a one-year time period would consistently apply. This is not currently the case, because the amounts set forth in the expungement law are different than the amounts used to grade the crime.

Concerning a person with one or more convictions for disorderly persons or petty disorderly persons offenses (but no criminal convictions), the bill sets forth eligibility as follows:

- a person who has been convicted on the same or separate occasions of no more than four disorderly persons offenses, no more than four petty disorderly persons offenses, or a combination of no more than four 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 four;
- 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).

If a person with one or more convictions for disorderly persons or petty disorderly persons offenses is eligible as described above for expungement relief, the expungement application may 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 conviction;

- 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 three but less than five years have passed with respect to all aspects of satisfying the conviction (this expedited expungement would also require, as it does under current law, the person to show that it is in the public interest to permit such expungement, similar to the expedited “public interest” expungement process for criminal convictions).

As is the case with an expungement involving one or more criminal convictions, the amendments provide that the term “fine,” in reference to measuring any applicable time period requirement for determining the satisfaction thereof, 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 applicable law.

The bill provides a one-time limit on a person receiving an expungement involving any criminal conviction (continuing the current law’s one-time limit), as well as a one-time limit for receiving an expungement of multiple convictions pertaining to multiple disorderly persons or petty disorderly persons offenses, which convictions were entered the same day or which convictions constituted a “crime spree.”

Finally, the bill would remove a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction or convictions for which expungement is sought had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. The dismissal of criminal charges in such manner would no longer be an automatic bar to the person seeking and obtaining the relief of expungement. However, even if the person is successful in expunging any convictions, the expunged records would remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory

treatment or diversion program for new charges. See N.J.S.2C:52-20 and 2C:52-27, subsection b.

The committee amendments to the bill:

- update the categories of persons with one or more criminal convictions who would be eligible for expungement relief, as described above;

- update the categories of persons with one or more convictions for disorderly persons offenses or petty disorderly persons offenses (and no criminal convictions) who would be eligible for expungement relief, as described above;

- update the time period requirements that need to be met in order for a person to proceed with an application to expunge one or more convictions for a crime of offense, as described above;

- provide that the term “fine,” in reference to measuring any applicable time period requirements for determining the satisfaction thereof for proceeding with an expungement application, 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 applicable law;

- add provisions which would permit the court to nullify an expungement granted to a person with an outstanding fine if the person willfully fails to comply with an established payment plan or otherwise cooperate with the comprehensive enforcement program to facilitate the amounts that remain due, and only restore the expungement once the person complies with the payment plan or otherwise cooperates with the comprehensive enforcement program;

- revise the provisions in the underlying bill to maintain the one-time limit on a person receiving an expungement for multiple convictions pertaining to multiple disorderly persons or petty disorderly persons offenses, which convictions were entered the same day or which convictions constituted a “crime spree” – the revision is an update to the descriptions of the various categories of persons who are eligible for expungement relief, making these descriptions consistent throughout the bill;

- remove a provision which would have permitted the sharing of expunged records with the Administrative Office of the Courts (AOC) concerning any on-going obligations to pay restitution - this provision is unnecessary, as the AOC is not directly involved in the collection or enforcement of any such obligations; and

- provide for a delayed effective date, updated to be the first day of the tenth month next following enactment (instead of the third month), in order to provide additional time for the AOC to take necessary administrative action in advance of the bill becoming law so that it can more effectively implement the reforms presented in the bill.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3307
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JUNE 22, 2017

SUMMARY

- Synopsis:** Revises procedures for expunging criminal and other records and information, including shortening of certain waiting periods for expungement eligibility and increasing number of convictions which may be expunged.
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** The Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below.		

- The Office of Legislative Services (OLS) estimates that the Judiciary would incur indeterminate costs to review additional expungement requests in order to determine eligibility for expungement, and to process the requests. According to data provided by the Administrative Office of the Courts (AOC), about 8,400 expungements are filed annually. This 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 bill would revise procedures for expunging criminal and other records and information, including the shortening of certain waiting periods for expungement eligibility and increasing the number of convictions which may be expunged.



BILL DESCRIPTION

Senate Bill No. 3307 of 2017 would revise procedures for expunging criminal and other records and information, including the shortening of certain waiting periods for expungement eligibility and increasing the number of convictions which may be expunged.

Under the bill, a person who has been convicted of a crime, or a combination of one crime and less than four disorderly persons or petty disorderly persons offenses which were not closely related in circumstances or in time would be eligible to seek expungement relief. Alternatively, the person could seek expungement relief if convicted of more than one crime or a combination of crimes and disorderly persons or petty disorderly persons offenses which were closely related in circumstances or in time.

The bill would also decrease the standard time period, from 10 years to six years, before which a person with criminal convictions, or convictions for both crimes and offenses, could submit an expungement application to the Superior Court. There is a shorter waiting period of five years, unchanged by the bill, under which a person may seek the expungement of such convictions, if the person can show that it is in the public interest to permit the more expedited expungement.

While the above time periods are normally measured from the date of the most recent conviction, payment of fine, completion of probation or parole, or release from incarceration, whichever date is later in time, the bill would permit a person to proceed with either a standard or expedited, "public interest"-based expungement application if the applicable time period has not expired with respect to the satisfaction of a fine, but the time period for all other conditions is satisfied and appropriate arrangements are in place for the person to satisfy any outstanding obligation to pay restitution to a victim.

With respect to criminal convictions for the sale, distribution, or possession with intent to sell marijuana or hashish, the bill amends the expungement law to establish general expungement eligibility as described above for a low-level offender consistent with how such an offender's crime is graded under the State's Criminal Code. This consistency would also apply to a young low-level offender (21 years of age or less at the time of the offense) who is granted special eligibility to make an expungement application after one year from the date of the conviction, termination of probation or parole, or discharge from custody, whichever date is later in time. Eligibility would be extended to all such convicted offenders when the crime is graded as a crime of the fourth degree, based on the amount of the drug being:

- less than one ounce of marijuana (the current law provides eligibility for a smaller amount, 25 grams (0.89 ounce) or less); or
- less than five grams (less than 0.17 ounce) of hashish (the current law provides eligibility for a slightly higher amount of five grams (0.17 ounce) or less).

If a person who qualifies for the expungement of one or more criminal convictions has an outstanding balance of restitution, a fine, or other court-ordered financial assessment ordered by the court as part of a criminal sentence, the court would provide for the continued collection of any outstanding restitution and could order the continued collection of court-ordered financial obligations through the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). Once the person's records and information was expunged, information regarding the nature of such financial assessments or their derivation from expunged criminal convictions would not be disclosed to the public. Any record of a civil judgment for the unpaid portion of court-ordered financial obligations that may be docketed after the court has granted an expungement of an underlying criminal conviction would be entered in the name of the Treasurer, State of New Jersey. The State Treasurer would thereafter administer such judgments in cooperation with the comprehensive

enforcement program without disclosure of any information related to the underlying criminal nature of the assessments.

The bill also updates the expungement law with respect to a person who has only been convicted of one or more disorderly persons or petty disorderly persons offenses, mostly in a similar manner to the updates concerning a person who has been convicted of one or more crimes, or a combination of convictions for crimes and disorderly persons or petty disorderly persons offenses. A person would be eligible for expungement relief if the person has been convicted on separate occasions of no more than four disorderly persons offenses, no more than four petty disorderly persons offenses, or a combination of no more than four disorderly persons and petty disorderly persons offenses. Alternatively, the person could seek expungement relief if 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 closely related in circumstances or in time.

The current standard waiting period of five years before seeking to expunge convictions for disorderly persons or petty disorderly persons offenses would remain, as would the waiting period of three years before seeking an expedited, “public interest”-based expungement. However, the expedited expungement application could be made if the three-year time period has not expired with respect to the satisfaction of a fine, but the time period for all other conditions of the conviction is satisfied and appropriate arrangements are in place for the person to satisfy any outstanding obligation to pay restitution to a victim.

Finally, the bill would remove a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction or convictions for which expungement is sought had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. The dismissal of criminal charges in such manner would no longer be an automatic bar to the person seeking and obtaining the relief of expungement. However, even if the person is successful in expunging any convictions, the expunged records would remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory treatment or diversion program for new charges.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS states that according to data provided by the AOC, currently about 8,400 expungements are filed annually. This bill would increase this number by an indeterminate amount. The OLS also notes that the Judiciary would incur indeterminate costs to review these additional expungement requests in order to determine eligibility for expungement and to process the requests. 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. A precise estimate of the additional cost to make these modifications is not feasible without analysis by the Judiciary.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

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.).

FISCAL NOTE
[First Reprint]
SENATE, No. 3307
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: AUGUST 21, 2017

SUMMARY

- Synopsis:** Revises procedures for expunging criminal and other records and information, including shortening of certain waiting periods for expungement eligibility and increasing number of convictions which may be expunged.
- Type of Impact:** Annual expenditure increases and revenue decreases to State General Fund.
- Agencies Affected:** The Judiciary and Department of the Treasury.

Judiciary Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate with minimum one-time cost of \$500,000
State Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) **concurs** with the Judiciary estimate. The OLS adds that according to data provided by the Administrative Office of the Courts (AOC), currently about 8,400 expungements are filed annually. This bill would increase this number by an indeterminate amount.
- The AOC states that although a complete estimate of the bill's fiscal impact is not feasible, the Judiciary anticipates that it will incur: a) a substantial annual expenditure increase due to projected caseload growth attributable to the bill's expansion of expungement eligibility criteria; and b) a minimum of \$500,000 in one-time information technology-related expenditures to ensure its automated system complies with bill provisions.
- The AOC projects that the bill may result in a significant, indeterminate reduction in annual State collections of court-ordered fines and other financial obligations because of the elimination of the requirement that formerly convicted persons satisfy any such debts before they become eligible for expungement.

BILL DESCRIPTION

Senate Bill No. 3307 (1R) of 2017 would expand the categories of convictions for criminal, disorderly persons, and petty disorderly persons offenses that would qualify an individual for the expungement of the individual's criminal records and other related records and information. The bill would take effect on the first day of the tenth month following enactment.

The bill would also shorten certain waiting periods before a person may seek an expungement of a criminal conviction. An expungement application may proceed so long as one of the following time period requirements is met:

- six years, rather than ten years under current law, have passed with respect to all aspects of satisfying the most recent conviction (six years from the date of conviction, payment of fine, satisfactory completion of probation or parole, and release from incarceration);

- the payment of any fine, restitution, and other financial assessment imposed by the court as part of the sentence for the conviction is not yet satisfied due to reasons other than willful misconduct, but the six-year time requirement is otherwise met;

- the payment requirement of any fine, restitution, and other financial assessment is satisfied, but six years have not passed since doing so, and the six-year time requirement is otherwise met;

or

- at least five but less than six years have passed with respect to all aspects of satisfying the conviction.

The bill does not shorten the waiting periods before a person may seek an expungement of a conviction for disorderly or petty disorderly persons offenses, which is five years after satisfying all aspects of the conviction, subject to certain exceptions.

Under the bill, whenever the court would grant expungement relief to a person with an outstanding debt related to the conviction to be expunged, the court would provide for the continued collection of any amount owed. Once the person's records and information are expunged, information regarding the nature of such financial obligation would not be disclosed to the public. Any record of a civil judgment would be entered in the name of the State Treasurer, and administered by the State Treasurer in cooperation with the AOC's Comprehensive Enforcement Program without disclosure of any information related to the underlying criminal nature of the assessments.

The court could nullify an expungement granted to a person with an outstanding debt related to the expunged conviction if the person willfully fails to comply with an established payment plan or otherwise cooperate with the Comprehensive Enforcement Program to facilitate the collection of any unpaid amounts.

Finally, the bill would remove a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction for which expungement is sought had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. However, even if the person is successful in expunging any convictions, the expunged records would remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory treatment or diversion program for new charges.

FISCAL ANALYSIS

JUDICIAL BRANCH

The AOC projects that the bill may result in a significant, indeterminate reduction in annual collections of court-ordered State fines and other financial obligations because of the elimination of the requirement that formerly convicted persons satisfy these debts before they become eligible for expungement.

In addition, since the bill would significantly increase the number of expungement applications, hearings, and court orders, the AOC anticipates a correlated significant increase to annual AOC expenditures. The AOC, however, does not have the ability to estimate the number of individuals who, under the expanded criteria, may qualify for an expungement application, receive an expungement hearing, or receive approval of an expungement.

In addition, the Judiciary anticipates incurring a minimum of \$500,000 in one-time information technology-related expenditures to ensure its automated system complies with bill provisions.

Additional annual costs may also be incurred to facilitate case processing and judicial hearings to nullify or restore expungement orders due to a formerly convicted offender's willful non-compliance or non-cooperation with the collection efforts of the Comprehensive Enforcement Program after an expungement has been granted.

The AOC also notes that the bill may have a fiscal impact on the Department of the Treasury.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary estimate.

The OLS adds that according to data provided by the AOC, currently about 8,400 expungements are filed annually. This bill would increase this number by an indeterminate amount.

The OLS also adds that the bill would shift from the AOC to the Department of the Treasury annual expenditures for the administration of any portion of a civil judgment that remains due at the time the expungement is granted by the court. The Treasury would administer these debts in cooperation with the AOC's Comprehensive Enforcement Program.

Section: *Judiciary*
Analyst: *Anne C. Raughley*
 Principal Fiscal Analyst
Approved: *Frank W. Haines III*
 Legislative Budget and Finance Officer

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

ASSEMBLY, No. 5038

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JUNE 19, 2017

Sponsored by:

Assemblywoman ELIZABETH MAHER MUOIO

District 15 (Hunterdon and Mercer)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Revises procedures for expunging criminal and other records and information, including shortening of certain waiting periods for expungement eligibility and increasing number of convictions which may be expunged.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT revising procedures for expunging criminal and other
2 records and information, amending various parts of the statutory
3 law and supplementing chapter 52 of Title 2C of the New Jersey
4 Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. N.J.S.2C:52-2 is amended to read as follows:
10 2C:52-2. Indictable Offenses.

11 a. In all cases, except as herein provided, **[wherein]** a person
12 may present an expungement application to the Superior Court
13 pursuant to this section if:

14 the person has been convicted of a crime under the laws of this
15 State **[and who has not]** or a combination of one crime and less
16 than four disorderly persons or petty disorderly persons offenses
17 under the laws of this State which were not closely related in
18 circumstances or in time, provided that the person has not otherwise
19 been convicted of any prior or subsequent crime, or any prior or
20 subsequent disorderly persons or petty disorderly persons offense or
21 offenses such that the total number of convictions for disorderly
22 persons and petty disorderly persons offenses would exceed three,
23 whether any such crime or offense conviction was within this State
24 or any other jurisdiction **[,** and has not been convicted of a
25 disorderly persons or petty disorderly persons offense on more than
26 two occasions**];** or

27 the person has been convicted of more than one crime under the
28 laws of this State, or a combination of one or more crimes and
29 disorderly persons or petty disorderly persons offenses under the
30 laws of this State, which crimes or combination of crimes and
31 offenses were closely related in circumstances or in time, and the
32 person has not otherwise been convicted of any prior or subsequent
33 crime or offense, whether within this State or any other jurisdiction.

34 The person, if eligible, may **[,]** present the expungement
35 application after the expiration of a period of **[10]** six years from
36 the date of his most recent conviction, payment of fine, satisfactory
37 completion of probation or parole, or release from incarceration
38 **[for that crime or for any disorderly persons or petty disorderly**
39 **persons offense],** whichever is later **[,** present an**].** The person
40 shall submit the expungement application to the Superior Court in
41 the county in which the conviction for the crime was adjudged,
42 which contains a separate, duly verified petition as provided in
43 N.J.S.2C:52-7 for **[the criminal]** each conviction sought to be
44 expunged, **[and may also contain additional duly verified petitions**

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 for no more than two convictions for any disorderly persons or petty
2 disorderly persons offenses,] praying that the conviction, or
3 convictions if applicable, and all records and information pertaining
4 thereto be expunged. The petition for each conviction appended to
5 an application shall comply with the requirements set forth in
6 N.J.S.2C:52-1 et seq.

7 Notwithstanding the provisions of the preceding paragraph, a
8 petition may be filed and presented, and the court may grant an
9 expungement pursuant to this section, although less than **[10]** six
10 years **[has]** have expired in accordance with the requirements of the
11 preceding paragraph **[where]** when the court finds:

12 (1) less than **[10]** six years **[has]** have expired from the
13 satisfaction of a fine, but the **[ten-year]** time requirement of six
14 years is otherwise satisfied, and the court finds that the person
15 substantially complied with any payment plan ordered pursuant to
16 N.J.S.2C:46-1 et seq., or could not do so due to compelling
17 circumstances affecting his ability to satisfy the fine, provided that
18 appropriate arrangements are in place for the person to satisfy any
19 outstanding obligation to pay restitution to a victim; or

20 (2) less than six years have expired from the satisfaction of a
21 fine, but at least five years [has] have expired from the date of
22 [his] the most recent conviction, [payment of fine,] satisfactory
23 completion of probation or parole, or release from incarceration,
24 whichever is later, and the court finds that the person substantially
25 complied with any payment plan ordered pursuant to N.J.S.2C:46-1
26 et seq., or could not do so due to compelling circumstances
27 affecting his ability to satisfy the fine, provided that appropriate
28 arrangements are in place for the person to satisfy any outstanding
29 obligation to pay restitution to a victim; the person has not been
30 otherwise convicted of a crime, disorderly persons offense, or petty
31 disorderly persons offense since the time of the most recent
32 conviction; and the court finds in its discretion that expungement is
33 in the public interest, giving due consideration to the nature of the
34 offense or offenses, and the applicant's character and conduct since
35 the conviction or convictions.

36 If the person qualifies for expungement under this subsection,
37 but there remains an outstanding balance of restitution, a fine, or
38 other court-ordered financial assessment ordered by the court as
39 part of the sentence for a criminal conviction, the court shall
40 provide for the continued collection of any outstanding restitution
41 and may order the continued collection of other financial
42 assessments in accordance with section 8 of P.L. , c. (C.)
43 (pending before the Legislature as this bill).

44 In determining whether compelling circumstances exist for the
45 purposes of **[paragraph]** paragraphs (1) or (2) of this subsection, a
46 court may consider the amount of the fine or fines imposed, the
47 person's age at the time of the offense or offenses, the person's

1 financial condition and other relevant circumstances regarding the
2 person's ability to pay.

3 **【Although subsequent convictions for no more than two**
4 **disorderly or petty disorderly persons offenses shall not be an**
5 **absolute bar to relief, the nature of those conviction or convictions**
6 **and the circumstances surrounding them shall be considered by the**
7 **court and may be a basis for denial of relief if they or either of them**
8 **constitute a continuation of the type of unlawful activity embodied**
9 **in the criminal conviction for which expungement is sought.】**

10 b. Records of conviction pursuant to statutes repealed by this
11 Code for the crimes of murder, manslaughter, treason, anarchy,
12 kidnapping, rape, forcible sodomy, arson, perjury, false swearing,
13 robbery, embracery, or a conspiracy or any attempt to commit any
14 of the foregoing, or aiding, assisting or concealing persons accused
15 of the foregoing crimes, shall not be expunged.

16 Records of conviction for the following crimes specified in the
17 New Jersey Code of Criminal Justice shall not be subject to
18 expungement: N.J.S.2C:11-1 et seq. (Criminal Homicide), except
19 death by auto as specified in N.J.S.2C:11-5; N.J.S.2C:13-1
20 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or
21 Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human
22 Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual
23 Assault); subsection a. of N.J.S.2C:14-3 (Aggravated Criminal
24 Sexual Contact); if the victim is a minor, subsection b. of
25 N.J.S.2C:14-3 (Criminal Sexual Contact); if the victim is a minor
26 and the offender is not the parent of the victim, N.J.S.2C:13-2
27 (Criminal Restraint) or N.J.S.2C:13-3 (False Imprisonment);
28 N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related
29 Offenses); subsection a. of N.J.S.2C:24-4 (Endangering the welfare
30 of a child by engaging in sexual conduct which would impair or
31 debauch the morals of the child, or causing the child other harm);
32 paragraph (4) of subsection b. of N.J.S.2C:24-4 (Photographing or
33 filming a child in a prohibited sexual act); paragraph (3) of
34 subsection b. of N.J.S.2C:24-4 (Causing or permitting a child to
35 engage in a prohibited sexual act); subparagraph (a) of paragraph
36 (5) of subsection b. of N.J.S.2C:24-4 (Distributing, possessing with
37 intent to distribute or using a file-sharing program to store items
38 depicting the sexual exploitation or abuse of a child); subparagraph
39 (b) of paragraph (5) of subsection b. of N.J.S.2C:24-4 (Possessing
40 or viewing items depicting the sexual exploitation or abuse of a
41 child); N.J.S.2C:28-1 (Perjury); N.J.S.2C:28-2 (False Swearing);
42 paragraph (4) of subsection b. of N.J.S.2C:34-1 (Knowingly
43 promoting the prostitution of the actor's child); section 2 of
44 P.L.2002, c.26 (C.2C:38-2) (Terrorism); subsection a. of section 3
45 of P.L.2002, c.26 (C.2C:38-3) (Producing or Possessing Chemical
46 Weapons, Biological Agents or Nuclear or Radiological Devices);
47 and conspiracies or attempts to commit such crimes.

48 Records of conviction for any crime committed by a person
49 holding any public office, position or employment, elective or

1 appointive, under the government of this State or any agency or
2 political subdivision thereof and any conspiracy or attempt to
3 commit such a crime shall not be subject to expungement if the
4 crime involved or touched such office, position or employment.

5 c. In the case of conviction for the sale or distribution of a
6 controlled dangerous substance or possession thereof with intent to
7 sell, expungement shall be denied except where the crimes involve:

8 (1) Marijuana, where the total quantity sold, distributed or
9 possessed with intent to sell was **[25 grams or]** less than one ounce;

10 (2) Hashish, where the total quantity sold, distributed or
11 possessed with intent to sell was **[five grams or]** less than five
12 grams; or

13 (3) Any controlled dangerous substance provided that the
14 conviction is of the third or fourth degree, where the court finds that
15 expungement is consistent with the public interest, giving due
16 consideration to the nature of the offense and the petitioner's
17 character and conduct since conviction.

18 d. In the case of a State licensed physician or podiatrist
19 convicted of an offense involving drugs or alcohol or pursuant to
20 section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the
21 court shall notify the State Board of Medical Examiners upon
22 receipt of a petition for expungement of the conviction and records
23 and information pertaining thereto.

24 (cf: P.L.2015, c.261, s.2)

25

26 2. N.J.S.2C:52-3 is amended to read as follows:

27 2C:52-3. Disorderly persons offenses and petty disorderly
28 persons offenses.

29 a. Any person who has been convicted of **[a]** one or more
30 disorderly persons **[offense]** or petty disorderly persons **[offense]**
31 offenses under the laws of this State who has not been convicted of
32 any **[prior or subsequent]** crime, whether within this State or any
33 other jurisdiction, may present an expungement application to the
34 Superior Court pursuant to this section. Any person who has been
35 convicted of **[a]** one or more disorderly persons **[offense]** or petty
36 disorderly persons **[offense]** offenses under the laws of this State
37 who has also been convicted of **[a prior or subsequent crime]** one
38 or more crimes shall not be eligible to apply for an expungement
39 pursuant to this section, but may present an expungement
40 application to the Superior Court pursuant to N.J.S.2C:52-2.

41 b. Any person who has been convicted of **[a]** one or more
42 disorderly persons **[offense]** or petty disorderly persons **[offense]**
43 offenses under the laws of this State who has not been convicted of
44 any **[prior or subsequent]** crime, whether within this State or any
45 other jurisdiction, **[or who has not been convicted of a disorderly**
46 persons or petty disorderly persons offense on more than two other

1 occasions,】 may present an expungement application to the
2 Superior Court pursuant to this section if:

3 the person has been convicted on separate occasions of no more
4 than four disorderly persons offenses, no more than four petty
5 disorderly persons offenses, or a combination of no more than four
6 disorderly persons and petty disorderly persons offenses, provided
7 that the person has not otherwise been convicted of any additional
8 prior or subsequent offenses, whether within this State or any other
9 jurisdiction, such that the total number of convictions for disorderly
10 persons and petty disorderly persons offenses would exceed four; or

11 the person has been convicted of multiple disorderly persons
12 offenses or multiple petty disorderly persons offenses under the
13 laws of this State, or a combination of multiple disorderly persons
14 and petty disorderly persons offenses under the laws of this State,
15 which offenses or combination of offenses were closely related in
16 circumstances or in time, and the person has not otherwise been
17 convicted of any prior or subsequent offense, whether within this
18 State or any other jurisdiction.

19 The person, if eligible, may [.] present the expungement
20 application after the expiration of a period of five years from the
21 date of his most recent conviction, payment of fine, satisfactory
22 completion of probation or release from incarceration [for any
23 disorderly persons or petty disorderly persons offense], whichever
24 is later [, present an]. The person shall submit the expungement
25 application to the Superior Court in the county in which the most
26 recent conviction for [the most recent] a disorderly persons or petty
27 disorderly persons offense was adjudged, which contains a separate,
28 duly verified petition as provided in N.J.S.2C:52-7 for [the
29 disorderly persons or petty disorderly persons] each conviction
30 sought to be expunged, [and which may also contain additional
31 duly verified petitions for no more than two other convictions for
32 disorderly persons or petty disorderly persons offenses,] praying
33 that the conviction, or convictions if applicable, and all records and
34 information pertaining thereto be expunged. The petition for each
35 conviction appended to an application shall comply with the
36 requirements of N.J.S.2C:52-1 et seq.

37 Notwithstanding the provisions of the preceding paragraph, a
38 petition may be filed and presented, and the court may grant an
39 expungement pursuant to this section, when the court finds:

40 (1) less than five years [has] have expired from the satisfaction
41 of a fine, but the five-year time requirement is otherwise satisfied,
42 and the court finds that the person substantially complied with any
43 payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or could
44 not do so due to compelling circumstances affecting his ability to
45 satisfy the fine, provided that appropriate arrangements are in place
46 for the person to satisfy any outstanding obligation to pay
47 restitution to a victim; or

1 (2) less than five years have expired from the satisfaction of a
2 fine, but at least three years have expired from the date of [his] the
3 most recent conviction, [payment of fine,] satisfactory completion
4 of probation or parole, or release from incarceration, whichever is
5 later, and the court finds that the person substantially complied with
6 any payment plan ordered pursuant to N.J.S.2C:46-1 et seq., or
7 could not do so due to compelling circumstances affecting his
8 ability to satisfy the fine, provided that appropriate arrangements
9 are in place for the person to satisfy any outstanding obligation to
10 pay restitution to a victim; the person has not been otherwise
11 convicted of a crime, disorderly persons offense, or petty disorderly
12 persons offense since the time of the most recent conviction; and
13 the court finds in its discretion that expungement is in the public
14 interest, giving due consideration to the nature of the offense or
15 offenses, and the applicant's character and conduct since the
16 conviction or convictions.

17 In determining whether compelling circumstances exist for the
18 purposes of [paragraph] paragraphs (1) or (2) of this subsection, a
19 court may consider the amount of the fine or fines imposed, the
20 person's age at the time of the offense or offenses, the person's
21 financial condition and other relevant circumstances regarding the
22 person's ability to pay.

23 (cf: P.L.2015, c.261, s.3)

24

25 3. N.J.S.2C:52-5 is amended to read as follows:

26 2C:52-5. Expungement of Records of Young Drug Offenders.
27 Notwithstanding the provisions of [sections] N.J.S.2C:52-2 and
28 N.J.S.2C:52-3, after a period of not less than one year following
29 conviction, termination of probation or parole or discharge from
30 custody, whichever is later, any person convicted of an offense
31 under chapters 35 or 36 of this title for the possession or use of a
32 controlled dangerous substance, convicted of violating P.L. 1955, c.
33 277, s. 3 (C. 2A:170-77.5), or convicted of violating P.L. 1962, c.
34 113, s. 1 (C. 2A:170-77.8), and who at the time of the offense was
35 21 years of age or younger, may apply to the Superior Court in the
36 county wherein the matter was disposed of for the expungement of
37 such person's conviction and all records pertaining thereto. The
38 relief of expungement under this section shall be granted only if
39 said person has not, prior to the time of hearing, violated any of the
40 conditions of his probation or parole, albeit subsequent to discharge
41 from probation or parole, has not been convicted of any previous or
42 subsequent criminal act or any subsequent or previous violation of
43 chapters 35 or 36 of this title or of P.L. 1955, c. 277, s. 3 (C.
44 2A:170-77.5) or of P.L. 1962, c. 113, s. 1 (C. 2A:170-77.8), or who
45 has not had a prior or subsequent criminal matter dismissed because
46 of acceptance into a supervisory treatment or other diversion
47 program.

1 This section shall not apply to any person who has been
2 convicted of the sale or distribution of a controlled dangerous
3 substance or possession with the intent to sell any controlled
4 dangerous substance except:

5 (1) Marihuana, where the total sold, distributed or possessed
6 with intent to sell was **【25 grams or】** less than one ounce, or

7 (2) Hashish, where the total amount sold, distributed or
8 possessed with intent to sell was **【5 grams or】** less than five grams.
9 (cf: P.L.1987, c.106, s.16)

10

11 4. N.J.S.2C:52-8 is amended to read as follows:

12 2C:52-8. Statements to accompany petition. There shall be
13 attached to a petition for expungement:

14 a. A statement with the affidavit or verification that there are no
15 disorderly persons, petty disorderly persons or criminal charges
16 pending against the petitioner at the time of filing of the petition for
17 expungement.

18 b. In those instances where the petitioner is seeking the
19 expungement of a criminal conviction, or the expungement of
20 convictions pursuant to N.J.S.2C:52-3 for multiple disorderly
21 persons or petty disorderly persons offenses which were closely
22 related in circumstances or in time, a statement with affidavit or
23 verification that he has never been granted expungement, sealing or
24 similar relief regarding a criminal conviction or convictions for
25 multiple disorderly persons or petty disorderly persons offenses
26 which were closely related in circumstances or in time by any court
27 in this State or other state or by any Federal court. "Sealing" refers
28 to the relief previously granted pursuant to P.L.1973, c.191
29 (C.2A:85-15 et seq.).

30 c. In those instances where a person has received a dismissal of
31 a criminal charge because of acceptance into a supervisory
32 treatment or any other diversion program, a statement with affidavit
33 or verification setting forth the nature of the original charge, the
34 court of disposition and date of disposition.

35 (cf: N.J.S.2C:52-8)

36

37 5. N.J.S.2C:52-14 is amended to read as follows:

38 2C:52-14. A petition for expungement filed pursuant to this
39 chapter shall be denied when:

40 a. Any statutory prerequisite, including any provision of this
41 chapter, is not fulfilled or there is any other statutory basis for
42 denying relief.

43 b. The need for the availability of the records outweighs the
44 desirability of having a person freed from any disabilities as
45 otherwise provided in this chapter. An application may be denied
46 under this subsection only following objection of a party given
47 notice pursuant to N.J.S.2C:52-10 and the burden of asserting such
48 grounds shall be on the objector, except that in regard to
49 expungement sought for third or fourth degree drug offenses

1 pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2, the
2 court shall consider whether this factor applies regardless of
3 whether any party objects on this basis.

4 c. In connection with a petition under **[section]** N.J.S.2C:52-6,
5 the acquittal, discharge or dismissal of charges resulted from a plea
6 bargaining agreement involving the conviction of other charges.
7 This bar, however, shall not apply once the conviction is itself
8 expunged.

9 d. The arrest or conviction sought to be expunged is, at the
10 time of hearing, the subject matter of civil litigation between the
11 petitioner or his legal representative and the State, any
12 governmental entity thereof or any State agency and the
13 representatives or employees of any such body.

14 e. A person has had a previous criminal conviction expunged
15 regardless of the lapse of time between the prior expungement, or
16 sealing under prior law, and the present petition. This provision
17 shall not apply:

18 (1) When the person is seeking the expungement of a municipal
19 ordinance violation or,

20 (2) When the person is seeking the expungement of records
21 pursuant to **[section]** N.J.S.2C:52-6.

22 f. **[The person seeking the relief of expungement of a**
23 **conviction for a disorderly persons, petty disorderly persons, or**
24 **criminal offense has prior to or subsequent to said conviction been**
25 **granted the dismissal of criminal charges following completion of a**
26 **supervisory treatment or other diversion program.]** (Deleted by
27 amendment, P.L. , c.) (pending before the Legislature as this
28 bill)

29 (cf: P.L.2009, c.188, s.3)

30
31 6. N.J.S.2C:52-15 is amended to read as follows:

32 2C:52-15. **[If]** a. Except as provided in subsection b. of this
33 section, if an order of expungement of records of arrest or
34 conviction under this chapter is granted by the court, all the records
35 specified in said order shall be removed from the files of the
36 agencies which have been noticed of the pendency of petitioner's
37 motion and which are, by the provisions of this chapter, entitled to
38 notice, and shall be placed in the control of a person who has been
39 designated by the head of each such agency which, at the time of
40 the hearing, possesses said records. That designated person shall,
41 except as otherwise provided in this chapter, **[insure]** ensure that
42 such records or the information contained therein are not released
43 for any reason and are not utilized or referred to for any purpose.
44 In response to requests for information or records of the person who
45 was arrested or convicted, all noticed officers, departments and
46 agencies shall reply, with respect to the arrest, conviction or related
47 proceedings which are the subject of the order, that there is no
48 record information.

1 b. Records of the Probation Division of the Superior Court
2 related to restitution, a fine, or other court-ordered financial
3 assessment that remains due at the time the court grants an
4 expungement may be retained as confidential, restricted-access
5 records in the Judiciary’s automated system to facilitate the
6 collection and distribution of any outstanding assessments by the
7 comprehensive enforcement program established pursuant to
8 P.L.1995, c.9 (C.2B:19-1 et al.) as ordered by the court. The
9 Administrative Director of the Courts shall ensure that such records
10 are not released to the public. Such records shall be removed from
11 the Judiciary’s automated system upon satisfaction of court-ordered
12 financial assessments or by order of the court.
13 (cf: N.J.S.2C:52-15)

14

15 7. N.J.S.2C:52-18 is amended to read as follows:

16 2C:52-18. Information contained in expunged records may be
17 supplied to the Violent Crimes Compensation **[Board]** Office, in
18 conjunction with any claim which has been filed with said **[board]**
19 office, or to the Administrative Office of the Courts in conjunction
20 with the obligation to pay restitution to a victim.
21 (cf: N.J.S.2C:52-18)

22

23 8. (New Section) Notwithstanding any provision in this act to
24 the contrary, expunged records may be used by the comprehensive
25 enforcement program established pursuant to P.L.1995, c.9
26 (C.2B:19-1 et al.) to collect restitution, fines and other court-
27 ordered financial assessments that remain due at the time an
28 expungement is granted by the court. Information regarding the
29 nature of such financial assessments or their derivation from
30 expunged criminal convictions shall not be disclosed to the public.
31 Any record of a civil judgment for the unpaid portion of court-
32 ordered financial obligations that may be docketed after the court
33 has granted an expungement of the underlying criminal conviction
34 shall be entered in the name of the Treasurer, State of New Jersey.
35 The State Treasurer shall thereafter administer such judgments in
36 cooperation with the comprehensive enforcement program without
37 disclosure of any information related to the underlying criminal
38 nature of the assessments.

39

40 9. This act shall take effect on the first day of the third month
41 next following enactment.

42

43

44

STATEMENT

45

46 This bill would revise procedures for expunging criminal and
47 other records and information, including the shortening of certain
48 waiting periods for expungement eligibility and increasing the
49 number of convictions which may be expunged.

1 Under the bill, a person who has been convicted of a crime, or a
2 combination of one crime and less than four disorderly persons or
3 petty disorderly persons offenses which were not closely related in
4 circumstances or in time would be eligible to seek expungement
5 relief. Alternatively, the person could seek expungement relief if
6 convicted of more than one crime or a combination of crimes and
7 disorderly persons or petty disorderly persons offenses which were
8 closely related in circumstances or in time. Under the current law, a
9 person is generally limited to expunging one criminal conviction
10 and up to two additional convictions for disorderly persons or petty
11 disorderly persons offenses, and there is no ability to expunge a
12 potentially higher number of convictions based on crimes or
13 offenses that were closely related in circumstances or in time.

14 The bill would also decrease the standard time period, from 10
15 years to six years, before which a person with criminal convictions,
16 or convictions for both crimes and offenses, could submit an
17 expungement application to the Superior Court. There is a shorter
18 waiting period of five years, unchanged by the bill, under which a
19 person may seek the expungement of such convictions, if the person
20 can show that it is in the public interest to permit the more
21 expedited expungement.

22 While the above time periods are normally measured from the
23 date of the most recent conviction, payment of fine, completion of
24 probation or parole, or release from incarceration, whichever date is
25 later in time, the bill would permit a person to proceed with either a
26 standard or expedited, “public interest”-based expungement
27 application if the applicable time period has not expired with
28 respect to the satisfaction of a fine, but the time period for all other
29 conditions is satisfied and appropriate arrangements are in place for
30 the person to satisfy any outstanding obligation to pay restitution to
31 a victim. The current law only permits the consideration of a
32 standard expungement application by a person under such
33 circumstances; there is no such consideration permitted on an
34 expedited application, meaning the fine must be satisfied in full for
35 a minimum of five years before a person may proceed with an
36 expedited application.

37 With respect to criminal convictions for the sale, distribution, or
38 possession with intent to sell marijuana or hashish, the bill amends
39 the expungement law to establish general expungement eligibility as
40 described above for a low-level offender consistent with how such
41 an offender’s crime is graded under the State’s Criminal Code.
42 This consistency would also apply to a young low-level offender
43 (21 years of age or less at the time of the offense) who is granted
44 special eligibility to make an expungement application after one
45 year from the date of the conviction, termination of probation or
46 parole, or discharge from custody, whichever date is later in time.
47 Eligibility would be extended to all such convicted offenders when
48 the crime is graded as a crime of the fourth degree, based on the
49 amount of the drug being:

1 - less than one ounce of marijuana (the current law provides
2 eligibility for a smaller amount, 25 grams (0.89 ounce) or less); or
3 - less than five grams (less than 0.17 ounce) of hashish (the
4 current law provides eligibility for a slightly higher amount of five
5 grams (0.17 ounce) or less).

6 The new amounts set forth in the bill are derived from the
7 amounts used to grade the crime as a crime of the fourth degree
8 under the State's Criminal Code. See N.J.S.2C:35-5, subsection b.,
9 paragraph (12). As such, this would create a legal consistency
10 between expungement law eligibility and grading under the
11 Criminal Code, such that any fourth degree crime involving the
12 sale, distribution, or possession with intent to sell marijuana or
13 hashish would be generally eligible for expungement, and in the
14 case of a young offender, the special eligibility for expungement
15 after a one-year time period would consistently apply. This is not
16 currently the case, because the amounts set forth in the
17 expungement law are different than the amounts used to grade the
18 crime.

19 The current difference in the amounts used for expungement
20 eligibility and the grading of the crime causes fourth degree crimes
21 involving marijuana weighing more than 25 grams (more than 0.89
22 ounce) to only be eligible for expungement if the person can prove
23 it is in the public interest to permit the expungement (a burden not
24 faced when the amount involved is less), and young offenders are
25 not afforded special eligibility for expungement after a one-year
26 period. Additionally, the current inconsistency permits more
27 serious third degree crimes involving hashish (if the amount
28 involved is five grams exactly) to be generally eligible without the
29 heightened burden on the person to show that expungement is in the
30 public interest, and third-degree young offenders may seek the
31 relief of expungement after a one-year period. The bill's proposed
32 consistency between the expungement law and criminal grading
33 would result in all fourth degree crimes and fourth degree young
34 offenders being treated the same under the expungement law, and
35 all third degree crimes and third degree young offenders being
36 treated not just the same but subject to the more burdensome
37 requirements concerning public interest proofs in order to obtain the
38 relief of expungement.

39 If a person who qualifies for the expungement of one or more
40 criminal convictions has an outstanding balance of restitution, a
41 fine, or other court-ordered financial assessment ordered by the
42 court as part of a criminal sentence, the court would provide for the
43 continued collection of any outstanding restitution and could order
44 the continued collection of court-ordered financial obligations
45 through the comprehensive enforcement program established
46 pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). Once the person's
47 records and information was expunged, information regarding the
48 nature of such financial assessments or their derivation from
49 expunged criminal convictions would not be disclosed to the public.

1 Any record of a civil judgment for the unpaid portion of court-
2 ordered financial obligations that may be docketed after the court
3 has granted an expungement of an underlying criminal conviction
4 would be entered in the name of the Treasurer, State of New Jersey.
5 The State Treasurer would thereafter administer such judgments in
6 cooperation with the comprehensive enforcement program without
7 disclosure of any information related to the underlying criminal
8 nature of the assessments.

9 The bill also updates the expungement law with respect to a
10 person who has only been convicted of one or more disorderly
11 persons or petty disorderly persons offenses, mostly in a similar
12 manner to the updates concerning a person who has been convicted
13 of one or more crimes, or a combination of convictions for crimes
14 and disorderly persons or petty disorderly persons offenses. A
15 person would be eligible for expungement relief if the person has
16 been convicted on separate occasions of no more than four
17 disorderly persons offenses, no more than four petty disorderly
18 persons offenses, or a combination of no more than four disorderly
19 persons and petty disorderly persons offenses. Alternatively, the
20 person could seek expungement relief if convicted of multiple
21 disorderly persons offenses or multiple petty disorderly persons
22 offenses, or a combination of multiple disorderly persons and petty
23 disorderly persons offenses, all of which were closely related in
24 circumstances or in time. Under the current law, a person is limited
25 to expunging no more than three convictions for disorderly persons
26 or petty disorderly persons offenses, and there is no option to
27 expunge a potentially higher number of such convictions based on
28 offenses that were closely related in circumstances or in time.

29 The current standard waiting period of five years before seeking
30 to expunge convictions for disorderly persons or petty disorderly
31 persons offenses would remain, as would the waiting period of three
32 years before seeking an expedited, "public interest"-based
33 expungement. However, the expedited expungement application
34 could be made if the three-year time period has not expired with
35 respect to the satisfaction of a fine, but the time period for all other
36 conditions of the conviction is satisfied and appropriate
37 arrangements are in place for the person to satisfy any outstanding
38 obligation to pay restitution to a victim. As with expungement
39 applications that include criminal convictions, the current law only
40 permits the consideration of a standard expungement application by
41 a person who has not previously satisfied a fine; there is no such
42 consideration permitted on an expedited application, meaning the
43 fine must be satisfied in full for a minimum of three years before a
44 person may proceed with an expedited application.

45 Finally, the bill would remove a bar on expungement eligibility
46 for any person with one or more convictions for crimes, disorderly
47 persons offenses, or petty disorderly persons offenses, who, prior or
48 subsequent to the conviction or convictions for which expungement
49 is sought had criminal charges dismissed following the completion

1 of a supervisory treatment or other diversion program. The
2 dismissal of criminal charges in such manner would no longer be an
3 automatic bar to the person seeking and obtaining the relief of
4 expungement. However, even if the person is successful in
5 expunging any convictions, the expunged records would remain
6 available for subsequent review for purposes of determining
7 whether to grant or deny the person another entry into a supervisory
8 treatment or diversion program for new charges. See N.J.S.2C:52-
9 20 and 2C:52-27, subsection b.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5038

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Assembly Appropriations Committee reports favorably Assembly Bill No. 5038.

This bill revises procedures for expunging criminal and other records and information, including the shortening of certain waiting periods for expungement eligibility and increasing the number of convictions that may be expunged.

Under the bill, a person who has been convicted of a crime, or a combination of one crime and less than four disorderly persons or petty disorderly persons offenses that were not closely related in circumstances or in time, is eligible to seek expungement relief. A person who has been convicted of more than one crime, or a combination of crimes and disorderly persons or petty disorderly persons offenses that were closely related in circumstances or in time, is also eligible for expungement relief. In contrast, current law generally limits a person to expunging one criminal conviction and up to two additional convictions for disorderly persons or petty disorderly persons offenses, and prohibits expungement of a potentially higher number of convictions based on crimes or offenses that were closely related in circumstances or in time.

In addition, the standard waiting period is decreased—from 10 years to six years—before a person with criminal convictions, or convictions for both crimes and offenses, may properly submit an expungement application. The bill, however, does not affect the shorter waiting period—of five years—before which a person may seek the expungement of such convictions if the person can show it is in the public interest to permit this expedited expungement.

The bill permits a person to properly submit either a standard or expedited, “public interest”-based expungement application if the applicable time period has not expired with respect to the satisfaction of a fine, but the time period for all other conditions is satisfied and appropriate arrangements are made to satisfy any outstanding obligation to pay restitution. In contrast, current law requires that any fine must be satisfied in full for a minimum of five years before a person may properly file an expedited application.

Furthermore under the bill, a person is eligible for expungement if that person has been convicted on separate occasions of no more than four disorderly persons offenses, no more than four petty disorderly persons offenses, or a combination thereof. The person

may also seek expungement if convicted of multiple disorderly persons offenses or multiple petty disorderly persons offenses, or a combination thereof, all of which were closely related in circumstances or in time. In contrast, current law limits a person to expunging no more than three convictions for disorderly persons or petty disorderly persons offenses, and there is no option to expunge a potentially higher number of such convictions based on offenses closely related in circumstances or in time.

The current standard waiting period of five years before seeking to expunge convictions for disorderly persons or petty disorderly persons offenses, as well as the waiting period of three years before seeking an expedited, “public interest”-based expungement, are not affected by the bill. However, an expedited expungement application could be made if the three-year time period has not expired with respect to the satisfaction of a fine, but the time period for all other conditions of the conviction is satisfied and appropriate arrangements are in place for the person to satisfy any outstanding obligation to pay restitution. Current law only permits the consideration of a standard expungement application by a person who has not previously satisfied a fine, and any fine must have been satisfied in full for a minimum of three years before a person may proceed with an expedited application.

With respect to criminal convictions for the sale, distribution, or possession with intent to sell marijuana or hashish, the bill amends the law to establish general expungement eligibility as described above for a low-level offender in order to be consistent with how such an offender’s crime is graded under the State’s Criminal Code. This consistency also applies to a young low-level offender (21 years of age or less at the time of the offense) who is granted special eligibility to make an expungement application after one year from the date of the conviction, termination of probation or parole, or discharge from custody, whichever date is later in time. Eligibility is extended to all such convicted offenders when the crime is graded as a crime of the fourth degree, based on the amount of the drug being:

- less than one ounce of marijuana (current law provides eligibility for 25 grams or less); or
- less than five grams of hashish (current law provides eligibility for five grams or less).

The current difference in the amounts used for expungement eligibility and the grading of the crime causes fourth degree crimes involving marijuana weighing more than 25 grams to be eligible for expungement only if the person can prove it is in the public interest to permit the expungement (a burden not faced when the amount involved is less), and young offenders are not afforded special eligibility for expungement after a one-year period. As well, the current inconsistency permits more serious third degree crimes

involving hashish (if the amount involved is five grams exactly) to be generally eligible without the heightened burden on the person to show that expungement is in the public interest, and third-degree young offenders may seek the relief of expungement after a one-year period. The bill's alignment of the expungement law and criminal grading in this regard results in all fourth degree crimes and fourth degree young offenders being treated the same under the expungement law, and all third degree crimes and third degree young offenders being treated not just the same but also subject to the more burdensome requirements concerning public interest proofs in order to obtain expungement.

If a person who qualifies for the expungement of one or more criminal convictions has an outstanding restitution balance, a fine, or other court-ordered financial assessment as part of a criminal sentence, the court provides for the continued collection of any outstanding restitution and could order the continued collection of court-ordered financial obligations through the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). Once a person's records and information is expunged, information regarding the nature of such financial assessments or their derivation from expunged criminal convictions is disclosed to the public. Any record of a civil judgment for the unpaid portion of court-ordered financial obligations that may be docketed after the court has granted an expungement of an underlying criminal conviction is entered in the name of the State Treasurer. The State Treasurer thereafter administers such judgments in cooperation with the comprehensive enforcement program without disclosure of any information related to the underlying criminal nature of the assessments.

Finally, the bill removes a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction or convictions for which expungement is sought, had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. The dismissal of criminal charges in this manner would no longer be an automatic bar to the person obtaining expungement. However, any expunged records remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory treatment or other diversion program under new charges.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that if this bill is enacted, the Judiciary would incur indeterminate costs to review additional expungement requests in order to determine eligibility for expungement, and to process the requests. According to data provided

by the Administrative Office of the Courts (AOC), 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.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5038

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2017

The Assembly Budget Committee reports favorably Assembly Bill No. 5038, with committee amendments.

As amended, this bill revises procedures for expunging criminal and other records and information, including the shortening of certain waiting periods before a person may seek an expungement and increasing the number of convictions which may be expunged.

Concerning the expungement of one or more criminal convictions, the bill sets forth the following categories of eligible persons:

- a person who has been convicted of one crime, and does not otherwise have any prior or 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 prior or 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 one or more crimes and one or more 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 prior or 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 one or more crimes and one or more 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 prior or 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 requirements is met:

- six years have passed with respect to all aspects of satisfying the most recent conviction (six 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 six-year time requirement is otherwise met.

- the fine is satisfied, but six years have not passed since doing so, and the six-year time requirement is otherwise met; or

- at least five but less than six years have passed with respect to all aspects of satisfying the conviction (this expedited expungement would also require, as it does under current law, the person to show that it is in the public interest to permit such expungement).

As expressed in the bill, the term "fine," in reference to measuring any applicable time period requirement for determining the satisfaction thereof, 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 applicable law.

Whenever the court granted expungement relief to a person with an outstanding fine, the court would, utilizing the comprehensive enforcement program, provide for the continued collection of any amount owed that is necessary to satisfy the fine or for the entry of civil judgment for the outstanding amount. Once the person's records and information was expunged, information regarding the nature of such financial assessments or their derivation from expunged criminal convictions would not be disclosed to the public. Any record of a civil judgment would be entered in the name of the State Treasurer, and administered by the State Treasurer in cooperation with the comprehensive enforcement program without disclosure of any information related to the underlying criminal nature of the assessments.

With respect to criminal convictions for the sale, distribution, or possession with intent to sell marijuana or hashish, the bill amends the expungement law to establish general expungement eligibility for a low-level offender consistent with how such an offender's crime is graded under the State's Criminal Code. This consistency would also apply to a young low-level offender (21 years of age or less at the time of the offense) who is granted special eligibility to make an expungement application after one year from the date of the conviction, termination of probation or parole, or discharge from custody, whichever date is later in time. Eligibility would be extended to all such convicted offenders when the crime is graded

as a crime of the fourth degree, based on the amount of the drug being:

- less than one ounce of marijuana (the current law provides eligibility for a smaller amount, 25 grams (0.89 ounce) or less); or
- less than five grams (less than 0.17 ounce) of hashish (the current law provides eligibility for a slightly higher amount of five grams (0.17 ounce) or less).

The new amounts set forth in the bill are derived from the amounts used to grade the crime as a crime of the fourth degree under the State's Criminal Code. See N.J.S.2C:35-5, subsection b., paragraph (12). As such, this would create a legal consistency between expungement law eligibility and grading under the Criminal Code, such that any fourth degree crime involving the sale, distribution, or possession with intent to sell marijuana or hashish would be generally eligible for expungement, and in the case of a young offender, the special eligibility for expungement after a one-year time period would consistently apply. This is not currently the case, because the amounts set forth in the expungement law are different than the amounts used to grade the crime.

Concerning a person with one or more convictions for disorderly persons or petty disorderly persons offenses (but no criminal convictions), the bill sets forth eligibility as follows:

- a person who has been convicted on the same or separate occasions of no more than four disorderly persons offenses, no more than four petty disorderly persons offenses, or a combination of no more than four 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 four;
- 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).

If a person with one or more convictions for disorderly persons or petty disorderly persons offenses is eligible as described above for

expungement relief, the expungement application may 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 conviction;

- 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 three but less than five years have passed with respect to all aspects of satisfying the conviction (this expedited expungement would also require, as it does under current law, the person to show that it is in the public interest to permit such expungement, similar to the expedited “public interest” expungement process for criminal convictions).

As is the case with an expungement involving one or more criminal convictions, the amendments provide that the term “fine,” in reference to measuring any applicable time period requirement for determining the satisfaction thereof, 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 applicable law.

The bill provides a one-time limit on a person receiving an expungement involving any criminal conviction (continuing the current law’s one-time limit), as well as a one-time limit for receiving an expungement of multiple convictions pertaining to multiple disorderly persons or petty disorderly persons offenses, which convictions were entered the same day or which convictions constituted a “crime spree.”

Finally, the bill removes a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction or convictions for which expungement is sought had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. The dismissal of criminal charges in such manner would no longer be an automatic bar to the person seeking and obtaining the relief of expungement. However, even if the person is successful in expunging any convictions, the expunged records would remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory treatment or diversion program for new charges. See N.J.S.2C:52-20 and 2C:52-27, subsection b.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- update the categories of persons with one or more criminal convictions who would be eligible for expungement relief, as described above;

- update the categories of persons with one or more convictions for disorderly persons offenses or petty disorderly persons offenses (and no criminal convictions) who would be eligible for expungement relief, as described above;

- update the time period requirements that need to be met in order for a person to proceed with an application to expunge one or more convictions for a crime of offense, as described above;

- provide that the term “fine,” in reference to measuring any applicable time period requirements for determining the satisfaction thereof for proceeding with an expungement application, 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 applicable law;

- revise the provisions in the underlying bill to maintain the one-time limit on a person receiving an expungement for multiple convictions pertaining to multiple disorderly persons or petty disorderly persons offenses, which convictions were entered the same day or which convictions constituted a “crime spree” – the revision is an update to the descriptions of the various categories of persons who are eligible for expungement relief, making these descriptions consistent throughout the bill;

- remove a provision which would have permitted the sharing of expunged records with the Administrative Office of the Courts (AOC) concerning any on-going obligations to pay restitution - this provision is unnecessary, as the AOC is not directly involved in the collection or enforcement of any such obligations; and

- provide for a delayed effective date, updated to be the first day of the tenth month next following enactment (instead of the third month), in order to provide additional time for the AOC to take necessary administrative action in advance of the bill becoming law so that it can more effectively implement the reforms presented in the bill.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that if this bill is enacted, the Judiciary would incur indeterminate costs to review additional expungement requests in order to determine eligibility for expungement, and to process the requests. According to data provided by the Administrative Office of the Courts (AOC), 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.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 5038

with Assembly Floor Amendments
(Proposed by Assemblywoman MUOIO)

ADOPTED: JUNE 29, 2017

These floor amendments address the continued collection of outstanding monies owed by persons who are granted expungements in accordance with the underlying bill's new expungement eligibility standards.

Pursuant to the amendments, a court, after providing appropriate due process, could nullify an expungement granted to a person with any outstanding restitution, fines, and other court-ordered assessments if the person willfully fails to comply with an established payment plan or otherwise cooperate with the State's comprehensive enforcement program to facilitate the collection of any amounts that remain due. In the event of nullification, the court could restore the previous expungement granted after the person complies with the payment plan or otherwise cooperates with the comprehensive enforcement program to facilitate the collection of any outstanding amounts owed.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5038
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: JUNE 22, 2017

SUMMARY

- Synopsis:** Revises procedures for expunging criminal and other records and information, including shortening of certain waiting periods for expungement eligibility and increasing number of convictions which may be expunged.
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** The Judiciary.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below.		

- The Office of Legislative Services (OLS) estimates that the Judiciary would incur indeterminate costs to review additional expungement requests in order to determine eligibility for expungement, and to process the requests. According to data provided by the Administrative Office of the Courts (AOC), about 8,400 expungements are filed annually. This 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 bill would revise procedures for expunging criminal and other records and information, including the shortening of certain waiting periods for expungement eligibility and increasing the number of convictions which may be expunged.

BILL DESCRIPTION

Assembly Bill No. 5038 of 2017 would revise procedures for expunging criminal and other records and information, including the shortening of certain waiting periods for expungement eligibility and increasing the number of convictions which may be expunged.

Under the bill, a person who has been convicted of a crime, or a combination of one crime and less than four disorderly persons or petty disorderly persons offenses which were not closely related in circumstances or in time would be eligible to seek expungement relief. Alternatively, the person could seek expungement relief if convicted of more than one crime or a combination of crimes and disorderly persons or petty disorderly persons offenses which were closely related in circumstances or in time.

The bill would also decrease the standard time period, from 10 years to six years, before which a person with criminal convictions, or convictions for both crimes and offenses, could submit an expungement application to the Superior Court. There is a shorter waiting period of five years, unchanged by the bill, under which a person may seek the expungement of such convictions, if the person can show that it is in the public interest to permit the more expedited expungement.

While the above time periods are normally measured from the date of the most recent conviction, payment of fine, completion of probation or parole, or release from incarceration, whichever date is later in time, the bill would permit a person to proceed with either a standard or expedited, "public interest"-based expungement application if the applicable time period has not expired with respect to the satisfaction of a fine, but the time period for all other conditions is satisfied and appropriate arrangements are in place for the person to satisfy any outstanding obligation to pay restitution to a victim.

With respect to criminal convictions for the sale, distribution, or possession with intent to sell marijuana or hashish, the bill amends the expungement law to establish general expungement eligibility as described above for a low-level offender consistent with how such an offender's crime is graded under the State's Criminal Code. This consistency would also apply to a young low-level offender (21 years of age or less at the time of the offense) who is granted special eligibility to make an expungement application after one year from the date of the conviction, termination of probation or parole, or discharge from custody, whichever date is later in time. Eligibility would be extended to all such convicted offenders when the crime is graded as a crime of the fourth degree, based on the amount of the drug being:

- less than one ounce of marijuana (the current law provides eligibility for a smaller amount, 25 grams (0.89 ounce) or less); or
- less than five grams (less than 0.17 ounce) of hashish (the current law provides eligibility for a slightly higher amount of five grams (0.17 ounce) or less).

If a person who qualifies for the expungement of one or more criminal convictions has an outstanding balance of restitution, a fine, or other court-ordered financial assessment ordered by the court as part of a criminal sentence, the court would provide for the continued collection of any outstanding restitution and could order the continued collection of court-ordered financial obligations through the comprehensive enforcement program established pursuant to P.L.1995, c.9 (C.2B:19-1 et al.). Once the person's records and information was expunged, information regarding the nature of such financial assessments or their derivation from expunged criminal convictions would not be disclosed to the public. Any record of a civil judgment for the unpaid portion of court-ordered financial obligations that may be docketed after the court has granted an expungement of an underlying criminal conviction would be entered in the name of the Treasurer, State of New Jersey. The State Treasurer would thereafter administer such judgments in cooperation with the comprehensive

enforcement program without disclosure of any information related to the underlying criminal nature of the assessments.

The bill also updates the expungement law with respect to a person who has only been convicted of one or more disorderly persons or petty disorderly persons offenses, mostly in a similar manner to the updates concerning a person who has been convicted of one or more crimes, or a combination of convictions for crimes and disorderly persons or petty disorderly persons offenses. A person would be eligible for expungement relief if the person has been convicted on separate occasions of no more than four disorderly persons offenses, no more than four petty disorderly persons offenses, or a combination of no more than four disorderly persons and petty disorderly persons offenses. Alternatively, the person could seek expungement relief if 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 closely related in circumstances or in time.

The current standard waiting period of five years before seeking to expunge convictions for disorderly persons or petty disorderly persons offenses would remain, as would the waiting period of three years before seeking an expedited, “public interest”-based expungement. However, the expedited expungement application could be made if the three-year time period has not expired with respect to the satisfaction of a fine, but the time period for all other conditions of the conviction is satisfied and appropriate arrangements are in place for the person to satisfy any outstanding obligation to pay restitution to a victim.

Finally, the bill would remove a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction or convictions for which expungement is sought had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. The dismissal of criminal charges in such manner would no longer be an automatic bar to the person seeking and obtaining the relief of expungement. However, even if the person is successful in expunging any convictions, the expunged records would remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory treatment or diversion program for new charges.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS states that according to data provided by the AOC, currently about 8,400 expungements are filed annually. This bill would increase this number by an indeterminate amount. The OLS also notes that the Judiciary would incur indeterminate costs to review these additional expungement requests in order to determine eligibility for expungement and to process the requests. 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. A precise estimate of the additional cost to make these modifications is not feasible without analysis by the Judiciary.

Section: Judiciary
Analyst: Anne Raughley
Principal Fiscal Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

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.).

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 5038
STATE OF NEW JERSEY
217th LEGISLATURE

DATED: AUGUST 21, 2017

SUMMARY

- Synopsis:** Revises procedures for expunging criminal and other records and information, including shortening of certain waiting periods for expungement eligibility and increasing number of convictions which may be expunged.
- Type of Impact:** Annual expenditure increases and revenue decreases to State General Fund.
- Agencies Affected:** The Judiciary and Department of the Treasury.

Judiciary Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate with minimum one-time cost of \$500,000
State Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) **concurs** with the Judiciary estimate. The OLS adds that according to data provided by the Administrative Office of the Courts (AOC), currently about 8,400 expungements are filed annually. This bill would increase this number by an indeterminate amount.
- The AOC states that although a complete estimate of the bill’s fiscal impact is not feasible, the Judiciary anticipates that it will incur: a) a substantial annual expenditure increase due to projected caseload growth attributable to the bill’s expansion of expungement eligibility criteria; and b) a minimum of \$500,000 in one-time information technology-related expenditures to ensure its automated system complies with bill provisions.
- The AOC projects that the bill may result in a significant, indeterminate reduction in annual State collections of court-ordered fines and other financial obligations because of the elimination of the requirement that formerly convicted persons satisfy any such debts before they become eligible for expungement.

BILL DESCRIPTION

Assembly Bill No. 5038 (2R) of 2017 would expand the categories of convictions for criminal, disorderly persons, and petty disorderly persons offenses that would qualify an individual for the expungement of the individual's criminal records and other related records and information. The bill would take effect on the first day of the tenth month following enactment.

The bill would also shorten certain waiting periods before a person may seek an expungement of a criminal conviction. An expungement application may proceed so long as one of the following time period requirements is met:

- six years, rather than ten years under current law, have passed with respect to all aspects of satisfying the most recent conviction (six years from the date of conviction, payment of fine, satisfactory completion of probation or parole, and release from incarceration);

- the payment of any fine, restitution, and other financial assessment imposed by the court as part of the sentence for the conviction is not yet satisfied due to reasons other than willful misconduct, but the six-year time requirement is otherwise met;

- the payment requirement of any fine, restitution, and other financial assessment is satisfied, but six years have not passed since doing so, and the six-year time requirement is otherwise met;

or

- at least five but less than six years have passed with respect to all aspects of satisfying the conviction.

The bill does not shorten the waiting periods before a person may seek an expungement of a conviction for disorderly or petty disorderly persons offenses, which is five years after satisfying all aspects of the conviction, subject to certain exceptions.

Under the bill, whenever the court would grant expungement relief to a person with an outstanding debt related to the conviction to be expunged, the court would provide for the continued collection of any amount owed. Once the person's records and information are expunged, information regarding the nature of such financial obligation would not be disclosed to the public. Any record of a civil judgment would be entered in the name of the State Treasurer, and administered by the State Treasurer in cooperation with the AOC's Comprehensive Enforcement Program without disclosure of any information related to the underlying criminal nature of the assessments.

The court could nullify an expungement granted to a person with an outstanding debt related to the expunged conviction if the person willfully fails to comply with an established payment plan or otherwise cooperate with the Comprehensive Enforcement Program to facilitate the collection of any unpaid amounts.

Finally, the bill would remove a bar on expungement eligibility for any person with one or more convictions for crimes, disorderly persons offenses, or petty disorderly persons offenses, who, prior or subsequent to the conviction for which expungement is sought had criminal charges dismissed following the completion of a supervisory treatment or other diversion program. However, even if the person is successful in expunging any convictions, the expunged records would remain available for subsequent review for purposes of determining whether to grant or deny the person another entry into a supervisory treatment or diversion program for new charges.

FISCAL ANALYSIS

JUDICIAL BRANCH

The AOC projects that the bill may result in a significant, indeterminate reduction in annual collections of court-ordered State fines and other financial obligations because of the elimination of the requirement that formerly convicted persons satisfy these debts before they become eligible for expungement.

In addition, since the bill would significantly increase the number of expungement applications, hearings, and court orders, the AOC anticipates a correlated significant increase to annual AOC expenditures. The AOC, however, does not have the ability to estimate the number of individuals who, under the expanded criteria, may qualify for an expungement application, receive an expungement hearing, or receive approval of an expungement.

In addition, the Judiciary anticipates incurring a minimum of \$500,000 in one-time information technology-related expenditures to ensure its automated system complies with bill provisions.

Additional annual costs may also be incurred to facilitate case processing and judicial hearings to nullify or restore expungement orders due to a formerly convicted offender's willful non-compliance or non-cooperation with the collection efforts of the Comprehensive Enforcement Program after an expungement has been granted.

The AOC also notes that the bill may have a fiscal impact on the Department of the Treasury.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary estimate.

The OLS adds that according to data provided by the AOC, currently about 8,400 expungements are filed annually. This bill would increase this number by an indeterminate amount.

The OLS also adds that the bill would shift from the AOC to the Department of the Treasury annual expenditures for the administration of any portion of a civil judgment that remains due at the time the expungement is granted by the court. The Treasury would administer these debts in cooperation with the AOC's Comprehensive Enforcement Program.

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

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Governor Christie Signs Model Legislation To Help Minor Offenders Reclaim Their Lives

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Expungement Reform Bills Aimed at Helping Those Suffering With Disease of Addiction

Trenton, NJ – Governor Chris Christie today signed a bipartisan package of bills that changes and modernizes the state’s expungement system in an effort to help minor criminal offenders reclaim their lives.

“Having a criminal record often impedes the ability to get a job, purchase a home or vehicle, or simply have and take care of a family,” said Governor Christie. “We want to give those overcoming incarceration or the disease of addiction, young offenders, and all who have earned and deserve it, a second chance at life. I want to thank Senator Sandra Cunningham whose leadership and partnership helped to make this legislation a true model for other states to replicate.”

The life-saving reform legislation signed into law today by Governor Christie includes:

Senate Bill 3306: Strengthens the original “Ban the Box” legislation by further preventing employers from making any oral, written or online inquiries about the candidate’s criminal record, and from using an online application that requires disclosure of an applicant’s criminal record, including an expungement criminal record. This action will provide people with an opportunity to provide their own personal history during an employment interview rather than being judged on their own criminal record.

Senate Bill 3307: Revises procedures for expunging criminal and other records and information, including shortening certain waiting periods for expungement eligibility and increasing the number of convictions that may be expunged. These include:

- Allows a petitioner to expunge up to four instead of three, offenses or multiple offenses that occurred within a short timeframe, if the petitioner has not been convicted of any prior or subsequent offense;
- Reduces the expungement eligibility waiting period from 10 years to six years, following the latest of any conviction, payment of fine, and completion of probation, parole, or prison sentence;
- Further reduces the expungement eligibility waiting period if satisfaction of a fine or restitution is the petitioner’s only remaining barrier and the court finds that the expungement is in the public’s interest; and
- Aligns expungement and sentencing statutes, allowing expungement for possession of marijuana with the intent to sell up to one ounce, which is the threshold for a fourth-degree crime

Senate Bill 3308: Allows young adults to expunge their juvenile records two years sooner than current law permits, decreasing the waiting period from five to three years to expunge an entire juvenile record, and maintaining all other requirements and provisions. As a result, young offenders will have fewer barriers to overcome as they re-enter society and begin their lives as adults.

“Giving people second chances has been a guiding principle of my administration and a driving force behind many of my policies and initiatives, especially in regard to prisoner reentry and substance use disorder,” said Governor Christie. “The revisions we are implementing today will provide people with an even greater opportunity to become employed and become productive members of society once again after they have paid their debt to society.”

Visit ReachNJ.gov for assistance with addiction prevention, treatment and recovery, as well as a record of Governor Christie's initiatives, programs, policies and services at the forefront of America's fight against this deadly disease.

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