

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5826

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 4, 2024

The Senate Judiciary Committee reports favorably and with committee amendments the First Reprint of Assembly Bill No. 5826.

This bill, as amended, makes various revisions to the expungement laws, including the clarification of several provisions dealing with expungement procedures.

First, concerning the filing of an application for expungement relief, the bill would establish that the person filing the application would have the choice of filing in the Superior Court in the county in which the person resides, or in a county in which one or more of the person's convictions for which expungement is sought were adjudged. These two options would provide more flexibility than the current application procedure, for which the person is required to make the filing in the county in which the most recent conviction was adjudged.

Regarding a person's general expungement eligibility, the law usually requires that the person wait to make an application for a period of time, the length of which is determined by the number or types of crimes or offenses for which the expungement is sought, and is counted from such events as the most recent conviction, release from incarceration, or payment of any court-ordered fine, fee, or other form of financial assessment, whichever event is later. Several of the expungement statutes include two exceptions which permit a person to get an expungement when either (1) the person has fully satisfied the court-ordered financial assessment, but the time since that satisfaction does not meet the applicable waiting period, or (2) the assessment could not be satisfied due to compelling circumstances related to the person's ability to pay, but the person otherwise qualifies for the expungement.

These exceptions do not currently exist for a "clean slate" expungement applied for pursuant to section 7 of P.L.2019, c.269 (C.2C:52-5.3), which generally permits a person's entire record of convictions and related information to be expunged. The bill adds the eligibility exceptions related to the timing of the satisfaction of

the financial assessment or alternatively, the nonpayment due to compelling circumstances, in order for a person with either circumstance to still obtain a “clean slate” expungement.

The bill also expressly incorporates into the “clean slate” expungement the eligibility to expunge convictions for one or more municipal violations, which would not only make the statutory law more consistent with the New Jersey Superior Court’s decision in State v. R.O.-S., 474 N.J. Super. 87 (Law. Div. 2021), permitting the inclusion of certain municipal violations in a “clean slate” expungement, but extend the scope of the statute to cover all such violations.

For all of the expungement statutes that involve the above described compelling circumstances analysis to determine whether an expungement may be granted even though there is a nonpayment of court-ordered financial assessments, the bill further provides, regarding the court’s determination, that a person would not be required to provide transcripts of plea or sentencing proceedings, or be required to provide any presentence reports with the expungement application or any other filing. This restriction on the information to be provided by the person would also apply to any other statutory compelling circumstances analysis not tied to court-ordered financial assessments, such as the analysis associated with whether to grant an expungement for a third- or fourth-degree conviction for the sale, possession with intent to sell, or distribution of a controlled dangerous substance pursuant to paragraph (3) of subsection c. of N.J.S.2C:52-2.

Finally, as introduced, the bill would have rendered a person ineligible to apply for an expungement for any crime, disorderly persons offense, or petty disorderly persons offense, even if such acts were eligible to be expunged, if that person had been convicted of any of the crimes enumerated in N.J.S.2C:52-2 that are ineligible for expungement. Such crimes are generally those considered to be more serious, violent, or immoral in character, and include such acts as: N.J.S.2C:11-1 et seq. (Criminal Homicide); N.J.S.2C:13-1 (Kidnapping); section 1 of P.L.1993, c.291 (C.2C:13-6) (Luring or Enticing); section 1 of P.L.2005, c.77 (C.2C:13-8) (Human Trafficking); N.J.S.2C:14-2 (Sexual Assault or Aggravated Sexual Assault); N.J.S.2C:15-1 (Robbery); N.J.S.2C:17-1 (Arson and Related Offenses); and acts by public officials or employees constituting a crime involving or touching upon such officials’ or employees’ office, position, or employment. The amendments revert the bill back to the current state of the law, so that a person with a conviction that is ineligible for an expungement would still have an opportunity to expunge other, eligible convictions.

This bill, as amended and reported, is identical to Senate Bill No. 4211, also amended and reported today by the committee.

The committee amendments to the bill:

- establish, consistent with other categories of expungement, the above described two exceptions from the standard waiting period before a person may apply for a “clean slate” expungement if the person has either (1) fully satisfied any court-ordered fine, fee, or other financial assessment, but the time since that satisfaction does not meet the waiting period, or (2) not satisfied the financial assessment, and the assessment could not be satisfied due to compelling circumstances related to the person’s ability to pay, but the person otherwise qualifies for the expungement;

- no longer expressly permit a court to use the potential financial factors for a compelling circumstances analysis regarding nonpayment of court-ordered financial assessments for making other types of expungement decisions which are not directly tied to the financial circumstances of the person applying for an expungement;

- add a restriction for any financially based or non-financially based compelling circumstances analysis which prevents a person from having to provide transcripts of plea or sentencing proceedings, or providing any presentence reports with an expungement application or any other filing;

- restore the ability of a person with a conviction that is ineligible for expungement, as described above in the statement, to still expunge other, eligible convictions; and

- amend the bill’s title to reflect the changes made by the amendments.