Expediting Expungements To Clear Pot Possession Records Is Laudable: Implementation May Still Present Challenges

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Most New Jersey policy makers and residents agree that expunging the criminal records of more than 200,000 individuals who have been convicted of non-violent marijuana possession is good public policy.

Currently, the expungement process is complicated and often costly for such individuals. The expungement sections in S-2703/A-4497, sponsored by state Sens. Nicholas Scutari and Stephen Sweeney and Assemblymembers Annette Quijano and Jamel Holley, establish an expedited electronic expungement process that is designed to be easy and free to all.

Realistically, the proposed expedited expungement process may not be as efficient as anticipated.

The present expungement law permits a person to file a petition for expungement if he or she has met conditions such as having the requisite number of years from the most recent conviction, the payment of a fine, the satisfactory completion of probation or the release from incarceration.

Filing the petition requires providing the Court with detailed information and exact dates. Generally, attorneys file expungements for clients.

Typically, only one Superior Court Judge per county reviews expungement petitions. The process often takes months before a final ruling occurs.

Under the legislation, the Court will "immediately" grant an expedited expungement after the petitions are filed using the Administrative Office of the Courts' (AOC) as yet to be developed electronic system. To the sponsors' credit, the AOC is mandated to set up a multilingual public awareness campaign about the expedited expungement program. The cost of funding the AOC electronic filing system could also be an issue.

A county judiciary ombudsman is mandated to provide assistance to the person filing the petition by obtaining the criminal records or data such as the dates of conviction, the completion of probation and the payment of fines.

Since the petition will be filed electronically, parties such as the state police and the municipal police chief will be served automatically.

The electronic filing certainly makes that part of the expungement process less burdensome. However, issues will still occur when the information submitted in the electronic expungement petition is wrong or incomplete.

It might be challenging for individuals to file an online expungement petition themselves, even though there will be electronic forms to complete and an ombudsman to help because the person may not understand how to access his or her records or what information that should pull out of those records.

Once the court order is granted, the ombudsman must provide a copy to the petitioner. The bill permits the court to vacate the expedited expungement if the county prosecutor determines, within 45 days after the order was issued, that it should not have been granted. Under the procedure now, the prosecutor must be served with a copy of the petition when it is filed so that he may object before the order is granted.

The ombudsman must also provide the person with "all relevant records from the appropriate entities." It is not clear what records this language refers to, but it may be the letter that individuals receive from the state police notifying them that the records have been expunged.

In a recent case, my client waited six months for this letter before she could apply for a position that required a background check. Unless the individual has proof that records have been sealed, the criminal record will be disclosed if a background check is run.

Finally, uploading all of the relevant criminal records will be challenging for the AOC. In addition, the AOC will have a big job creating a secure system with easily accessible documents. Transitioning to a system that lay people can use will be complicated, but attorneys are knowledgeable about e-filing, including uploading documents.

Although the new system will be free and electronic, it may still prove challenging to the individuals most in need of expungements in order to obtain jobs, housing or other opportunities.

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