

Page Printed From:

https://www.law.com/njlawjournal/2022/10/27/excessive-logjam-in-expungement-process-a-disservice-to-the-public/?kw=Excessive%20Logjam%20in%20Expungement%20Process%20a%20Disservice%20to%20the%20Public&utm_source=email&utm

NOT FOR REPRINT

COMMENTARY

Excessive Logjam in Expungement Process a Disservice to the Public

The leadership of the State Police and the Attorney General's Office should take urgent steps to make sure that sufficient staff are processing expungement applications and doing so in a timely fashion.

October 27, 2022 at 10:00 AM

Criminal Law

By Darren M. Gelber | October 27, 2022 at 10:00 AM

Expungements are a vital component of New Jersey's criminal code. The expungement process allows people who have been arrested or charged with criminal offenses and municipal court offences (other than traffic violations), to have the public nature of the charges and dispositions removed from the records that are available in most criminal history searches. Once the record of an arrest, charge or conviction is expunged, the records relating to that matter are no longer disclosed in most background checks. Also, once expunged, the law permits a person to treat the matter as if it had not occurred when filling out most job applications. Charges that are dismissed outright, most charges that are dismissed following successful completion of a diversionary program, and some convictions are eligible to be expunged. It is very easy to see that most people who are eligible for an expungement benefit significantly from having expungement applications processed through and heard by the courts, because having these types of records expunged expands the horizon of employment and licensing opportunities. Recent developments in the law, including the legalization of adult recreational use of cannabis, the "Ban the Box" legislation concerning employment applications, and other remedial legislation designed to remove barriers associated with having an arrest record or a criminal conviction, are all well served by a robust and efficient expungement process.

The expungement laws themselves envision the speedy disposition of expungement applications. Indeed, N.J.S.A. 2C:52-9 provides that, upon the filing of a petition for expungement, the court *shall* by order fix a time not less than 35 days nor more than 60 days for a hearing on the expungement application. Another statute, N.J.S.A. 2C:52-11, allows the court to grant an application for an expungement without a hearing, when no objection to the expungement petition is filed. To streamline the expungement process, the court system has developed and implemented an electronic filing system to allow expungement applications to be filed electronically.

Despite the recognized benefits of expungements, and despite the speedy disposition of expungement applications set forth by statute, our courts, and the New Jersey State Police (the entity responsible for verifying that someone is eligible for an expungement and providing

input on an expungement application to County Prosecutors' offices), have become deficient in their handling of expungement petitions and have permitted the expungement process to become so backlogged that there is now an approximate one year waiting time for an expungement application to work its way through the court system—despite the statute that requires the hearing date to be fixed no more than 60 days after the expungement petition is filed.

Any criminal practitioner throughout the State who handles expungement matters for clients will verify that the waiting time to have an expungement application processed and heard has become intolerable. Clients who have had their criminal cases dismissed are still having those matters show up on background checks, and other clients whose convictions are eligible to be expunged are being forced to delay pursuing available employment opportunities for fear that their conviction will show up on a routine background check when an expungement would prevent that from happening.

So why is this lengthy period of delay happening? The answer is three-fold. First, court staff and county prosecutors' officers will tell you that the State Police, which has primary responsibility for checking into the eligibility of individuals who have filed petitions for expungement, are not processing those expungements in a timely fashion. Complaints about lack of staffing in the unit of the State Police that handles these applications are routine. Without input from the State Police confirming that someone is eligible for an expungement, county prosecutors' officers are loathe to consent to the application.

Next, the court system has utterly failed in its obligation to schedule hearing dates no more than 60 days from the filing of the petition, and have failed to grant applications where no objection is filed in a timely fashion. Instead, the courts seem to have bypassed the obligation to process expungement applications according to the statutory framework and have delayed any action on the expungement applications until such time as the prosecutor either files an objection or files a notice that no objection is being filed. In essence, the failure of the State Police to ensure that sufficient personnel are processing expungement applications in a timely fashion has led to a situation where prosecutors cannot consent to the applications in an timely manner, and the court system has abdicated its responsibility to schedule hearing dates and instead has elected to delay hearings to await the decision of the prosecutor about whether to object or consent to the application.

Of course, the final reason affecting the backlog are the remnants of the COVID-19 pandemic. Clearly, all aspects of court operations were affected by the pandemic, and practitioners and the public recognize that the processing of expungement applications was not immune from those delays. Nevertheless, having to wait a year to have an expungement application processed is intolerable. Expungements are typically processed on the papers that are filed. What this means is that the expungement process is uniquely well-suited for remote working by those in the State Police responsible for checking into the suitability for an expungement, and for the court staff involved in processing and scheduling them. The overwhelming percentage of expungement applications are granted without objection. And, usually, no court appearance is required.

The leadership of the State Police and the Attorney General's Office should take urgent steps to make sure that sufficient staff are processing expungement applications and doing so in a timely fashion. In addition, the court system should follow the statutory time table envisioned

by the legislature when it enacted the expungement statutes, and consistently and firmly schedule hearing dates no later than 60 days after the filing of the petition. If no opposition is filed within that time frame, and the applicant appears to be eligible, the courts ought to grant the expungement without objection, even in those cases where the State Police have not completed their review. Applicants seeking expungement of their records should not be held hostage and be required to keep their lives in limbo.

Darren M. Gelber *is a shareholder and a member of the criminal and cannabis law teams at Wilentz, Goldman & Spitzer, P.A. He devotes his practice to criminal, white-collar, health care and regulatory litigation, defending clients in federal and state courts and before administrative agencies.*

NOT FOR REPRINT

Copyright © 2022 ALM Global, LLC. All Rights Reserved.