

ASSEMBLY BILL NO. 3881
(Second Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3881 (Second Reprint) with my recommendations for reconsideration.

This bill would require, for every requested State Police criminal history information background check, the State Bureau of Identification ("SBI") within the Division of the New Jersey State Police to verify whether the subject of a criminal history background check has been granted a judicial order of expungement that is awaiting processing at the time of the background check request. If such an unprocessed order is found to exist for an individual, the SBI would then be required to respond to the background check for that individual while omitting any records subject to the expungement order or any reference to either the record or the expungement order itself.

New Jersey's laws have been significantly revised in recent years to give hundreds of thousands of residents the opportunity to apply for an expungement. These reforms, which have exponentially expanded the eligibility, scope and volume of expungements, have opened up much-needed pathways to enable many more New Jerseyans to re-enter the community without having to face the collateral consequences that often operated to deprive fully rehabilitated individuals of opportunities for employment, housing, professional licensure, education, and other benefits that would otherwise have been available but for their criminal history.

The State Police were hard-pressed to keep up with the substantial increase in expungement orders granted by the courts, leading to a backlog of nearly 50,000 unprocessed orders and eventually a class action lawsuit initiated by the Office of the Public Defender. The lawsuit, filed in October 2023, sought to

compel the State Police to process expungement orders in a more timely fashion.

This bill was designed to address this problem legislatively, by providing an interim solution that would remove criminal history information from the record as ordered by the court during the time the court's expungement order was awaiting processing. Unfortunately, however, in proposing an interim solution as a work-around to the processing backlog, the legislation would have the unintended effect of substantially delaying the State Police's primary task of processing expungement orders issued by the court. To implement this bill, the State Police would have to address each criminal history information background check request manually, first screening each of the one million-plus background check requests received each year and, for the ones identified as having unprocessed expungement orders, manually removing from each record the information to be expunged before responding to the request. The disruption to the processing of expungement orders and the re-allocation of resources necessary to perform the tasks required by this bill would frustrate the very ends the bill seeks to achieve.

Since the introduction of the bill last year, and as a result of the diligent, concerted and coordinated efforts of the parties to the litigation, the State Police, the Public Defender, and the Attorney General, significant reforms have been implemented to the system that have dramatically reduced the backlog and processing times for the bulk of expungement orders received. Last week, the parties announced and released agreed-upon terms to resolve and settle the pending litigation. The Term Sheet Reflecting Settlement ("Term Sheet") delineates the proposed timeframes under which the State Police will resolve the backlog of expungement orders and process future expungement orders. The Term Sheet also

requires that the State Police launch and maintain an online portal where expungement applicants can review the status of the processing of their expungement orders. Expungement applicants can receive email updates for any alerts relating to status changes.

I applaud the proponents of this bill and their admirable desire to help petitioners for expungements move on with their lives without fear of a background check revealing a record that a court otherwise ordered to be expunged. I especially want to extend my gratitude to sponsor Assemblywoman Quijano, whose focus and advocacy on this issue underlines her unwavering commitment to fairness and better outcomes for all New Jerseyans. As a result of her efforts, we are all in a much better place.

However, the goals sought to be advanced through this legislation have largely been accomplished, obviating the need for the bill as currently formulated. Recognizing this, I am recommending revisions that would replace the requirements in the bill with language that would codify portions of the agreement. Specifically, my revisions would enshrine in statute the requirement that the State Police maintain an online portal. I am also recommending annual reporting by the State Police to ensure that policymakers and the public have a full understanding of the number of applications that been received each year and the time it took to process them. My recommended changes acknowledge the significant progress that has already been made in processing expungements and ensure continued accountability and compliance beyond the terms of the settlement agreement.

Therefore, I herewith return Assembly Bill No. 3881 (Second Reprint) and recommend that it be amended as follows:

Page 2, Title, Line 2:

Delete "amending P.L.1985,
c.69" and insert
"supplementing chapter 52 of
Title 2C of the New Jersey
Statutes"

Page 2, Section 1, Line 7:

Delete "Section 2 of P.L.1985, c.69 (C.53:1-20.6) is" and insert "a. The Division of State Police shall establish or continue to maintain, and update, as appropriate, an online portal, in the form of an Internet website, that, free of charge, allows a person who has been granted an order of expungement to ascertain the status of the electronic processing of that order by the State Bureau of Identification.

b. (1) The Division of State Police shall annually submit to the Governor and Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1) a report summarizing the number of expungement orders received year-to-date starting January 1 of the year being reported by expungement type, the number of expungement orders received each month by expungement type, the number of expungement orders processed year-to-date, and relevant processing timeframes.

(2) The report shall be based on the calendar year.

(3) The report shall be published on the official website of the Division of State Police in the Department of Law and Public Safety."

Page 2, Section 1, Lines 8-44:

Delete in their entirety

Page 3, Section 1, Lines 1-31:

Delete in their entirety

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate E. McDonnell

Chief Counsel to the Governor