SJC-13120

IN THE MATTER OF EXPUNGEMENT.

Suffolk. September 10, 2021. - January 31, 2022.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Criminal Records. Expungement. Practice, Criminal, Record, Standing. Statute, Construction.

Indictments found and returned in the Superior Court Department on September 16, 1985.

A petition for expungement, filed on November 22, 2019, was heard by Beverly J. Cannone, J., and a motion for clarification or reconsideration was also heard by her.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Hadler E. Charles for Commissioner of Probation.
The petitioner, pro se.

GEORGES, J. This case requires us to construe the relationship between the subsections in one part of the expungement statute, G. L. c. 276, § 100K. The crux of the parties' dispute is whether a judge ordering expungement under

this statute may skip the conditions enumerated in G. L. c. 276, § 100K (a), and expunge a record solely because doing so is in "the best interests of justice," pursuant to G. L. c. 276, § 100K (b).

We conclude that a judge ordering expungement under this statute must employ a two-part procedure. First, the judge must make findings based on clear and convincing evidence that the relevant criminal record was created because of one or more of the reasons listed in G. L. c. 276, § 100K (a). Second -- and only after making such findings -- a judge may consider whether expungement would be "in the best interests of justice," see G. L. c. 276, § 100K (b). Accordingly, the order of expungement at issue here must be vacated and set aside.

1. Background. In this section, we first set forth the details of the defendant's convictions and the events that transpired before he petitioned to have his criminal record expunged. We then describe the statutory scheme at some length, as knowledge of the intricacies of that scheme is essential to understanding the nature of the disagreement that arose after the defendant filed his petition. Finally, we discuss the postfiling proceedings and the Superior Court judge's order of expungement.

a. Convictions and sealing. The essential facts are undisputed. In 1986, the defendant pleaded guilty to one count

of assault with intent to commit rape and one count of robbery. He was sentenced to a term of twenty years of incarceration, suspended, and a concurrent two-year term of probation. The probationary period was completed without incident, and in 1988, the case was closed. In 2003, the defendant successfully moved in the Superior Court to have his criminal record sealed.[1] The following year, the Sex Offender Registry Board notified the defendant of his obligation to register as a level one sex offender, pursuant to G. L. c. 6, § 178K (2) (a). Pursuant to the sex offender registration scheme, sex offenders who are "required to register" must do so within five days of being sentenced, G. L. c. 6, § 178E, and those classified as level two or three offenders must reregister at least annually, see G. L. c. 6, § 178F.

In July of 2019, the defendant successfully moved in the Superior Court to be relieved of his obligation to register as a sex offender. In allowing the defendant's motion, the judge concluded that the defendant posed no risk of reoffending nor

[1] When a criminal record is sealed, it remains accessible to some members of law enforcement but is generally inaccessible to employers, landlords, and others. See, e.g., G. L. c. 276, § 100A. Expungement goes further, as it entails "the permanent erasure or destruction of a record so that the record is no longer accessible to, or maintained by, the court, any criminal justice agencies or any other state agency, municipal agency or county agency." See G. L. c. 276, § 100E.

any danger to the community. In November of 2019, the defendant filed a petition for expungement under G. L. c. 276, § 100K.

b. The expungement scheme. In 2018, the Legislature enacted an omnibus package of criminal justice reforms entitled, "An Act relative to criminal justice reform" (act).[2] St. 2018, c. 69. One of these reforms involved changes to the expungement of criminal records. Specifically, the act created two distinct pathways for the expungement of two different kinds of criminal records. These pathways often are referred to as "time-based expungement" and "reason-based expungement."

i. Time-based expungement. Broadly speaking, time-based expungement, as set forth in G. L. c. 276, §§ 100F-100J, is a pathway available to petitioners who were under the age of twenty-one at the time of the relevant offenses. Their offenses or alleged offenses must have been lower level, and at least three years (for a misdemeanor) or seven years (for a felony)

[2] The act was amended in 2020. See St. 2020, c. 253, "An Act relative to justice, equity and accountability in law enforcement in the Commonwealth." These amendments took effect after the Superior Court judge ordered the defendant's record expunged, and do not bear directly on this case. The differences in the wording of the relevant sections between the 2018 version and the 2020 version are not material for any of the provisions discussed here. Because this decision is to provide guidance for judges who will be making determinations on petitions for expungement in future cases, we use the language in the current version of the statute, rather than the version in effect when the defendant's petition was allowed. See St. 2018, c. 69, § 195 (effective Oct. 13, 2018).

must have elapsed since the time of the offenses and the successful completion of any sentences imposed. See G. L. c. 276, §§ 100I (a) (1)-(3).

A petitioner is eligible for time-based expungement if he or she is able to clear three different hurdles. First, the petitioner must fall into one of three categories; the petitioner must have (1) "not more than [two] records as an adjudicated delinquent or adjudicated youthful offender," G. L. c. 276, § 100F (a); or (2) "not more than [two] records of conviction," G. L. c. 276, § 100G (a), or (3) "not more than [two] records that do not include an adjudication as a delinquent, an adjudication as a youthful offender or a conviction," G. L. c. 276, § 100H (a).

A petitioner who meets this threshold requirement then must clear the hurdle imposed by G. L. c. 276, § 100I, which requires the Commissioner of Probation (commissioner) to certify that the record sought to be expunged is eligible for expungement, meaning that

> "(1) any offense resulting in the record or records that are the subject of the petition is not a criminal offense included in [§] 100J;
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> "(2) all offenses that are the subject of the petition to expunge the record or records occurred before the petitioner's twenty-first birthday;
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> "(3) all offenses that are the subject of the petition to expunge the record or records, including any period of incarceration, custody or probation, occurred not less than

> [seven] years before the date on which the petition was filed if the record or records that are the subject of the petition include a felony, and not less than [three] years before the date on which the petition was filed if the record or records that are the subject of the petition include a misdemeanor or misdemeanors;
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> "(4) other than motor vehicle offenses in which the penalty does not exceed a fine of [fifty dollars] and the record or records that are the subject of the petition to expunge, the petitioner does not have any other criminal court appearances, juvenile court appearances or dispositions on file with the commissioner; provided, however, multiple offenses arising out of the same incident shall be considered a single offense for the purposes of this section;
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> "(5) other than motor vehicle offenses in which the penalty does not exceed a fine of [fifty dollars], the petitioner does not have any criminal court appearances, juvenile court appearances or dispositions on file in any other state, United States possession or in a court of federal jurisdiction; and
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> "(6) the petition includes a certification by the petitioner that, to the petitioner's knowledge, the petitioner is not currently the subject of an active criminal investigation by any criminal justice agency.
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> "Any violation of [G. L. c. 209A, § 7,] or [G. L. c. 258E, § 9,] shall be treated as a felony for purposes of this section."

Finally, pursuant to G. L. c. 276, § 100I (a) (1), an otherwise eligible petitioner is ineligible for time-based expungement if the record sought to be expunged resulted from the disposition of an offense that falls into any of twenty categories of offenses enumerated in G. L. c. 276, § 100J. Those categories encompass any felony included in G. L. c. 265. See G. L. c. 276, § 100J (a) (18).

If a petitioner satisfies all three requirements, the judge may order the criminal record expunged. The judge, however, "shall have the discretion to grant or deny the petition based on what is in the best interests of justice." See G. L. c. 276, §§ 100F (d), 100G (d), 100H (c).

ii. Reason-based expungement. The second path to expungement, set forth in G. L. c. 276, § 100K, is known as reason-based expungement. The reason-based pathway provides:

> "(a) Notwithstanding the requirements of [§] 100I and [§] 100J, a court may order the expungement of a record created as a result of criminal court appearance, juvenile court appearance or dispositions if the court determines based on clear and convincing evidence that the record was created as a result of:
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> "(1) false identification of the petitioner or the unauthorized use or theft of the petitioner's identity;
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> "(2) an offense at the time of the creation of the record which at the time of expungement is no longer a crime, except in cases where the elements of the original criminal offense continue to be a crime under a different designation[;]
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> "(3) demonstrable errors by law enforcement;
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> "(4) demonstrable errors by civilian or expert witnesses;
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> "(5) demonstrable errors by court employees; or
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> "(6) demonstrable fraud perpetrated upon the court.
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> "(b) The court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice. . . . Upon an order of expungement, the court shall enter written findings of fact.

> "(c) The court shall forward an order for expungement pursuant to this section forthwith to the clerk of the court where the record was created, to the commissioner and to the commissioner of criminal justice information services appointed pursuant to [G. L. c. 6, § 167A]."

c. Defendant's petition for expungement. In November of 2019, the defendant petitioned to have his criminal record expunged. On the physical copy of his petition, the defendant checked the box for "Errors by law enforcement," invoking one of the reason-based grounds for expungement. See G. L. c. 276, § 100K (a) (3).

The following month, a Superior Court judge held a hearing on the defendant's petition. Present at the hearing were the defendant and an assistant district attorney. Initially, the assistant district attorney opposed the petition on the ground that G. L. c. 276, § 100K, "has narrowly prescribed parameters and I'd say those parameters have not been met in this case." The judge responded that G. L. c. 276, § 100K (b), appeared to include a "catchall" provision authorizing her to expunge the defendant's criminal record if doing so "would be in the best interest of justice." Ultimately, the assistant district attorney reversed course and agreed with the judge's interpretation; following the hearing, the judge issued an order allowing the petition for expungement.

On the form documenting her written findings, the judge indicated that she was ordering the record expunged pursuant to

G. L. c. 276, § 100K. She also, however, checked the box for expungement pursuant to G. L. c. 276, § 100F, a type of time-based expungement that the defendant had not invoked in his petition.[3] The judge then entered the following written findings:

> "After Hearing, the Court finds the following facts in support of the defendant's pro se motion to expunge the record in the above-referenced matter: the petitioner has led an exemplary life and for the past [thirty-four] years has had no further problems with the law; were it not for the fact that the record was made public, the petitioner would have been employed in the profession of his choosing; and the public availability of his record continues to cause great loss and undue pain and hardship to his family.
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> "After Hearing, the Court concludes it is in the interest of justice to expunge the petitioner's record and hereby order such expungement, effective this date."

As required by G. L. c. 276, § 100K (c), the judge forwarded the order of expungement to the commissioner; he responded by filing a motion for clarification or reconsideration of the order. Specifically, the commissioner requested that, if the defendant were seeking to expunge his record pursuant to G. L. c. 276, § 100F, the judge refer the petition to the commissioner, as required by the terms of the act. Alternatively, if the defendant sought expungement pursuant to G. L. c. 276, § 100K, the commissioner requested

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[3] As discussed infra, several aspects of the defendant's criminal record make him ineligible for this time-based expungement.

that the judge issue written findings explaining which of the factors set forth in G. L. c. 276, § 100K (a), had resulted in the creation of the defendant's criminal record. Central to the commissioner's motion was his assertion that the expungement statute does not authorize a judge to order expungement based solely on the "best interests of justice" provision in G. L. c. 276, § 100K (b).

At a hearing on the motion, the commissioner reiterated his argument that expungement of the defendant's record pursuant to G. L. c. 276, § 100K, required a determination of the existence of the factor that the defendant presented in his petition, "demonstrable errors by law enforcement." G. L. c. 276, § 100K (a) (3). The judge denied the motion, and the commissioner appealed to the Appeals Court. We transferred the matter to this court on our own motion.

2. Discussion. a. Standing. As an initial matter, the defendant challenges the commissioner's standing to bring this appeal. "A party has standing when it can allege an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred." Massachusetts Ass'n of Indep. Ins. Agents & Brokers v. Commissioner of Ins., 373 Mass. 290, 293 (1977). "Whether a plaintiff's injury falls within the so-called 'zone of interests' of a statute or regulatory scheme depends upon a number of factors," including

"the language of the statute in issue" and "the Legislature's intent and purpose in enacting the statute." Revere v. Massachusetts Gaming Comm'n, 476 Mass. 591, 607 (2017), quoting Enos v. Secretary of Envtl. Affairs, 432 Mass. 132, 135-136 (2000). Accordingly, the commissioner has standing to bring this appeal based on his responsibilities as set forth in this particular expungement scheme, and his role as record-keeper for criminal records in the Commonwealth. See Vaccaro v. Vaccaro, 425 Mass. 153, 153-154 & n.1 (1997) (commissioner was made party to appeal from order allowing expungement of temporary protective order due to "duties imposed on" commissioner to "maintain a Statewide system of records").

b. Standards of review. We review questions of statutory interpretation de novo. See People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280, 285-286 (2017); Tirado v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds, 472 Mass. 333, 336-337 (2015).

"A fundamental principle of statutory interpretation 'is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be

effectuated.'" Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749 (2006), quoting Hanlon v. Rollins, 286 Mass. 444, 447 (1934). We begin "with the language of the statute itself and 'presume, as we must, that the Legislature intended what the words of the statute say.'" Commonwealth v. Williamson, 462 Mass. 676, 679 (2012), quoting Commonwealth v. Young, 453 Mass. 707, 713 (2009). "When the meaning of any particular section or clause of a statute is questioned, it is proper, no doubt, to look into the other parts of the statute; otherwise the different sections of the same statute might be so construed as to be repugnant, and the intention of the [L]egislature might be defeated" (citation omitted). Leary v. Contributory Retirement Appeal Bd., 421 Mass. 344, 347 (1995).

c. Permissible bases for reason-based expungement. The language in dispute here is the first sentence of G. L. c. 276, § 100K (b), "The court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice." The meaning of this sentence turns on four words in the middle: "pursuant to this section." If that phrase applies only to G. L. c. 276, § 100K (b), then the allowance of the petition for expungement was within the judge's discretion, because the judge believed that expunging the defendant's criminal record was "in the best interests of

justice." If, however, "pursuant to this section" means "pursuant to all of G. L. c. 276, § 100K," then allowing the petition for expungement out of concern for "the best interests of justice" as set forth in G. L. c. 276, § 100K (b), without a finding under G. L. c. 276, § 100K (a), was error.

For two distinct but related reasons, we conclude that the Legislature intended the words "pursuant to this section" in G. L. c. 276, § 100K (b), to mean "pursuant to all of G. L. c. 276, § 100K." First, throughout the act, the Legislature used the words "section" and "subsection" to refer to different, specific types of provisions. Second, because G. L. c. 276, § 100K (b) and (c), each employ the phrase "expungement pursuant to this section," we can deduce the manner in which that phrase functions in G. L. c. 276, § 100K (b), by examining the way that it functions in G. L. c. 276, § 100K (c). See Casseus v. Eastern Bus Co., 478 Mass. 786, 795 (2018) ("[W]e . . . do not read statutory language in isolation, but, instead, examine [it] in the context of the . . . statute in its entirety" [quotation and citation omitted]).

i. Plain language. Turning first to the precise function of the word "section," we note that the Legislature used the words "section" and "subsection" differently throughout the expungement act. The Legislature chose to use "section" to refer to the parts of the act that are indicated by numbers and

uppercase letters (e.g., § 100G or § 100K). Conversely, the Legislature used the word "subsection" to refer to smaller, component parts of a section, which are indicated by lowercase letters within the overarching section (e.g., § 100K [b]).

On this point, G. L. c. 276, § 100G, part of the time-based expungement scheme, is instructive. The provision sets forth some of the procedures required for time-based expungement: "[u]pon receipt of a petition, the commissioner shall certify whether the petitioner is eligible for an expungement under sections 100I and 100J" (emphasis added). Other procedural portions of G. L. c. 276, § 100G, however, establish processes by which time-based expungement is to be carried out "pursuant to subsection (b)," see G. L. c. 276, § 100G (c), or "as provided in subsection (a)," see G. L. c. 276, § 100G (d) (emphases added).

Thus, had the Legislature intended that G. L. c. 276, § 100K (b), function as a standalone provision, it could have signaled that intention by authorizing expungement pursuant to that "subsection," just as it did in G. L. c. 276, § 100G. Because the Legislature chose not to do so, its decision to use the language "section" rather than "subsection" in this part of the act supports construing the phrase "pursuant to this section based on what is in the best interests of justice" to mean pursuant to the entirety of G. L. c. 276, § 100K, including the

substantive requirements of G. L. c. 276, § 100K (a), and the procedural requirements of G. L. c. 276, § 100K (c). See Commonwealth v. Wynton W., 459 Mass. 745, 751-752 (2011), quoting Green v. Board of Appeals of Provincetown, 404 Mass. 571, 573 (1989) ("[T]he same words in different parts of a statute enacted at the same time . . . should receive the same meaning").

Examination of the plain language of G. L. c. 276, § 100K (b) and (c), reveals that this construction is not only reasonable, but also necessary. Both provisions include the phrase "expungement pursuant to this section." General Laws c. 276, § 100K (b), begins "[t]he court shall have the discretion to order an expungement pursuant to this section based on what is in the best interests of justice," and G. L. c. 276, § 100K (c), begins "[t]he court shall forward an order for expungement pursuant to this section forthwith to the clerk of the court where the record was created."

With respect to G. L. c. 276, § 100K (c), therefore, the words "pursuant to this section" must mean "pursuant to the entirety of G. L. c. 276, § 100K." To construe the language otherwise essentially would render the provision a nullity, as it would be floating procedural guidance (about the handling of an order of expungement) with no substance attached (as to how such an order could issue). "We do not 'interpret a statute so

as to render it or any portion of it meaningless'" (citation omitted). Volin v. Board of Pub. Accountancy, 422 Mass. 175, 179 (1996). Because the words "pursuant to this section" in G. L. c. 276, § 100K (c), must mean "pursuant to the entirety of G. L. c. 276, § 100K," we also must construe the identical language in G. L. c. 276, § 100K (b), in the same way, i.e., pursuant to each part of G. L. c. 276, § 100K, and not only to the single provision of G. L. c. 276, § 100K (b).

Put differently, a decision to allow expungement must be reached by a determination of the applicable factor enumerated in G. L. c. 276, § 100K (a), in consideration of the "best interests of justice," as provided in G. L. c. 276, § 100K (b), and in accordance with the procedural requirements of G. L. c. 276, § 100K (c).

ii. Statutory structure. This conclusion is bolstered when the requirements of the time-based and reason-based pathways to expungement are harmonized with each other. See DiFiore v. American Airlines, Inc., 454 Mass. 486, 491 (2009) ("Where possible, we construe the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction"). If determination of an applicable factor under G. L. c. 276, § 100K (a), were not construed as a necessary step in reason-based expungement, the elaborate time-based expungement scheme

could be rendered effectively irrelevant. See Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 513-514 (1975) ("where two or more statutes relate to the same subject matter, they should be construed together so as to constitute a harmonious whole consistent with the legislative purpose").

The circumstances of the defendant's convictions exemplify the incoherent results that would arise were G. L. c. 276, § 100K (a)-(c), construed as independent parts. Under the plain statutory language, the defendant is ineligible for time-based expungement, for a number of reasons. He was older than twenty-one at the time of the relevant offenses, see G. L. c. 276, § 100I (a) (2), and was convicted of an offense that falls within at least two of the categories of offenses enumerated in G. L. c. 276, § 100J, which are excluded from those eligible for time-based expungement, see G. L. c. 276, § 100J (a) (6), (8) (petitioner is ineligible for time-based expungement if criminal record resulted from "any sex offense" or "any sexually violent offense," as defined in G. L. c. 6, § 178C).

Therefore, had the defendant petitioned for time-based expungement, his petition would have had to be denied. See G. L. c. 276, § 100G (a) ("If the petitioner is not eligible for an expungement under [§§] 100I and 100J the commissioner shall, within [sixty] days of the request, deny the request in writing"); G. L. c. 276, § 100G (d) ("The court shall deny any

petition that does not meet the requirements of [§§] 100I and 100J").

Another way to frame the question before us, then, is to ask whether the Legislature intended that someone like the defendant, who is ineligible for time-based expungement, nonetheless could be eligible for expungement under the reason-based pathway, even if that person's criminal record was not created due to one of the factors enumerated in G. L. c. 276, § 100K (a). Because we "endeavor to interpret a statute to give effect 'to all its provisions, so that no part will be inoperative or superfluous,'" we conclude that the answer is no. See Connors v. Annino, 460 Mass. 790, 796 (2011), quoting Wheatley v. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 601 (2010), S.C., 465 Mass. 297 (2013). See also Tallage Lincoln, LLC v. Williams, 485 Mass. 449, 456 (2020) (rejecting statutory interpretation that "would render superfluous [a] distinction specifically made by the Legislature").

Affirming the order of expungement in this case would be inconsistent with this principle because petitioners whose criminal records made them ineligible for time-based expungement could avoid those requirements simply by petitioning for reason-based expungement, even when those records were not created as a result of any of the specific factors enumerated in G. L.

c. 276, § 100K (a). The Legislature could not have intended this result when it crafted the elaborate time-based scheme.

iii. Development of 2018 act. The broader context surrounding expungement in Massachusetts also is instructive with respect to the Legislature's intent. See Worcester v. College Hill Props., LLC, 465 Mass. 134, 139 (2013), quoting 81 Spooner Rd. LLC v. Brookline, 452 Mass. 109, 115 (2008) (in construing statute, we look to its "development, its progression through the Legislature, prior legislation on the same subject, and the history of the times").

In the years preceding the 2018 reforms, this court had delineated the outer limits of the expungement powers then granted to courts by the Legislature. See Commonwealth v. Moe, 463 Mass. 370, 372-376 (2012), cert. denied, 568 U.S. 1231 (2013); Commonwealth v. Boe, 456 Mass. 337, 342-349 (2010). Boe, supra at 338, for example, involved a case of mistaken identity. There, a woman petitioned for the expungement of a criminal record that was created after police "erroneously assumed" that she had threatened someone following a car accident. See id. at 339. The origin of the mistake was that the actual perpetrator, a man, had been driving Boe's car at the time of the incident. Id. at 338-339. Despite Boe's utter lack of involvement in (or presence at the site of) the altercation, we concluded that expungement was not possible because the

Legislature had "chosen not to provide for such a remedy," and instead had provided for the sealing of records as the only option in such situations. See id. at 348. Two years later, in Moe, 463 Mass. at 371-372, 375, a defendant sought expungement of a criminal record created solely because another man had fabricated a statement to police that the defendant had assaulted him with a gun. When the defendant sought expungement of his criminal record, this court followed the reasoning in Boe to the same conclusion. See id. at 375.

By the enactment of G. L. c. 276, § 100K (a), the Legislature provided courts precisely the expungement authority that they lacked when Boe and Moe were decided. See G. L. c. 276, § 100K (a) (1) (authorizing expungement of records created by "false identification of the petitioner"); G. L. c. 276, § 100K (a) (6) (authorizing expungement of records created by "demonstrable fraud perpetrated upon the court"). In light of this, it would be a mistake to read the factors set forth in G. L. c. 276, § 100K (a), as merely ancillary parts of reason-based expungement, rather than as forming the very core of the reason-based scheme.

We recognize that a broad goal of the Legislature and the executive branch in adopting the act was to make the Commonwealth's criminal justice system more equitable, and that those efforts included expanding access to expungement. See,

e.g., Criminal Justice Overhaul Expected to Reach Baker Wednesday, State House News Service, Apr. 4, 2018 (noting statement from chair of Senate Judiciary Committee that act was meant to reform "[a] sprawling bureaucracy that ensnares people but from which they cannot escape"); State House News Service (Hous. Sess.), Dec. 4, 2018 (noting floor statement from House member that adopting act would mean that "we can finally start living up to our end of the bargain and give every ex-offender a real ability to become a rehabilitated and productive member of society"). At the same time, "this purpose should not be used as a means of disregarding the considered judgment of the Legislature" in crafting the intricate expungement scheme it ultimately adopted. See Commonwealth v. Newberry, 483 Mass. 186, 196 (2019), quoting Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 436 (1983).

Indeed, during the 2017 to 2018 legislative session prior to adoption of the act, legislators filed at least eighteen different proposed expungement bills, some of which would have significantly expanded the possibilities for expungement. Ultimately, in adopting the act, the Legislature rejected many of these proposed expansions in favor of a narrower expungement scheme.[4] See Quirion, Sealing and Expungement After

[4] See, e.g., 2017 House Doc. No. 2359 (adding lack of probable cause as reason-based factor); 2017 House Doc. No. 2261

Massachusetts Criminal Justice Reform, 100 Mass. L. Rev. 100, 106 (2019). Therefore, over the course of the drafting process, the Legislature narrowed, rather than broadened, the availability of expungement.[5] As discussed, however, to interpret G. L. c. 276, § 100K (b), as a standalone provision, as the judge did here, would dramatically expand the scope of the current expungement statute in ways that the Legislature apparently rejected when it chose not to adopt any of the other proposed bills. The history of the enactment of the 2018

(broadening reason-based factors and guaranteeing right to counsel at expungement hearings); 2017 House Doc. No. 760 (imposing, in time-based expungement, no eligibility limits based on type or seriousness of offense); 2017 House Doc. No. 756 (mandating expungement five years after sealing of certain juvenile cases, with limited restrictions on sealing in those instances); 2017 Senate Doc. No. 871 (mandating expungement of records for those pardoned before legislation would take effect); 2017 Senate Doc. No. 845 (mandating expungement of record of anyone "falsely accused"); 2017 Senate Doc. No. 758 (authorizing expungement following successful completion of requirements imposed by either drug court or terms of petitioner's probation, and authorizing expungement of all records stemming from charge of possession of class D substance); 2017 Senate Doc. No. 757 (proposing broader language for enumerated reason-based factors).

[5] Although not applicable to this defendant, we also note that, with the 2020 amendments, the Legislature further narrowed the availability of expungement. Specifically, the 2020 amendments modified each of the threshold requirements for time-based expungement to exclude would-be petitioners who have "more than [two]" criminal records. See, e.g., St. 2020, c. 253, § 96 (effective Dec. 31, 2020). Prior to this amendment, the time-based threshold requirements featured no restrictions based on the number of convictions. See St. 2018, c. 69, § 195 (effective Oct. 13, 2018).

expungement scheme further indicates that such an expansion was not the Legislature's intent.

3. Conclusion. The order allowing the defendant's petition for expungement is vacated and set aside, and the matter is remanded to the Superior Court for further proceedings consistent with this opinion.

So ordered.