

**To: New Jersey Law Revision Commission**  
**From: Meyarah Jabarin, Legislative Intern<sup>1</sup>**  
**Samuel M. Silver, Deputy Director**  
**Re: Expungement – Examination of N.J.S. 2C:52-5.3 to determine whether the “Clean Slate” includes violations of local ordinances**  
**Date: November 06, 2023**

## MEMORANDUM

### Project Summary

An expungement is the “extraction, sealing, impounding, or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system.”<sup>2</sup> In New Jersey a petitioner may seek an expungement may be sought for a panoply of offenses and records retained by the State.<sup>3</sup>

The general purpose of New Jersey’s expungement statute is to “eliminate the collateral consequences of imposed upon otherwise law-abiding citizens who had . . . a brush with the criminal justice system.”<sup>4</sup> Since 1979, the Legislature has maintained that “[t]his chapter shall be construed with the primary objective of providing relief to the one-time offender who has led a life of rectitude and disassociated himself with unlawful activity....”<sup>5</sup> As remedial legislation, courts have liberally interpreted these statutes.<sup>6</sup>

In *State v. R.O.-S.*, two petitioners, each of whom had multiple convictions, including violations of local ordinances sought expungements under the State’s newly enacted “clean slate” statute.<sup>7</sup> The court considered, as a matter of first impression “whether the recently enacted statute, N.J.S.A. 2C:52-5.3, includes violations of local ordinances.”<sup>8</sup>

### Statute Considered

#### **N.J.S. 2C:52-5.3. “Clean slate” expungement by petition; terms**

“Clean slate” expungement by petition. a. A person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52

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<sup>1</sup> Jabarin Meyarah is a Legislative Intern who began working with the N.J. Law Revision Comm’n during the Fall of 2023. Ms. Meyarah is a Senior at the N.J. Institute of Tech. and is expected to graduate in the Spring of 2024.

<sup>2</sup> N.J. STAT. ANN. § 2C:52-1(a) (West 2023).

<sup>3</sup> N.J. STAT. ANN. § 2C:52-2 (indictable offenses); N.J. STAT. ANN. § 2C:52-3 (disorderly persons or petty disorderly persons offenses); N.J. STAT. ANN. § 2C:52-4 (ordinances); N.J. STAT. ANN. § 2C:52-4.1 (juvenile adjudications and charges); N.J. STAT. ANN. § 2C:52-6 (arrest or charge not resulting in conviction); and N.J. STAT. ANN. § 2C:52-6.1 (cannabis related offenses);

<sup>4</sup> *State v. R. O.-S.*, 474 N.J. Super. 87, 95 (Law. Div. 2021) (citing *In re Kollman*, 210 N.J. 557, 568 (2012)).

<sup>5</sup> N.J. STAT. ANN. § 2C:52-32. L.1979, c. 178, § 139, eff. Sept. 1, 1979.

<sup>6</sup> *State v. R. O.-S.*, 474 N.J. Super. 87, 95 (Law. Div. 2021) (citing *Maglies v. Est. of Guy*, 193 N.J. 108, 123 (2007)).

<sup>7</sup> *Id.* at 89.

<sup>8</sup> *Id.*

of Title 2C of the New Jersey Statutes or other section of law, may present an expungement application to the Superior Court pursuant to this section if the person has been convicted of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses under the laws of this State, unless the person has a conviction for a crime which is not subject to expungement pursuant to subsection b. or c. of N.J.S.2C:52-2. The person may present an application pursuant to this section regardless of whether the person would otherwise be ineligible pursuant to subsection e. of N.J.S.2C:52-14 for having had a previous criminal conviction expunged, or due to having been granted an expungement pursuant to this or any other provision of law.

b. The person, if eligible, may present the expungement application after the expiration of a period of ten years from the date of the person's most recent conviction, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. The term “court-ordered financial assessment” as used herein and throughout this section means and includes any fine, fee, penalty, restitution, and other form of financial assessment imposed by the court as part of the sentence for the conviction or convictions that are the subject of the application, for which payment of restitution takes precedence in accordance with chapter 46 of Title 2C of the New Jersey Statutes. The person shall submit the expungement application to the Superior Court in the county in which the most recent conviction for a crime or offense was adjudged, which includes a duly verified petition as provided in N.J.S.2C:52-7 praying that all the person's convictions, and all records and information pertaining thereto, be expunged. The petition appended to an application shall comply with the requirements set forth in N.J.S.2C:52-1 et seq.

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### **Background**

In 2021, two petitioners, identified as C.C. and R.O.-S filed applications for expungement of their complete criminal histories pursuant to the “clean slate” statute of New Jersey’s expungement law.<sup>9</sup> Each of the petitioners sought to expunge their indictable convictions as well as borough ordinances that had originally be charged as a violation of the Code of Criminal Justice.<sup>10</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (noting that C.C.’s record included twelve indictable convictions, eleven disorderly persons convictions, one acquittal and two borough ordinances one of which had been originally charged as Simple Assault in violation of N.J.S. 2C:12-1(a)(1); and R.O. -S.’s criminal record included two indicatable convictions, four disorderly persons convictions and one borough ordinance conviction for Loitering which was originally charged as Theft, a violation of N.J.S. 2C:20-3).

In both cases, the State initially raised objections to the expungement of ordinance violations “citing ineligibility under N.J.S. 2C:52-2[–:52-4].”<sup>11</sup> After reconsidering the petitioner’s applications under the “clean slate” statute, the state withdrew its objection while maintaining an objection to the expungement of borough ordinance violations.”<sup>12</sup> The State contended that these violations were not eligible for expungement under the “clean slate” statute.<sup>13</sup> Since each petitioner raised the same issue, the court consolidated these matters.<sup>14</sup>

In their briefs, each petitioner conceded that N.J.S. 2C:52-5.3 does not provide for the expungement of local ordinance convictions.<sup>15</sup> The petitioners, however, argued what they perceived to be an exception to the rule.<sup>16</sup> They argued that because the ordinance violation originated as a criminal offense, “both the plain language and legislative intent of the statute call[ed] for the expungement of that conviction.”<sup>17</sup>

Oral argument was heard on November 10, 2021.<sup>18</sup> The Court issued its decision on November 19, 2021.<sup>19</sup>

### Legal Analysis

The general purpose of New Jersey’s expungement statutes is to “eliminate the collateral consequences imposed upon otherwise law-abiding citizens who had a ... brush with the criminal justice system.”<sup>20</sup> Given the remedial nature of the expungement statutes, courts have interpreted them liberally.<sup>21</sup>

Consistent with the purpose of previously enacted expungement statutes, the “clean slate” statute was established with the intent of offering petitioners a “broad form of expungement relief.”<sup>22</sup> The statute allows individuals who previously expunged a criminal conviction to file for “clean slate” expungement relief.<sup>23</sup> Historically, the expungement of a prior conviction would have rendered a person ineligible for expungement pursuant to N.J.S. 2C:52-14.

The Court in *R.O.-S.* deemed the “general intent and purpose of the expungement statute” to be significant when it considered whether N.J.S. 2C:52-5.3 included ordinance violations that had previously been downgraded from indicatable offenses.<sup>24</sup> The Court noted that the charges

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 90. *See* n.3 (limiting the issue to the expungement of local ordinances arising from Title 2C violations).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 87.

<sup>20</sup> *Id.* at 95. (quoting *In re Kollman*, 210 N.J. 557, 568 (2012)).

<sup>21</sup> *Id.* at 95. (quoting *Maglies v. Est. of Guy*, 193 N.J. 108, 123 (2007)).

<sup>22</sup> *Id.* at 95 (quoting the legislative statement in S.B. 4154 218th Leg., Second Annual Sess. (N.J. 2019)).

<sup>23</sup> N.J. STAT. ANN. § 2C:52-5.3.

<sup>24</sup> *State v. R. O.-S.*, 474 N.J. Super. at 95.

faced by each petitioner are typically accompanied by “police and arrest reports, fingerprint cards, ‘mug shots,’ complaint warrants or summonses and most importantly, they are included on an individual’s criminal case history or “RAP” sheet.”<sup>25</sup>

The *R.O.-S* Court noted the inequity of excluding municipal court ordinances from the “clean slate” statute. The Court opined that “absent an expungement of the local ordinance that resulted from the Title 2C offense C.C. is left with an arrest record for Simple Assault and R.O.-S. is left with a criminal record for Theft.”<sup>26</sup> The court reasoned that “[t]his persistent criminal history is not what the ‘clean slate’ statute intended... and [would] undermine the very purpose and intent of N.J.S.A. 2C:52-5.3.”<sup>27</sup>

The Court granted the Petitioners’ motion for the expungement of their criminal histories, including the violation of any local ordinance that originated from a Title 2C violation finding that such a result was consistent with the intent of the Legislature.<sup>28</sup>

### **Pending Bills**

There are not any bills pending that seek to amend the language of N.J.S. 2C:52-5.3 to clarify whether the “clean slate” statute includes the expungement of local ordinance violations.

### **Conclusion**

Staff seeks authorization to conduct additional research and outreach to determine the viability of modifying N.J.S. 2C:52-5.3 to clarify that the statute applies to the expungement of local ordinance violations.

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<sup>25</sup> *Id.* at 96.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*