



## NEW JERSEY LAW REVISION COMMISSION

### **Draft Tentative Report Regarding Expungement – Inclusion of Local Ordinances in the “Clean Slate” Statute – N.J.S. 2C:52-5.3**

**December 11, 2023**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **February 19, 2024**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

Samuel M. Silver, Deputy Director  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [sms@njlrc.org](mailto:sms@njlrc.org)  
Web site: <http://www.njlrc.org>

## Project Summary<sup>1</sup>

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 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 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>

The Commission recommends modification of N.J.S. 2C:52-5.3 to include a reference to municipal ordinance violations.

## 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 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

---

<sup>1</sup> Preliminary work on this subject was performed by Meyarah Jabarin, who worked with the N.J. Law Revision Comm’n as a Legislative Intern during the Fall semester of 2023. Ms. Jabarin 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. at 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.* See *In re Expungement of K.M.G.*, No. A-0363-22, 2023 WL 7374818 (N.J. Super. Ct. App. Div. Nov. 8, 2023) (finding, as a matter of first impression, that the “clean slate” statute, “which permits expungement of a New Jersey criminal record if ten years have passed “from the date of the person’s most recent conviction, applies to a conviction from another state.”).

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.

\* \* \* \*

### **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” provision of New Jersey’s expungement law.<sup>9</sup> Each of the petitioners sought to expunge their indictable convictions as well as violations of borough ordinances that had originally be charged as a violation of the Code of Criminal Justice.<sup>10</sup>

In both cases, the State initially raised objections to the expungement requests citing “ineligibility under N.J.S.A. 2C:52-2 and N.J.S.A. 2C:52-4.”<sup>11</sup> After reconsidering the petitioners’ applications under the “clean slate” statute, the State withdrew its objections to the requests in their entirety, while maintaining an objection to the expungement of borough ordinance violations.<sup>12</sup> The State contended that the ordinance violations were not eligible for expungement under the “clean slate” statute.<sup>13</sup> Since each petitioner raised the same issue, the court consolidated the 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 argued, however, 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>16</sup>

---

<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).

<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.*

## 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>17</sup> Given the remedial nature of the expungement statutes, courts have interpreted them liberally.<sup>18</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>19</sup> The statute allows individuals who previously expunged a criminal conviction to file for “clean slate” expungement relief.<sup>20</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>21</sup> The Court noted that the charges 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>22</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>23</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>24</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>25</sup>

## Pending Bills

There are no 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.

---

<sup>17</sup> *Id.* at 95. (quoting *In re Kollman*, 210 N.J. 557, 568 (2012)).

<sup>18</sup> *Id.* at 95. (quoting *Maglies v. Est. of Guy*, 193 N.J. 108, 123 (2007)).

<sup>19</sup> *Id.* at 95 (quoting the legislative statement in S.B. 4154 218th Leg., Second Annual Sess. (N.J. 2019)).

<sup>20</sup> N.J. STAT. ANN. § 2C:52-5.3.

<sup>21</sup> *State v. R. O.-S.*, 474 N.J. Super. at 95.

<sup>22</sup> *Id.* at 96.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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

## **Conclusion**

The Commission recommends the modification of N.J.S. 2C:52-5.3 to clarify that the statute applies to the expungement of local ordinance violations.

## Appendix

The proposed modifications to N.J.S. 2C:52-5.3 are shown with underlining for inserted language and ~~striketrough~~ for deletions.

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

a. (1) Unless a 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. A the person, who is not otherwise eligible to present an expungement application pursuant to any other section of chapter 52 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:

(A) crimes;

(B) ~~one or more~~ disorderly persons or petty disorderly persons offenses;

(C) municipal ordinances of any government entity of this State<sup>26</sup>; or

(D) 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.~~

(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.

\* \* \* \*

### Comments

The proposed statutory modification employs contemporary drafting techniques to improve readability and accessibility. Notably, subsection a. has been bifurcated into two subsections, with the exception now positioned at the beginning of the subsection. The crimes eligible for expungement are delineated in subsections (a)(1)(A)-(D) and align with the rationale of *State v. R. O.-S.*, which now extends to the inclusion of municipal ordinances from any government entity within the state. Subsection (a)(2) remains unchanged with no substantive alterations.

---

<sup>26</sup> See N.J. STAT. ANN. § 2C:52-4 (utilizing the language “municipal ordinance of any governmental entity of this State” when referring to municipal violations eligible for expungement).