

To: New Jersey Law Revision Commission
From: Whitney G. Schlimbach, Deputy Director
Re: “Clean Slate” Statute (N.J.S.A. 2C:52-5.3) As Applied to Out-of-State Convictions
Date: October 6, 2025

MEMORANDUM

Project Summary

In 2019, New Jersey enacted N.J.S.A. 2C:52-5.3, referred to as the “clean slate” statute, which expanded expungement eligibility beyond what was contained in New Jersey’s previous expungement statutes.¹ The statute allows an expungement application to be filed “after the expiration of a period of ten years from the date of the person’s most recent conviction.”²

In *In re K.M.G.*, the Appellate Division addressed, as a “matter of first impression,” whether the “most recent conviction” language includes “a conviction from another state.”³ Reversing the trial court, which found, based on the statute’s plain language, that out-of-state convictions were excluded from the ten-year waiting period, the Appellate Division concluded that interpretation contradicted the “general purpose of the expungement statutes, [as well as] . . . the apparent design of the ‘clean slate’ statute as an alternative to ordinary expungement.”⁴

Relying on the “clean slate” statute’s legislative history, as well as New Jersey decisions interpreting similar language in other expungement statutes, the Appellate Division held that the requirement in N.J.S.A. 2C:52-5.3 that an application must be brought ten years after the petitioner’s “most recent conviction,” includes out-of-state convictions.⁵

Statute Considered

N.J.S. 2C:52-5.3 provides, in relevant part:

“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 . . .

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. . . [t]he person shall submit the expungement application to the Superior Court

¹ N.J. STAT. ANN. § 2C:52-5.3 (West 2025).

² N.J. STAT. ANN. § 2C:52-5.3(b).

³ *In re K.M.G.*, 477 N.J. Super. 167, 169 (App. Div. 2023).

⁴ *Id.* at 178-79.

⁵ *Id.* at 169-70.

in the county in which the person resides or a county in which one or more of the person's convictions were 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.⁶

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Background

In *K.M.G.*, the petitioner was a Virginia resident who sought expungement of a 1988 arrest for forgery and a 1991 conviction for third-degree conspiracy to commit burglary and fourth-degree theft, all of which occurred in New Jersey.⁷ Petitioner filed her application in 2021, and the State objected, asserting that she “failed to include an ‘out-of-state arrest and/or charge’ of unknown disposition.”⁸

In 2022, the petitioner filed an amended petition setting forth the circumstances of a 2017 conviction “to a Class 1 misdemeanor ‘Concealed Weapon’ charge” in Virginia.⁹ She pled guilty after being arrested for “Attempt to Purchase a Firearm Without a Permit” and “False History on Criminal History Consent Form.”¹⁰ The charges resulted from her statement on a firearms application that she had not been convicted of a felony, believing that her 1991 New Jersey conviction “had been automatically expunged.”¹¹

The trial court granted petitioner's application for expungement, finding that “the Virginia conviction did not constitute a ‘most recent conviction’ . . . because it was an out-of-state conviction.”¹² The court “relied on the presumption that a word or phrase is used in the same sense throughout [a] statute.”¹³ Therefore, because the other use of the phrase “most recent conviction,” relating to the statute's venue provision, necessarily excludes out-of-state convictions, the court concluded that the ten-year waiting period provision also did not include out-of-state convictions.¹⁴

In support of this interpretation, the court pointed out that the statute permits the ten-year waiting period to begin on “the date on which the petitioner made payment of any ‘court-ordered financial assessment,’” which are “limited to penalties related to New Jersey convictions.”¹⁵ In addition, the court noted that another use of the term “convictions” in the statute clearly includes

⁶ N.J. STAT. ANN. § 2C:52-5.3 (emphasis added).

⁷ *K.M.G.*, 477 N.J. Super at 170.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 170-71.

¹² *Id.* at 172.

¹³ *Id.*

¹⁴ *Id.* (“the second usage necessarily refers to a New Jersey conviction where it states: ‘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 . . . ’ [and t]he court determined that a petitioner could not file for a ‘clean slate’ expungement in another jurisdiction, so the phrase ‘most recent conviction’ . . . in that sentence must be referring to a New Jersey conviction”).

¹⁵ *Id.*

only New Jersey convictions,¹⁶ and finally, unlike in other expungement statutes, the Legislature did not include language specifying that “out-of-state convictions . . . defin[e] eligibility” for expungement.¹⁷

Analysis

Although the State did not dispute the trial court’s interpretation of the plain language of N.J.S.A. 2C:52-5.3 on appeal, the Appellate Division expressed “disagreement with the [conclusion] . . . that based on a plain meaning interpretation of the ‘clean slate’ statute, ‘conviction’ in the phrase ‘most recent conviction’ is limited to New Jersey convictions.”¹⁸

The Appellate Division began by noting that the “clean slate” statute applies to “disorderly and petty disorderly persons offenses” as well as “crimes,” and these terms, as used in New Jersey statutes, “ordinarily include out-of-state offenses.”¹⁹ The Court indicated that interpreting the two instances of the phrase “most recent convictions” in N.J.S.A. 2C:52-5.3 differently “at most, . . . creates an inconsistency.”²⁰ However, the Court concluded that, “arguably there is no inconsistency,” because the term “conviction” in the waiting period provision is used in its common sense to include New Jersey *and* out-of-state convictions, while “in the statute’s venue provision [the term] is impliedly qualified to mean ‘New Jersey conviction’” only.²¹

The Appellate Division further found that the trial court’s interpretation of the statutory language did not align with the purpose and legislative history of the “clean slate” statute.²² The Court explained that “[t]he trial court’s reading of the statute failed to consider the Legislature’s mandate” that the goal of the expungement statutes is to “provid[e] relief to the reformed offender.”²³ Interpreting the waiting period provision to exclude out-of-state convictions “would apply equally and give relief to a petitioner with a lengthy record of out-of-state convictions in the ten years preceding an expungement petition.”²⁴ Reading the “clean slate” statute “to permit the expungement of an unlimited number of convictions of a person who has continued to violate the law is plainly contrary to” the Legislature’s intent in enacting the statute.²⁵

Furthermore, the Court found “nothing in the history of the ‘clean slate’ statute’s enactment” supporting the trial court’s understanding of the waiting period provision.²⁶ The Court

¹⁶ *Id.* at 172-73 (“‘convictions; in the phrase ‘a duly verified petition as provided in N.J.S.A. 2C:52-7 praying that all the person’s convictions ... be expunged,’ . . . ‘must be limited to New Jersey convictions’”).

¹⁷ *Id.* at 173.

¹⁸ *Id.* at 176 (“[t]he State essentially accepts the trial court’s reading as to the plain meaning of the statute . . . but argues that it is not the best indicator of the Legislature’s intent”).

¹⁹ *Id.* at 176-77.

²⁰ *Id.* at 177.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 178.

²⁵ *Id.*

²⁶ *Id.* at 182.

cited to various statements released at the time, including “[t]he Governor’s Office’s press release” which characterized the statute as intended to allow expungement “for those ‘who have not committed an offense in ten years.’”²⁷ Additional statements from legislators, including the bill’s sponsor, indicated that the statute was intended “for ‘former offenders’” and “would ‘bring us a step closer to social equity and social justice for offenders who have not committed a law violation in years.’”²⁸

Finally, the Appellate Division discussed decisions by New Jersey courts “fac[ing] a similar dilemma when interpreting prior iterations of the expungement statutes to avoid an absurd result.”²⁹

In *State v. Josselyn*, the court addressed statutory language permitting an expungement petition “[i]n all cases wherein a criminal conviction has been entered against any person, and no subsequent conviction has been entered against such person.”³⁰ The *Josselyn* Court held that the language “no subsequent conviction included out-of-state convictions,” finding that permitting expungement of a New Jersey conviction despite a subsequent out-of-state conviction, was “an ‘absurd’ result that ran counter to the statute’s purpose to give relief to the reformed.”³¹

The decision in *State v. Ochoa* involved statutory language that allowed expungement when a petitioner “has not been convicted of any prior or subsequent crime, whether within the State or any other jurisdiction, or of another three disorderly persons or petty disorderly persons offenses.”³² The *Ochoa* petitioner argued that the placement of the phrase “whether within this State or any other jurisdiction” meant that it should only apply to “any prior or subsequent crime,” and not disorderly persons offenses.³³ The *Ochoa* Court “declined ‘to construe this omission as an affirmative expression of a legislative intent that convictions of disorderly persons and petty disorderly persons in other jurisdictions should be disregarded.’”³⁴

The *K.M.G.* Court drew a parallel between the statutory language in *Ochoa* and the “clean slate” statute language, neither of which “specif[ied] that the conviction. . . includes out-of-state convictions,” or “that such offenses must have been committed in New Jersey.”³⁵ The Court found that, in both cases, “there . . . is a strong, if not conclusive, textual argument that the disputed

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 179.

³⁰ *Id.* at 179-80 (citing *State v. Josselyn*, 148 N.J. Super. 538, 539-40 (Law Div. 1977) (quoting N.J. STAT. ANN. § 2A:164-28 (1977), repealed by L.1978, c. 95, §2C:98-2, eff. Sept. 1, 1979)).

³¹ *Id.* at 180.

³² *Id.* (citing *State v. Ochoa*, 314 N.J. Super. 168, 170 (App. Div. 1998) (quoting N.J. STAT. ANN. § 2C:52-3 (1981), amended L.2017, c. 244, § 2, eff. Oct. 1, 2018)).

³³ *Id.* at 181.

³⁴ *Id.* (“The current version of the statute now makes clear that disorderly persons convictions ‘whether within this State or any other jurisdiction’ are counted in determining eligibility.”).

³⁵ *Id.*

language nevertheless excludes out-of-state convictions,” in addition to a “clear directive that the expungement statutes be construed to give relief to the reformed.”³⁶

Pending Legislation

There are two pending bills that address N.J.S.A. 2C:52-5.3, but neither bill proposes changes that impact or clarify the “most recent convictions” language in the statute.³⁷

Conclusion

In light of the holding in *K.M.G.*, Staff requests authorization to conduct further research and outreach to determine whether N.J.S.A. 2C:52-5.3 would benefit from a modification clarifying that the phrase “most recent convictions” in the ten-year waiting period provision includes out-of-state convictions.

³⁶ *Id.* at 181-82.

³⁷ A.B. 4749, 221st Leg., 2024 Sess. (Sept. 19, 2024) (“[m]akes certain procedural and substantive reforms to expungement statutes to reduce filing burdens and expand eligibility” namely adding juvenile adjudications to the statute and reducing the waiting period to seven years); S.B. 3846, 221st Leg., 2024 Sess. (Oct. 28, 2024) (“[m]akes certain amendments to expungement statutes to reduce filing burdens and expand eligibility” including adding juvenile adjudications and reducing the waiting period to seven years).