

To: New Jersey Law Review Commission
From: Samuel M. Silver, Dep. Dir.
Zahirah Sabir, Pro Bono Volunteer¹
Re: Expungement Statute - Meaning of “Closely Related Circumstances” in N.J.S. 2C:52-2 (Matter of C.P.M., 461 N.J. Super. 573, 577 (App. Div. 2019), cert. denied 241 N.J. 204 (2020))
Date: January 16, 2024

MEMORANDUM²

Project Summary

Subject to certain restrictions, a person is permitted to present an expungement application that contains more than one conviction to the Superior Court of New Jersey.³ Crimes, or a combination of crimes, and offenses that were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, colloquially referred to as a “crime spree,” may be eligible for expungement under certain circumstances.⁴

In the *Matter of C.P.M.*, the Appellate Division analyzed the term “closely related in circumstances” to determine whether the offenses committed by a petitioner who was under the influence of drugs during the three-month period in which the offenses occurred were sufficiently related to grant his petition for an expungement.⁵

Staff examined the common law and statutes of all fifty states to ascertain whether they might provide any assistance in defining “closely related in circumstances.”⁶ Staff seeks guidance from the Commission on whether to conclude work on this project.

Statute Considered

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

a. In all cases, except as herein provided, a person may present an expungement application to the Superior Court pursuant to this section if:

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² Preliminary work on this subject was performed by Ayiah-Bideha Al-Qanawi and Samantha E. Schultz, Legal Interns, during their time with the N.J. Law Rev. Comm’n.

³ N.J. STAT. ANN. 2C:52-2(a) (West 2021). See *Matter of C.P.M.*, 461 N.J. Super. 573, 577 (App. Div. 2019), cert. denied, 241 N.J. 204 (2020).

⁴ *Id.*

⁵ *Id.* at 576.

⁶ N.J. LAW REVISION COMM’N, ‘Meaning of Closely Related Circumstances in New Jersey’s Expungement Statute,’ *Minutes of NJLRC Meeting 16 Sept. 2021*, at *8, Newark, New Jersey, available at www.njlrc.org. [hereinafter Sept. 16, 2022, Minutes]. See discussion *infra* 50-State Survey.

the person has been convicted of multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time, regardless of the date of conviction or sentencing for each individual crime or offense, and the person does not otherwise have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this State or any other jurisdiction

Background

On April 9, 2005, C.P.M. was out all night, drinking and using drugs with a friend.⁷ The next morning he was pulled over for speeding, arrested, and charged with driving while intoxicated.⁸ During a search at the police station, the police found cocaine in his pocket.⁹

On the evening of June 22, 2005, C.P.M. drank alcohol, used cocaine, returned to the house he formerly shared with his ex-girlfriend, and climbed through an open window.¹⁰ After hearing what he believed to be his ex-girlfriend with another man in a locked bedroom, C.P.M. grabbed a baseball bat and broke down the door to the room.¹¹ Following his arrest, C.P.M. was not tested for drugs.¹² He subsequently described his behavior as being fueled by a “drug-induced rage.”¹³

Ultimately, C.P.M. plead guilty to third-degree possession of a controlled dangerous substance (CDS) arising from the events of April 10, 2005¹⁴ and fourth-degree burglary and criminal mischief related to the events of June 22, 2005.¹⁵ In March of 2006, he was sentenced to one day of incarceration and three years of probation on the CDS charge.¹⁶ A concurrent three-year probationary sentence was imposed by the sentencing court on the burglary and criminal mischief charges.¹⁷

In 2018, C.P.M. filed a petition to expunge his 2005 convictions under the “crime spree” exception to New Jersey’s expungement statute.¹⁸ At the hearing on his petition, he contended that he was “eligible for expungement under the crime spree exception in the newly amended statute” because he was under the influence of drugs during the months in which the offenses occurred.¹⁹

⁷ *Id.* at 578.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 579.

¹¹ *Id.*

¹² *Id.* at 580.

¹³ *Id.* The characterization of his behavior appeared in C.P.M.’s petition for an expungement which was filed in 2018.

¹⁴ *Id.* at 579.

¹⁵ *Id.*

¹⁶ *Id.* at 579-80.

¹⁷ *Id.* at 580.

¹⁸ *Id.* at 578.

¹⁹ *Id.* at 580.

He argued the April and June 2005 convictions were sufficiently related.²⁰ The State disagreed and said that “there was no evidence that C.P.M. was under the influence of [CDS] when he broke into his former home.”²¹ The State argued that the crimes “were not interdependent or closely related in circumstances nor were they committed as part of a sequence of events in a comparatively short period of time” and that he was not entitled to an expungement.²²

The trial court requested and subsequently considered independent corroboration that C.P.M.’s drug dependency fueled his additional criminal activity.²³ The Court stated that “because the term ‘crime spree’ was not defined by the legislature, statutory interpretation was necessary.”²⁴ The trial court determined that the petitioner’s “drug use during the time period of the offenses was the ‘nexus’ permitting the court to determine that the two incidents were closely related in circumstances”²⁵ and that C.P.M. was entitled to an expungement pursuant to the “crime spree exception.”²⁶

The State appealed the decision of the trial court and maintained that such a reading of the statute would lead to an absurd result.²⁷ The State indicated that pursuant to the trial court’s interpretation of the expungement statute, “any individual [would] be eligible to have more than the statutorily allowed number of crimes... expunged so long as they [could] provide any type of similar nexus between the crimes.”²⁸

Analysis

In 2006, when C.P.M. was sentenced, the expungement statute permitted an individual to expunge one crime.²⁹ Despite the “single crime” limitation set forth in the expungement statute, “petitions were periodically granted under a ‘single spree’ or ‘crime spree’ doctrine.”³⁰ In 2015, the New Jersey Supreme Court held that the Legislature clearly intended to “permit expungement of a single conviction arising from multiple offenses only if those offenses occurred as part of a single, uninterrupted criminal event.”³¹

In 2018, the Legislature amended the expungement statute³² to permit expungement of

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 581.

²⁵ *Id.*

²⁶ *Id.* (basing its determination upon the court’s reading of N.J.S. 2C:52-2(a)).

²⁷ *Id.* at 583.

²⁸ *Id.*

²⁹ *Id.* at 576. *See* N.J.S. 2C:52-2a (2006) (providing for expungement where “a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime ...”).

³⁰ *Id.* at 576-77. This doctrine was first articulated in *In re Fontana*, 146 N.J. Super. 264, 267 (App. Div. 1976) and subsequently rejected in *In re Ross*, 400 N.J. Super. 117 (App. Div. 2008).

³¹ *Id.* at 577 (quoting *In re Expungement Petition of J.S.*, 233 N.J. 54, 73 (2015)).

³² *Id.* at 577-78. *See* N.J. STAT. ANN. 2C:52-2a ¶5 (West 2021).

multiple crimes or a combination of one or more crimes and one or more disorderly persons or petty disorderly persons offenses under the laws of this State, which crimes or combination of crimes and offenses were **interdependent or closely related in circumstances** and were committed as part of a sequence of events that took place within a **comparatively short period of time**, regardless of the date of conviction or sentencing for each individual crime or offense...³³

The statute also required that the petitioner not “have any prior or subsequent conviction for another crime or offense in addition to those convictions included in the expungement application, whether any such conviction was within this state or any other jurisdiction...”³⁴

In *C.P.M.* the Appellate Division considered the meaning of the phrase “closely related circumstances” in the newly-amended expungement statute.³⁵ The Court considered C.P.M.’s petition for expungement and determined that “[t]hese offenses were not committed as part of some larger criminals scheme.”³⁶ Instead, the Court found that “each offense was a distinct crime perpetrated under entirely different and unrelated circumstances.”³⁷ Acknowledging that the 2018 amendments to the expungement statute “increased the number of convictions that could be expunged” the Court opined that that the statute “did not allow for the expungement of all offenses with any arguable nexus among the crimes.”³⁸

The Appellate Division opined that C.P.M.’s reading of the expungement statute would require each court to “consider a petitioner’s motivations behind [their]... commission of an offense...”³⁹ Furthermore, it would “invite the submission of certifications that could consist of self-serving statements designed to show that the crimes... were ‘interdependent and closely related in circumstances.’”⁴⁰ Such a reading might result in the “grant[ing of an] expungement based on statements that only establish a loose and vague nexus between the crimes... for which the expungement [was] sought.”⁴¹ The Court emphasized the “uncertainty a trial judge would face, and [the] uneven applications that would result” under such an interpretation.⁴²

The Appellate Division reversed the trial court’s decision and concluded that the petitioner’s convictions “were not interdependent or closely related in circumstances.”⁴³ The Court did not however address “the second prong of the statute – whether the offenses were committed within a ‘comparatively short period of time.’”⁴⁴

³³ *Id.* at 578. (Emphasis added).

³⁴ *Id.*

³⁵ *Id.* at 584.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 585-86.

⁴⁰ *Id.* at 586.

⁴¹ *Id.*

⁴² *Id.* at 585.

⁴³ *Id.* at 586.

⁴⁴ *Id.*

50-State Survey⁴⁵

The specifics of expungement law vary by jurisdiction. The ability to expunge a prior criminal offense depends upon the laws governing the state in which the crime took place.⁴⁶ For purposes of this memorandum, the law governing expungements is set forth in four categories: (1) jurisdictions that do not permit expungements; (2) jurisdictions that permit the expungement of misdemeanors; (3) jurisdictions that allow the expungement of misdemeanors and pardoned felonies; and (4) jurisdictions that permit felony expungements.⁴⁷ Each category underwent cross-verification to ascertain whether expungement is possible for individuals with multiple criminal transgressions.⁴⁸ Finally, the jurisdictions that permit multiple offenses to be expunged were scrutinized to determine whether they could provide insight into how to better define the terms “interdependent,” “closely related circumstances,” and “comparatively short period of time” as used in subsection a. of New Jersey’s expungement statute, N.J.S. 2C:52-2.

• *No Expungement, Misdemeanors, Misdemeanors and Pardoned Felonies*

There are five states that do not permit an individual to expunge their criminal records.⁴⁹

Other states limit the expungement of records to misdemeanor offenses. Iowa, Montana, and Nebraska allow an individual to expunge misdemeanor offenses from their criminal records under certain circumstances.⁵⁰

⁴⁵ See Fig. 1 (fifty-state survey). See also Fig. 2 (fifty-state survey - by category).

⁴⁶ See RESTORATION OF RIGHTS PROJECT, <https://ccresourcecenter.org/restoration-about/> (last visited Jan. 02, 2024) (providing jurisdictional profiles that include 50-state surveys “that make it possible to see national patterns in restoration laws and policies.”).

⁴⁷ Figs. 1 & 2.

⁴⁸ *Id.*

⁴⁹ **No Expungement.** See Figs. 1 & 2. **Alaska.** Compare, *Johnson v. State*, 50 P.3d 404, 406 (Alaska Ct. App. 2002) (recognizing that Alaska law makes no providing for sealing or expunging records of a valid conviction and that where there is no exception to the state’s disclosure laws that courts balance “the public interest in disclosure on the one hand, and the privacy and reputation interests of the affected individuals together with the government’s interest in confidentiality, on the other) with ALASKA STAT. ANN. § 22.35.030 (West 2023) (forbidding the publication of a court record after dismissal or acquittal). **Florida.** Felony convictions are not eligible to be expungement pursuant to FLA STAT. ANN. § 943.0585 and § 943.0584. **Hawaii.** HAW. REV. STAT. ANN. § 831-3.2 (West 2023) (expunging records of those who arrested and charged, but not convicted of a crime). **Maine.** In Maine, courts are not authorized to expunge adult criminal records. **Wisconsin.** WIS. STAT. ANN. § 973.015 (West 2023) (providing that a person convicted of a crime who was under the age of twenty five at the time they committed an offense carrying a maximum period of incarceration of six years or less may have that record expunged upon successful completion of the sentence if the court determines that the person will benefit, and society will not be harmed by the disposition).

⁵⁰ **Misdemeanors.** See Figs. 1 & 2. **Iowa.** IOWA CODE ANN. § 901C.3 (West 2023) (providing only for the expungement of a misdemeanor offense). **Montana.** MONT. CODE ANN. § 46-18-1104 (West 2023) (providing an individual with the opportunity to expunge one more misdemeanor offenses). **Nebraska.** NEB. REV. STAT. ANN. § 29-2264 (West 2023) (providing that person convicted of offense and is placed on probation, sentenced to fine only, or sentenced to community service may petition to set aside the conviction after satisfactory completion of probation). See <https://supremecourt.nebraska.gov/self-help/court-records/petition-set-aside-criminal-conviction> (providing “[a]n adult criminal conviction in Nebraska cannot be erased. It can be *pardoned* or *set-aside* but WILL NOT be erased. Once there is a criminal conviction on your record, it always will be on your record.”).

Several states permit the expungement of misdemeanors and pardoned, or unprosecuted, felonies as well.⁵¹ The three states that authorize the expungement of misdemeanors and pardoned felonies are: Alabama, Georgia, and Texas.⁵²

- *Misdemeanors and Felonies*

The remaining thirty-nine states and the District of Columbia permit the expungement of certain misdemeanor, and certain felony records.⁵³

⁵¹ **Misdemeanors and Pardoned Felonies.** See Figs. 1 & 2. **Alabama.** See ALA. CODE § 15-27-1(b) (West 2023) (misdemeanors, violations, and municipal ordinances). See also ALA. CODE § 15-27-2(c) (pardoned felonies). **Georgia.** GA. CODE ANN. § 35-3-37 (West 2023) (misdemeanors or pardoned felonies); **Texas.** TEX. CODE CRIM. PROC. ANN. art. 55.01 (West 2023) (providing for expungement of misdemeanors and unprosecuted felonies).

⁵² *Id.*

⁵³ **Certain Felonies (Indictable Offenses) & Misdemeanors.** See Figs. 1 & 2. **Arizona.** ARIZ. REV. STAT. ANN. § 13-911 (providing, for the sealing of records for all offenses except Class 1 felonies, without limiting the number of times a person may request sealing or limiting the number of convictions that may be sealed along with “all cases related to the offense”). **Arkansas.** ARK. CODE ANN. § 16-90-1405 (West 2023) (setting forth the eligibility to file a uniform petition to seal a misdemeanor offense or violation). ARK. CODE ANN. §16-90-1406 (providing for the expungement of certain felonies). **California.** CAL. PENAL CODE § 1203.4 (West). **Colorado.** Colo. Rev. Stat. Ann. § 24-72-709 (West 2023) (providing for the sealing of criminal records information for multiple convictions). **Connecticut.** CONN. GEN. STAT. ANN. § 54-142a (West 2023) (providing for the erasure of classified or unclassified misdemeanor offenses after seven years from the date of conviction; and for the erasure of certain felonies after ten years). **Delaware.** DEL. CODE ANN. tit. 11, § 4374(a)(1), (2) (West 2023) (providing for expungement of one or more misdemeanors). **District of Columbia.** D.C. Code § 16-806 (West 2023), as amended by D.C. LAW 24-284 (Jan. 19, 2023) (authorizes sealing of non-conviction records, all misdemeanor convictions, most felony convictions except those involving crimes of violence or sexual offenses). **Idaho.** IDAHO CODE ANN. § 19-2604 (West). **Illinois.** 20 Ill. Comp. Stat. Ann. 2630/5.2 (2023) (setting forth the requirements for the expungement of records). **Indiana.** IND. CODE ANN. §§35-38-9-2 through -5. (West 2023) (setting forth the conditions and time frames within which to seek and expungement). **Kansas.** KAN. STAT. ANN. § 21-6614 (West 2023) (providing for the expungement of certain convictions and the corresponding time frames). **Kentucky.** KY. REV. STAT. ANN. § 431.073 (West 2023) (permitting an individual who has been convicted of a series of Class D felony violations) KY. REV. STAT. ANN. § 431.078 (authorizing petition for expungement where person has been convicted of a series of misdemeanors, violations, or traffic infractions). **Louisiana.** LA. CODE CRIM. PROC. ANN. ART. 977 (authorizing misdemeanor expungement of certain offenses after five years if certain conditions are met). LA. CODE CRIM. PROC. ANN. ART. 978 (authorizing felony expungement of certain offenses after five years if certain conditions are met). **Maryland.** MD. CODE ANN., CRIM. PROC. § 10-107 (West 2023) (charges arising from same incident, transaction, or set of facts). **Massachusetts.** MASS. GEN. LAWS ANN. ch. 276, § 100A (West 2023) (providing for the sealing of records and the requirements thereof). **Michigan.** MICH. COMP. LAWS ANN. § 780.621b (West 2023) (providing for expungement of more than one eligible felony or misdemeanor under certain circumstances). **Minnesota.** MINN. STAT. ANN. §§ 609A.01 – 609a.06 (West 2023) (providing for the expungement of criminal records). **Mississippi.** MISS. CODE. ANN. § 99-19-71 (West 2023) (defining “one (1) conviction” and “one (1) felony expunction.”). **Missouri.** Mo. Ann. Stat. § 610.140(1) (West 2023) (providing that “[i]f the offenses, violations, or infractions were charged as counts in the same indictment or information or were committed as part of the same course of criminal conduct, the person may include all the related offenses, violations, and infractions in the petition... and the petition shall only count as a petition for expungement of the highest level violation or offense contained in the petition for the purpose of determining future eligibility for expungement.”). **Nevada.** NEV. REV. STAT. ANN. § 179.2595 (West 2023) (setting forth the procedure for the sealing of more than one record). **New Hampshire.** N.H. REV. STAT. ANN. § 651:5 (providing for the annulment of certain offenses upon the satisfaction of certain statutory conditions). **New Jersey.** N.J. STAT. ANN. 2C:52-2(a) (providing for the expungement of multiple crimes). **New Mexico.** N.M. STAT. ANN. § 29-3A-5 (West 2023) (providing for the expungement of criminal records). **New York.** N.Y. CRIM. PROC. LAW § 160.59 (McKinney 2023) (permitting the sealing of records where defendant is convicted of more than one eligible offense). **North Carolina.** N.C. GEN. STAT. ANN. § 15A-145.5 (providing for the expunction of certain misdemeanors and felonies). **North Dakota.** N.D. CENT.

- *Multiple Offenses*

While participating in criminal activity, an individual may be charged with one or more criminal offenses. A number of states have expanded the eligibility requirements for those seeking an expungement to address such situations. Doing so provides individuals with the opportunity to remove the stigma associated with their criminal conviction, improves the possibility of finding a suitable place to live and increases their chance of finding employment.⁵⁴

Of the twenty states that permit multi-crime expungements, the majority require that the transgressions arise from the same incident.⁵⁵ What constitutes the “same incident,” however, depends upon the jurisdiction.

CODE ANN. § 12-60.1-02 (West) (setting forth the grounds to file petition to seal criminal record). **Ohio.** OHIO REV. CODE ANN. § 2953.32 (West 2023) (providing for the expungement of misdemeanors and limited felonies when certain conditions are met). **Oklahoma.** OKLA. STAT. ANN. tit. 22, § 18 (West 2023) (providing that the expungement of certain misdemeanors and felonies). **Oregon.** OR. REV. STAT. ANN. § 137.225 (West 2023) (enumerating the circumstances in which misdemeanors and felony convictions may be set aside). **Pennsylvania.** 18 PA. STAT. AND CONS. STAT. ANN. § 9122 (West) (providing that criminal history record – misdemeanor or felony – may be expunged when “[a]n individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following the final release from confinement or supervision.”). **Rhode Island.** 12 R.I. GEN. LAWS ANN. § 12-1.3-2 (West) (providing for the expungement of misdemeanor convictions after five years and felony convictions after ten years). **South Carolina.** S.C. CODE ANN. § 22-5-910 (West 2023) (providing that any number of offenses for crimes carrying a certain penalty may be expunged if certain conditions have been met). **South Dakota.** S.D. CODIFIED LAWS § 23A-3-34 (West 2023) (allowing automatic removal of petty offenses, municipal ordinance violations, or Class 2 misdemeanors from the public record after five years if petitioner is offense free). *See* S.D. CODIFIED LAWS § 23-6-8.1 (providing for destruction of records if person is dead; seventy-five years of age or older and no violation within ten years; incidents no longer considered crimes; “misdemeanor offenses whose final date of disposition occurred at least ten years prior to authorized date of destruction.”). **Tennessee.** TENN. CODE ANN. § 40-29-101 (West 2023) (“Those convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed for the infamous crime.”). **Utah.** UTAH CODE ANN. § 77-40a-303 (2023 West) (providing for expungement of certain misdemeanors and felonies and setting forth ineligibility for a certain number of convictions if set forth in a separate criminal episode). *See* UTAH CODE ANN. § 76-1-401 (defining “single criminal episode” as “all conduct which is closely related in time and is incident to an attempt to or an accomplishment of a single criminal objective.”). **Vermont.** VT. STAT. ANN. tit. 13, § 7602(a)(1) (West 2023) (providing that a court shall grant expungement of the record of a qualifying crime or qualifying crimes). **Virginia.** VA. CODE ANN. § 19.2-392.2 (West 2023) (providing for the expungement of “a crime, a civil offense, or any offense defined in Title 18.2.”). **Washington.** Wash. Rev. Code Ann. § 9.94A.640 (West 2023) (providing for the vacation of an offender’s record of conviction when certain conditions are met). **West Virginia.** W. VA. CODE ANN. § 61-11-26 (West 2023) (providing that persons with multiple misdemeanors are eligible for expungement but a person may apply for expungement of only one felony, including “offenses arising from the same transaction or series of transactions.”). *State v. T.D.*, No. 14-0988, 2015 WL 3448196 (W. Va. May 29, 2015) (finding that the convictions sought to be expunged occurred on three separate dates they did not arise out of the same transaction and were not eligible for expungement). **Wyoming.** WYO. STAT. ANN. § 7-13-1502 (West 2023) (Providing that individuals convicted of a felony or felonies may petition for expungement of their conviction records, subject to the limitations specified in the statute.).

⁵⁴ *Cunningham, Ruiz, Sweeney Bill to Expand Expungement Eligibility Clears Senate*, INSIDER NJ (June 10, 2019), <https://www.insidernj.com/press-release/cunningham-ruiz-sweeney-bill-expand-expungement-eligibility-clears-senate/>.

⁵⁵ **Alabama.** ALA. CODE § 15-27-2.1(b) (same arrest or incident). **Arkansas.** ARK. CODE ANN. § 16-90-1406 (same criminal episode). **Delaware.** DEL. CODE ANN. tit. 11, § 4374(a)(1), (2) (same case). **Indiana.** IND. CODE ANN. §§ 35-38-9-2 through -5 (same episode of criminal conduct). **Iowa.** IOWA CODE ANN. § 901C.3 (same transaction or occurrence). **Kentucky.** KY. REV. STAT. ANN. § 431.073 (arising from a single incident). **Maryland.** MD. CODE ANN., CRIM. PROC. § 10-107 (arising from same incident, transaction, or set of facts). **Michigan.** MICH. COMP. LAWS ANN.

The eligibility for expungement is contingent upon the statutory, or common, law that assesses whether multiple events are deemed to have originated from the same transaction. Not every state, among the twenty jurisdictions that permit the expungement of multiple offenses, has identified what it means for a crime to arise from the same transaction.

• *Transaction or Incident*

In Alabama, “all the charges or convictions must arise from the same arrest or incident, not an individual charge.”⁵⁶ Similarly, in Arkansas, “[f]or the sole purpose of calculating the number of previous felony convictions under this section, all felony offenses that were committed as part of the same criminal episode and for which the person was convicted are a single conviction.”⁵⁷

In Maryland, a person may seek the expungement of criminal charges arising from the same incident, transaction, or set of facts.⁵⁸ However, crimes committed over a period of several months, involving different venues, do not constitute a single “unit” where each crime constituted a separate incident, transaction, and involved a different set of facts.⁵⁹

In Mississippi, the terms “one (1) conviction” and “one (1) felony expunction” are defined to include convictions arising from one common nucleus of operative facts.⁶⁰ The Legislature has not defined these terms but has authorized the judiciary to hold an evidentiary hearing to make the determinations.⁶¹

The Missouri Legislature permits the expungement of multiple offenses, violations, or infractions if they are “charged as counts in the same indictment... or were committed as part of the same course of criminal conduct...”⁶² The Missouri Court of Appeals has found separate offenses where: the petitioner’s actions are separated in time; there was an opportunity to reconsider their actions; the offense was based upon different acts; or a separate mental state was formed for each act.⁶³

§ 780.621b (arose from the same transaction). **Mississippi.** MISS. CODE ANN. § 99-19-71 (one common nucleus of operative facts). **Missouri.** Mo. Ann. Stat. § 610.140(1) (part of the same course of criminal conduct). **Montana.** MONT. CODE ANN. § 46-18-1104 (found to be related). **New Jersey.** N.J. STAT. ANN. 2C:52-2(a) (part of a sequence of events). **New York.** N.Y. CRIM. PROC. LAW § 160.59 (same criminal transaction). **Oklahoma.** OKLA. STAT. ANN. tit. 22, § 18 (same transaction or occurrence). **South Carolina.** S.C. CODE ANN. § 22-5-910 (arose out of the same incident). **Texas.** TEX. CODE CRIM. PROC. ANN. art. 55.01 (arising out of the same transaction). **Vermont.** VT. STAT. ANN. tit. 13, § 7602(a)(1) (arising out of the same incident). **West Virginia.** W. VA. CODE ANN. § 61-11-26 (arising from the same transaction or series of transactions). **Wyoming.** WYO. STAT. ANN. § 7-13-1502 (arising from the same occurrence or related course of events). *But see* **North Carolina.** N.C. GEN. STAT. ANN. § 15A-145.5 (convicted in the same session of court).

⁵⁶ *Ex parte Curran*, No. CR-19-1082, 2022 WL 1721488, *5 (Ala. Crim. App. May 27, 2022) (interpreting the word “case” in ALA. CODE § 15-27-5).

⁵⁷ ARK. CODE ANN. § 16-90-1405.

⁵⁸ MD. CODE ANN., CRIM. PROC. § 10-107

⁵⁹ *Stoddard v. State*, 911 A.2d 1245, 1253 (2006).

⁶⁰ MISS. CODE ANN. § 99-19-71.

⁶¹ *Id.* See *Rogers v. State*, 364 So. 3d 784 (Miss. Ct. App. 2021) (noting the necessity of an evidentiary hearing to determine whether multiple convictions arose from a common nucleus of operative facts).

⁶² MO. ANN. STAT. § 610.140(1).

⁶³ See *N.M.C. v. Missouri State Highway Patrol Crim. Recs. Repository*, 661 S.W.3d 18, 25 (Mo. Ct. App. 2023).

In South Carolina a court may expunge any number of offenses that carry a certain penalty.⁶⁴ A court may grant the individual’s request for an expungement provided that the “individual received sentences at a single sentencing proceeding that are closely connected and arose out of the same incident may be considered as one offense and treated as one conviction for expungement purposes.”⁶⁵ The Legislature, however, has not defined “closely connected,” and the courts have yet to interpret these terms.

- *Timing of Events*

By contrast, the Michigan Legislature has authorized the judiciary to expunge offenses that occur during “one-bad-night.”⁶⁶ The Michigan Legislature, and courts, treat more than one eligible felony or misdemeanor conviction as a single conviction if the events were “contemporaneous such that all of the... offenses occurred within 24 hours and arose from the same transaction.”⁶⁷

- *Date of Conviction*

When a person in North Carolina is convicted of more than one nonviolent felony, or nonviolent misdemeanor, in the same court session, then these offenses may be treated as one conviction for purposes of expungement.⁶⁸

- *Transaction & Time*

Similarly, in New York, a court may seal a petitioner’s record involving one or more eligible offenses.⁶⁹ The offenses must, however, be committed as part of the same criminal transaction.⁷⁰ The New York Legislature defined the term “criminal transaction” as:

conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.

If these conditions are met, the court may seal the petitioner’s records.⁷¹ In *People v. Doe*, the Supreme Court of New York determined that the sale of drugs on two separate dates, five weeks apart “were not so closely related and connected in point of time and circumstances to

⁶⁴ S.C. CODE ANN. § 22-5-910.

⁶⁵ *Id.*

⁶⁶ See *People v. Maryanovska*, No. 362098, 2023 WL 4534971 *1, *1 (Mich. Ct. App. July 13, 2023) (referring colloquially to MICH. COMP. LAWS ANN. § 780.621b as the state’s “one bad night provision”).

⁶⁷ MICH. COMP. LAWS ANN. § 780.621b. See *Maryanovska*, No. 362098, 2023 WL 4534971 at *2 (finding as a matter of first impression that the “one-bad-night provision” did not apply where one of the multiple offenses precluded application of the one-bad-night provision).

⁶⁸ N.C. GEN. STAT. ANN. § 15A-145.5(b).

⁶⁹ N.Y. CRIM. PROC. LAW § 160.59.

⁷⁰ *Id.*

⁷¹ *Id.*

constitute a single criminal incident, [nor were they] so closely related in criminal purpose or objective as to constitute elements of or integral parts of a single criminal venture.”⁷²

New Jersey’s indictable offense expungement statute, N.J.S. 2C:52-2, provides broad relief to individuals seeking an expungement.⁷³ The Legislature has authorized the expungement of multiple crimes after the examination of the underlying offenses.⁷⁴ To expunge multiple crimes, the events must be considered interdependent or closely related in circumstances and were committed as part of a sequence of events.⁷⁵ In addition, the events must have occurred within a comparatively short period of time.⁷⁶ Finally, a court may consider multiple offenses that occurred regardless of the date of conviction or sentencing for each individual crime or offense.⁷⁷

Pending Bills

During New Jersey’s 2022-2023 legislative session, seventeen bills regarding expungements were introduced.⁷⁸ Although A.B. 3265 (last session bill A.B. 1362) proposes the

⁷² *People v. Doe*, 86 N.Y.S.3d 853, 855 (N.Y. Sup. Ct. 2018). *But see People v. Lynch*, 25 N.Y.3d 331, 344 (2015) (finding that “integrated, interdependent acts” that can sustain a “single criminal venture” generally arise from “ongoing organized criminal activity, such as conspiracies, complex fraud or larcenies, or narcotics rings.”).

⁷³ *See State v. R. O.-S.*, 474 N.J. Super. 87, 95 (Law. Div. 2021) (noting that the “Legislature’s expressed intent to increase the number of convictions eligible for expungement is consistent with the general purpose of the expungement statute to eliminate the collateral consequences imposed upon otherwise law-abiding citizens who had a ... brush with the criminal justice system.”).

⁷⁴ N.J. STAT. ANN. 2C:52-2(a). *See Matter of C.P.M.*, 461 N.J. Super. 573 and discussion *supra*.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ A.B. 1362 220th Leg., First Annual Sess. (N.J. 2022) (expands expungement eligibility; eliminates cap on number convictions person may expunge; eliminates limitation on number of times person may be granted expungement); A.B. 1678 220th Leg., First Annual Sess. (N.J. 2022) (imposing certain duties on persons or entities engaged in business pertaining to criminal records and imposing penalties for disseminating expunged records); A.B. 1858 220th Leg., First Annual Sess. (N.J. 2022) (eliminating certain prohibitions to expungement of criminal records); A.B. 2154 220th Leg., First Annual Sess. (N.J. 2022) (barring expungement of conviction, arrest, or charge if crime or offense involved in domestic violence); A.B. 2388 220th Leg., First Annual Sess. (N.J. 2022) (establishing pilot program in Paterson authorizing non-disclosure of records of certain expungements); A.B. 2669 220th Leg., First Annual Sess. (N.J. 2022) (Provides for process to vacate and expunge certain arrests, charges, complaints, convictions, other dispositions, and DNA records, associated with violations by certain human trafficking victims); A.B. 3787 220th Leg., First Annual Sess. (N.J. 2022) (barring the denial of expungement application in certain instances); *identical bill* S.B. 242 220th Leg., First Annual Sess. (N.J. 2022); A.B. 4072 220th Leg., First Annual Sess. (N.J. 2022) (permitting, under certain circumstances, person adjudged juvenile delinquent to expunge record for act which would have constituted robbery if committed by adult); A.B. 4911 220th Leg., First Annual Sess. (N.J. 2022) (decriminalizing and expunging past offenses involving psilocybin production, possession, use, and distribution) *identical bill* S.B. 2934 220th Leg., First Annual Sess. (N.J. 2022); A.B. 5826 220th Leg., Sec. Annual Sess. (N.J. 2023) (revising and clarifying certain expungement procedures); *identical bill* S.B. 4211 220th Leg., First Annual Sess. (N.J. 2022); S.B. 310 220th Leg., First Annual Sess. (N.J. 2022) (Permits expungement of possession or distribution of hypodermic syringe or needle offense in cases of previous expungement; repeals criminal offense of possession of syringe); S.B. 726 220th Leg., First Annual Sess. (N.J. 2022) (requiring notification of local law enforcement prior to expungement of certain mental health records of prospective firearms purchasers); S.B. 1589 220th Leg., First Annual Sess. (N.J. 2022) (amending eligibility for expungement of criminal records); S.B. 2038 220th Leg., First Annual Sess. (N.J. 2022) (providing that records for convictions for carjacking and promoting prostitution of child shall not be expunged).

elimination of the cap on the number of convictions a person may expunge, it does not directly address the “crime spree exception” discussed by the court in the *Matter of C.P.M.*

Conclusion

Among the twenty jurisdictions that permit the expungement of multiple criminal offenses, Michigan is the only one that requires that the events sought to be expunged occur within twenty-four hours *and* arise from the same transaction.⁷⁹ Among the remaining jurisdictions, some have adopted language akin to the existing New Jersey statute, while others incorporate language more stringent than the New Jersey statute when considering the expungement of multiple offenses.⁸⁰

Staff requests guidance from the Commission regarding whether to persist in efforts clarify the meaning of “interdependent,” “closely related circumstances,” and “comparatively short period of time” as set forth in subsection a. of New Jersey’s expungement statute, N.J.S. 2C:52-2; or leave the development and definition of these terms to the common law.

⁷⁹ MICH. COMP. LAWS ANN. § 780.621b. *See also* discussion, *supra*.

⁸⁰ *See* discussion *supra* pp. 7-10.