



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report**

#### **Relating to**

#### **The Definition of “Conviction”**

**September 11, 2017**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted. Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries to:

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## Introduction

The case of *In re J.S.*, 444 N.J. Super. 303 (App. Div. 2016), the Appellate Division considered whether the term “conviction” as used in N.J.S. 2C:7-2(f), refers to a plea of guilty, or to the entry of a judgment of conviction.

The issue in the case was when the clock started running for purposes of the 15-year time period set forth in N.J.S. 2C:7-2(f). That statutory section provides that “a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following *conviction* or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others [emphasis added]”. The Court determined that “conviction”, in that section of the statute, referred to the judgment of conviction, rather than to the plea of guilty. In doing so, the Court suggested that “exactness in drafting statutes would obviate the need for judicial interpretation” and noted that the issue on appeal was “an important matter of public interest and capable of repetition warranting our review.”

Defining “conviction” for all uses may not be easy, but it is also not necessary. The definition can deal narrowly with the time of conviction when that is an issue.

There are 748 statutes that use the word “conviction”, some several times. The term “conviction” is not used fully consistently. However, in the majority of instances, the issue of when the conviction takes place is not relevant. The most common example is, “. . . upon conviction, the defendant may be sentenced to . . .”

What makes the issue raised by *In re J.S.* important is the statutes that use the time of conviction in calculating when a right or duty arises, in the context of expungement, or licensing provisions, for example.<sup>1</sup> A survey of the statutes that use the word “conviction” in that context disclosed more than 10 such statutes. There probably are others that use some other form of the word “convict.” The most important of those statutes may be the ones providing for expungement of criminal records. (See e.g. 2C:52-2 Expungement; Indictable Offenses.) Others relate to a wide variety of subjects. The largest group of statutes identified are within the Criminal Code, but more than half are scattered through other titles of the statutes. The exact number of these statutes or their subject is not important; all need a clear rule as to when a

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<sup>1</sup> Provisions that would be effected by this time provision include (in addition to 2C:7-2(f)):

2A:18-61.1. Grounds for removal of tenants.

2C:33-12.1. Abating nuisance (closing premises)

2C:51-2. Forfeiture of public office

2C:52-2. Expungement; Indictable offenses.

2C:52-3. Disorderly persons offenses and petty disorderly persons offenses. (expungement)

2C:52-4. Ordinances (expungement)

2C:52-5. Expungement of records of young drug offenders

13:1E-99.3. Penalties for littering (subsequent offense)

13:1E-127. Definitions. (convictions that must be disclosed for licensing)

17:22A-40. Causes for probation, suspension, revocation, refusal to issue or renew.

19:34-25. Bribery (period of disenfranchisement)

23:3-22. Subsequent convictions; penalty

51:1-96. Penalties for using false weights (subsequent offense)

conviction occurred. Staff has identified no cases other than *In re J.S.* that address the issue. The Law Revision Commission recommends a statute to settle the issue for all statutes.

The Commission does not propose to define what is meant by the word “conviction” in all situations and in all statutory uses. The examination of the statutes that use the term, showed that its meaning was not consistent. A “one size fits all” such as equating a conviction with a formal judgment of conviction definition would not work in every case. The Commission proposes a definition specifying only when the conviction occurred and only in situations when the time from conviction is a relevant issue.

The proposed provision below is structured as a definition so that it can be added as subsection s. to 2C:1-14. The last sentence applies the provision to statutes outside of the criminal code. Placement in the Code with application outside is not ideal, but it seems the best option. A person looking for the definition of “conviction”, a criminal law concept, would be more likely to look in the Code than anywhere else.

## **Recommendation**

The Commission recommends an amendment to N.J.S. 2C:1-14 adding a new subsection s.:

### **2C:1-14 Definitions**

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s. The date of conviction of a New Jersey conviction, for the purpose of calculating the time from a conviction, shall mean the date of the judgment of conviction. If the conviction is modified, whether on appeal or by the trial court, the date of conviction shall remain the date of the original conviction. The date of conviction for a conviction occurring in a jurisdiction other than New Jersey shall be determined by the law of that jurisdiction. This subsection shall apply to provisions outside of this code unless the provision clearly provides otherwise.