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DIRECTIVE # 05-23

**To: Assignment Judges
Criminal Presiding Judges
Trial Court Administrators
Criminal Division Managers**

Questions may be directed to
the Criminal Practice Division
at (609) 815-2900 ext. 55300.

From: Glenn A. Grant, Administrative Director

**Subj: Criminal – Expungements – (1) Guidance on the New Compelling
Circumstances Standard; (2) Handling Fugitive from Justice
Charges with Regard to Expedited Expungement; (3) Additional
eCourts Expungement System Information and Enhancements**

Date: March 13, 2023

This Directive serves to clarify certain procedural requirements regarding the expungement process and to provide additional information on the eCourts Expungement System and enhancements.

**(1) GUIDANCE TO JUDGES AND STAFF ON THE NEW COMPELLING
CIRCUMSTANCES STANDARD**

Judges and staff should not require that an applicant provide plea or sentencing transcripts or presentence reports regarding the underlying offense(s). This direction is based on the June 15, 2020 statutory change that replaced the “public interest” standard with a “compelling circumstances” test. Further, consideration of expungement petitions should not be delayed by any requests by the State that applicants supply such materials. The reasoning is set forth below.

Legislative Amendment

On June 15, 2020, N.J.S.A. 2C:52-2(a)(2) and (c)(3) was amended to remove the requirement that the court consider the public interest in determining whether to grant an expungement and to require instead that the court find that compelling circumstances exist to grant an expungement. The statutory amendments also required the Administrative Office of the Courts to develop and maintain a system to electronically file expungement applications.

Former Public Interest Standard

Prior to the 2020 amendments, the statute imposed a public interest standard: "...and the court finds in its discretion that expungement is in the public interest, *giving due consideration to the nature of the offense*, and the applicant's character and conduct since conviction." N.J.S.A. 2C:52-2(a)(2) (emphasis added). This standard was clarified by the Supreme Court in In re Kollman, 210 N.J. 557 (2012). In Kollman, the Court directed applicants for expungement under N.J.S.A. 2C:52-2(a)(2) and (c)(3) to include transcripts of plea and sentencing hearings and their presentence report with their petition. 210 N.J. at 577. This requirement was specifically intended to assist trial judges in their evaluation of the "nature of the offense" component of the public interest test and allow them to "weigh the risks and benefits to the public of allowing or barring expungement." Id. The Court noted that "[t]he focus, as the statute says, is on the '*public interest*,' which is broader than the personal desires of an applicant...." Id. (emphasis added).

Compelling Circumstances Standard

The 2020 statutory amendments replaced the "public interest" test and its focus on the nature of the offense with a test that instead focuses on the applicant. Under the revised law, to grant an expungement the court must find in "its discretion that *compelling circumstances* exist to grant the expungement." N.J.S.A. 2C:52-2(a)(2) (emphasis added). The amended statute further provides:

In determining whether compelling circumstances exist for the purposes of paragraph (1) of this subsection, a court may consider the amount of any court-ordered financial assessment imposed, the person's age at the time of the offense or offenses, the person's financial condition and other relevant circumstances regarding the person's ability to pay.

In replacing the “public interest” standard with the “compelling circumstances” test, and specifically removing any reference to the nature of the offense and instead defining “compelling circumstances” to include fines, the age of defendant, and their ability to pay, the Legislature eliminated any expungement requirements associated with the public interest standard. That includes the requirement to provide transcripts and presentence reports set forth in Kollman, which was specifically related to the then-existing public interest standard. See Kollman, 210 N.J. at 577 (“To assist the court in its *evaluation of the public-interest prong...*” (emphasis added)).

(2) GUIDANCE ON HANDLING FUGITIVE FROM JUSTICE CHARGES

Whenever charges brought pursuant to N.J.S.A. 2A:160-10 (Fugitive from Justice) are transferred to another jurisdiction and the underlying records and information must be preserved pending federal or out-of-state litigation, prosecutorial and clerical staff must appropriately designate the case disposition as “transferred” rather than “dismissed.” The proper disposition is imperative to prevent inadvertent dismissals as a result of automatic expedited expungements.

Effective June 15, 2020, N.J.S.A. 2C:52-6 was amended to require the court to order an expungement of all related records and information at the time of the dismissal, acquittal, or discharge without a conviction or adjudication of delinquency (including juvenile diversion). The defendant or juvenile is no longer required to apply for an expungement of these matters. The court is now responsible for identifying matters eligible for an expedited expungement and in dismissing the charge or acquitting the defendant, the court is to order eligible matters expunged.

Stakeholders have raised concerns regarding the automatic expedited expungement of fugitive from justice charges when such matters have been dismissed when they in fact are actually being transferred to another jurisdiction. Cases with a “transferred” disposition are not subject to an automatic expedited expungement pursuant to N.J.S.A. 2C:52-6. Therefore, provided these matters are correctly designated by staff as “transferred” and not “dismissed,” all underlying records and information will be appropriately preserved.

(3) ADDITIONAL INFORMATION ON THE eCOURTS EXPUNGEMENT SYSTEM AND ENHANCEMENTS

The 2020 statutory amendments also required the Administrative Office of the Courts to develop and maintain a statewide system to electronically file, serve, and manage expungement applications. N.J.S.A. 2C:52-10.1(a). On December 8, 2020, the Court issued an Order relaxing and supplementing Part III Rules to conform to the legislation and support the 2021 launch of eCourts Expungement System and to add a 30-day timeframe for the petitioner to reply to any objection filed by the county prosecutor.

Pursuant to N.J.S.A. 2C:52-10.1(a) and (b), upon filing, the eCourts Expungement System (“eCourts”) sends an electronic notification as service of the petition and all supporting documents on the Superintendent of State Police, the Attorney General, the county prosecutor of the county in which the court is located, and the county prosecutor of any county in which the petitioner was convicted. The eCourts system also electronically compiles a list of all relevant Judiciary records for an expungement petitioner and transmits this information to all parties served. In limited situations, due to the significant age of a case, petitioners must enter into eCourts supplemental information that is not available in the Judiciary’s records.

Current Application Information

Currently, the eCourts Expungement System electronically facilitates: (1) the filing of expungement petitions; (2) the petitioner’s ability to withdraw and submit an amended petition and proposed order; (3) the transmittal and service of petitions to the county prosecutor and other law enforcement authorities; (4) the submission of an objection by the county prosecutor within 60 days of the filing of the initial petition; (5) the transmittal to the Office of the Public Defender of a county prosecutor’s objection; (6) the transmittal of a petitioner’s reply to an objection within 30 days of the filed objection; and (7) the dissemination of the expungement order.

The System incorporates all of the statutory requirements as well as additional enhancements.

Access to eCourts Expungement System

The eCourts Expungement System may be accessed at: <https://www.njcourts.gov/self-help/expunge-record>

For additional information and training materials please see visit the eCourts Training Page (<https://www.njcourts.gov/attorneys/ecourts/user-guides>) under the eCourts Expungement System section.

An expungement packet remains available in the [Self-Help Center](#) and in hardcopy form in the courthouses for those unable to access the eCourts Expungement System.

Recent Enhancements

Recent enhancements to the eCourts Expungement System allow County Prosecutors to object to the proposed order and petition and return them to the petitioner for correction. In that situation petitioners are able to submit a revised petition and proposed order. Additionally, the system now automatically schedules expungement hearings which, pursuant to N.J.S.A. 2C:52-9, should be scheduled within 60 days of the filed petition. While the court may, in its discretion, postpone these hearings, the initial hearing must be scheduled within 60 days of filing.

Questions regarding this Directive and the eCourts Expungement System may be directed to the Criminal Practice Division by phone at 609-815-2900 ext. 55300.

cc: Chief Justice Stuart Rabner
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