

Administrative Office of the Courts

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[Questions or comments may be directed to 609-292-3593.]

DIRECTIVE # 03-13 [SUPERSEDES DIRECTIVE #1-06]

TO: Assignment Judges

FROM: GLENN A. GRANT, J.A.D

SUBJ: REVISED UNIFORM DEFENDANT REPORTING SYSTEM

DATE: May 29, 2013

I. <u>SCOPE</u>

The Supreme Court in its decision directed the modification of the provisions of the prior directive with regard to the disclosure of defendant's financial information as set forth on the third page of the (UDIR) form: "We further hold that while ... Directive [#1-06] serves the valuable purpose of protecting disclosure of sensitive confidential information, it improperly prevents the State from prosecuting defendants who submit false financial information to secure the legal services of the Public Defender. We thus modify the Directive to permit, in appropriate circumstances, the disclosure of defendant's financial information set forth on the third page of the UDIR form. The State can obtain that information through a valid grand jury subpoena – not through a trial subpoena.... Our decision today facilitates the State's ability to prosecute false swearing and fraud in the submission of financial disclosures to obtain public defender representation. It also ensures that a defendant's non-financial personal information, such as the medical, mental health, and substance abuse history that is also submitted to the Superior Court on the UDIR form, will remain confidential." (Slip opinion at 4.) See Section

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IV below for the detailed guidelines provided by the Supreme Court for such limited disclosures.

II. BACKGROUND

On recommendation of the Criminal Practice Committee in its 1988-90 Report, the Supreme Court in January 1991 approved the use of the Uniform Defendant Reporting System by Criminal Division support staff for purposes of intake, bail, pretrial intervention, and sentencing. The Supreme Court directed the use of the forms under the following guidelines or conditions: (1) information contained on the intake form can be used by the court without restriction for purposes of setting bail, appointment of counsel, and pretrial intervention; (2) information on the intake form may not be used in grand jury proceedings or at trial, even for purposes of cross-examination; and (3) information contained on the intake form may be used at sentencing unless the defendant specifically objects, in which case the information cannot be used over that objection. The Supreme Court in 1991 further directed that whether or not the defendant objects to the use of the information on the intake form for sentencing purposes, defendant should still be instructed to appear for a presentence report interview at which he or she is to be asked for any statements for inclusion in the presentence report.

In 2006, the Uniform Defendant Reporting System was reissued as part of the new webbased application that allows staff to download into the forms information that exists in several mainframe computer systems, such as PROMIS/GAVEL and the Automated Criminal System (ACS), thereby eliminating the need to re-enter information separately in multiple systems. In addition, the web-based application allows any report produced to be stored centrally, and thus by accessible to other authorized staff within the county as well as authorized staff in other counties. The application allows staff producing reports to transmit the reports electronically to their supervisors for review and approval.

The Uniform Defendant Reporting System consists of the following array of reconfigured forms (all of which are appended to this Directive). As noted earlier, the only revision to this combined set of forms is to page 3 ("Financial Status") of the Uniform Defendant Intake component. However, also see Section IV below for the Supreme Court's guidelines regarding limited disclosure of the information in this section as set forth in the <u>In re</u> <u>Subpoena Duces Tecum on Custodian of Records</u> decision.

- 1. Uniform Defendant Intake Report (UDIR) (4 pages) (page 3 has been revised)
- 2. Adult Presentence Report
- 3. Multiple Charges
- 4. Offense Information
- 5. Case Analysis
- 6. Court History
- 7. Court History Continued
- 8. Pretrial Intervention Recommendation
- 9. Additional Information

III. <u>UDRS COMPONENT FORMS REQUIRED FOR PARTICULAR EVENTS AND</u> <u>REPORTS</u>

The particular forms required to be used for each type of report, with those component forms drawn from the preceding list of forms, are as follows:

A. <u>Indigency Application</u>

1) Pages 1 and 3 of the Uniform Defendant Intake

B. <u>Bail/Intake Report</u>

- 1) Pages 1 through 4 of the Uniform Defendant Intake
- 2) Court History
- 3) Court History Continued (if needed)
- 4) Additional Information (if needed)

C. <u>Pretrial Intervention Report (PTI)</u>

- 1) Pages 1 through 4 of the Uniform Defendant Intake
- 2) Offense Information (multiple copies if more than one case)
- 3) Court History
- 4) Court History Continued (if needed)
- 5) PTI Recommendation
- 6) Additional Information (if needed)

<u>Note</u>: The above forms for PTI are to be used in conjunction with the PTI Order of Postponement, Standard Conditions of PTI Supervision and Special Conditions of PTI Supervision issued October 4, 2005 in Directive #14-05 for cases being enrolled into the Pretrial Intervention Program.

D. <u>Presentence Investigation Report (PSI)</u>

- 1) Adult Presentence Report
- 2) Offense Information (multiple copies if more than one case)
- 3) Multiple Charges (if needed)
- 4) Pages 1 through 4 of the Uniform Defendant Intake
- 5) Case Analysis
- 6) Court History
- 7) Court History Continued (if needed)
- 8) Additional Information (if needed)

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IV. GUIDELINES ON DISCLOSURE OF FINANCIAL SECTION (NEW)

In <u>In re Subpoena Duces Tecum on Custodian of Records</u>, <u>N.J.</u> (A-25-11, May 14, 2013), the Supreme Court issued the following detailed guidelines regarding the disclosure of the financial section of a defendant's UDIR form (page UDIR-3) where the State seeks to investigate and prosecute the defendant for false swearing and/or fraud. Such disclosure "is proper only in limited circumstances." (Slip opinion at 26.)

A. To avoid any possible confusion about the scope of confidentiality for the UDIR, the Court directed that page 3 be modified to include the following warning: "At the direction of the Assignment Judge acting on his or her own initiative, or in response to a valid grand jury subpoena with the approval of the Assignment Judge, this page (UDIR-3) may be produced to a grand jury and a prosecutor." (Slip opinion at 26.) This added language is the only revision to the UDIR form effected by this Directive.

B. If prosecutors seek to preserve the option to subpoen the financial and employment information that defendants supply on the intake form, they must ask the trial court to have the defendant affirm three things at an early court appearance attended by court-appointed counsel:

(1) that the information that defendant supplied in the UDIR about his or her finances and employment is true;

(2) that the defendant understands that willfully false statements on the form about those areas may subject him or her to punishment; and

(3) that the defendant understands that information about finances and employment may be disclosed to a grand jury and the prosecution.

The colloquy in open court will confirm defendant's understanding of the purpose and significance of the UDIR form and will resolve any uncertainty in situations in which the defendant has prepared his form by telephone or videoconference and has not signed the form.

The defendant should be given the opportunity to review and amend the financial information he or she submitted in light of this colloquy. (Slip opinion at 26-27.)

C. The defendant's financial disclosures on the UDIR form should not be used by the prosecution to prove the pending case, even if the defendant's finances are relevant to the pending charges. To protect against the use of information provided by defendants in the pending trial, and to guard against improper accusations of abuse, a separate team of prosecutors and investigators, who are not involved with the pending case, should be assigned to any new investigation relative to the contents of the UDIR form. (Slip opinion at 27-28.)

D. Prosecutors who seek disclosure of financial data in UDIR forms should proceed by way of a grand jury subpoena, not by a trial subpoena. (Slip opinion at 28.)

E. Grand jury subpoenas should be presented to the Criminal Division Manager and the Assignment Judge along with an accompanying affidavit from the prosecutor that details the basis for the subpoena -- a showing that the intake form contains false financial information. The Assignment Judge shall determine, within his or her discretion, whether the State's proofs justify disclosure of the intake form. (Slip opinion at 29.)

V. <u>GUIDELINES/CONDITIONS ON THE USE OF THE UDIR</u>

To summarize, in light of the revision to the UDIR form and the Supreme Court's directions, the guidelines or conditions for the use of the attached set of forms are now revised as follows: (1) information contained on the intake form may be used by the court without restriction for purposes of setting bail, appointment of counsel, and pretrial intervention; (2) pursuant to <u>In re Subpoena Duces Tecum on Custodian of Records</u>, the information on the intake form may not be used in grand jury proceedings, even for purposes of cross-examination, except that at the direction of the Assignment Judge acting on his or her own initiative, or in response to a valid grand jury subpoena with the approval of the Assignment Judge, page 3 of the UDIR (UDIR-3) may be produced to a grand jury and a prosecutor, as long as the defendant's financial disclosures on the UDIR form are not used by the prosecution to prove the pending case, even if the defendant's finances would be relevant to the pending charges; (3) the information on the intake form may not be used at trial, even for purposes of cross-examination; and (4) information contained on the intake form may be used at sentencing unless the defendant objects, in which case the information cannot be used over defendant's objection.

Any questions or comments regarding this Directive or the Uniform Defendant Reporting System, including the UDIR form, may be directed to the AOC's Criminal Practice Division at 609-292-3593.

G.A.G.

Attachments

cc: Chief Justice Stuart Rabner Criminal Presiding Judges Criminal Division Judges Steven D. Bonville, Chief of Staff AOC Directors and Assistant Directors Trial Court Administrators Criminal Division Managers Sue Callaghan, Criminal Practice Division Gurpreet M. Singh, Special Assistant

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9. Family History					
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12. Other Information /	Comments				
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Revised: 05/2013, CN: 10693					

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SUPERVISOR	SUPERVISOR SIGNATURE	DATE APPROVED

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