

NOTICE TO THE BAR

AUTOMATED PROCESSES FOR CERTAIN MARIJUANA AND HASHISH CASES IN ACCORDANCE WITH THE MARIJUANA DECRIMINALIZATION LAW

The Supreme Court by the attached order dated July 1, 2021 provides for the dismissal, vacating, and expungement of certain marijuana and hashish cases involving offenses enumerated in the Marijuana Decriminalization Law, L. 2021, c. 19 (codified in relevant part at N.J.S.A. 2C:35-23.1 and N.J.S.A. 2C:52-6.1). Approximately 360,000 cases in the Superior Court (Criminal and Family) and in the Municipal Courts potentially fall within this statutory direction.

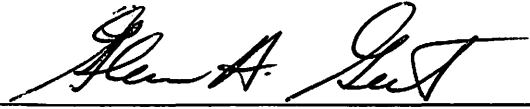
The Court's Order sets out in detail the statutory criteria for determining those cases to which the automated processes apply.

Technological modifications are being made to a number of the Judiciary's case management systems to enable implementation of the automated processes for these eligible cases as expeditiously as possible.

The Court's order also provides for a process for handling cases not captured by the automated processes via a motion to dismiss or vacate (depending on the status of the case) brought to the court (Superior Court or Municipal Court) that had jurisdiction over the case, or by individual expungement petition to the Superior Court.

A process to address inquiries from individuals as to whether their particular case has been expunged pursuant to the provisions of the Order and

to receive a certification of such expungement is currently being developed. This process for expungement inquiry and certification will be announced to the public upon completion of the automated processes set forth in the Order.

A handwritten signature in black ink, appearing to read "Glenn A. Grant", is positioned above a horizontal line.

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: July 1, 2021

SUPREME COURT OF NEW JERSEY

The Marijuana Decriminalization Law, L. 2021, c. 19, codified in relevant part at N.J.S.A. 2C:35-23.1 and N.J.S.A. 2C:52-6.1, provides for the dismissal, vacating, and expungement of certain marijuana and hashish cases involving specified offenses as defined in that legislation. The Administrative Office of the Courts has determined that approximately 360,000 cases in the Superior Court (Criminal and Family) and the Municipal Courts potentially fall within that statutory direction.

In accordance with N.J.S.A. 2C:35-23.1(a), the automated processes set forth in this Order apply only to cases involving the following specific marijuana or hashish offenses, including attempts or conspiracies to commit these specific offenses:

N.J.S.A. 2C:35-5(b)(12) - Distribution of less than one ounce of marijuana or less than 5 grams of hashish (fourth degree);

N.J.S.A. 2C:35-10(a)(3) - Possession of more than 50 grams of marijuana or more than 5 grams of hashish (fourth degree);

N.J.S.A. 2C:35-10(a)(4) - Possession of 50 grams or less of marijuana or 5 grams or less of hashish (disorderly persons offense).

The above specific offenses are eligible for the actions directed by the new statute whether they exist in the case alone, in combination, or in combination with one or more of the offenses listed in the following paragraph, including attempts or conspiracies to commit these related offenses.

The below specific offenses, including attempts or conspiracies to commit these related offenses, must be in combination with at least one of the above-listed offenses involving marijuana or hashish for the offense to be eligible for the automated processes set forth in this Order.

N.J.S.A. 2C:36-2 - Possession of Drug Paraphernalia (disorderly persons offense);

N.J.S.A. 2C:35-10(b) - Use or Being Under Influence of Controlled, Dangerous Substance (disorderly persons offense);

N.J.S.A. 2C:35-10(c) - Failure to Make Lawful Disposition of Controlled, Dangerous Substance (disorderly persons offense);

N.J.S.A. 39:4-49.1 - Operating Motor Vehicle in Possession of Controlled, Dangerous Substance (traffic offense).

For administrative efficiency, those eligible cases have been grouped into the following four categories by the particular stage of the case: (1) cases that are pending adjudication; (2) cases that have been adjudicated but are pending sentencing (adult) or pending disposition (juvenile); (3) select cases after sentencing (adult) or after disposition (juvenile); and (4) other cases that have been disposed (as defined below).

Accordingly, effective immediately, it is **ORDERED** as to those four categories of cases as follows:

(1) Cases Pending Adjudication

For cases in which adjudication is pending and where only the specific offense(s) remain active as of the date of this order, including cases in which the defendant is currently subject to a conditional discharge program:

(a) such cases shall be dismissed pursuant to N.J.S.A. 2C:35-23.1(a);

(b) such cases shall be expunged pursuant to N.J.S.A. 2C:52-6(a) (excluding N.J.S.A. 39:4-49.1, which is not eligible for expungement pursuant to N.J.S.A. 2C:52-28);

(c) any associated active warrants for failure to appear shall be rescinded;

(d) any associated violations of probation or violations of pretrial monitoring shall be vacated; and

(e) any associated court-ordered driver's license suspensions or revocations for failure to appear shall be rescinded. Any rescission of a court-ordered driver's license suspension or revocation pursuant to

this order is separate from any license restoration fee or process required by the New Jersey Motor Vehicle Commission.

(2) Cases That Have Been Adjudicated but are Pending Sentencing (Adult) or Disposition (Juvenile)

For cases that are pending sentencing or disposition, and that have been adjudicated through entry of a guilty plea, adjudication of delinquency, guilty verdict, disposition, or admission into pretrial intervention (PTI), veterans' diversion program, or juvenile diversion program:

(a) any guilty verdict, adjudication of delinquency, plea, placement in an enumerated diversionary program, or other entry of guilt shall be vacated pursuant to N.J.S.A. 2C:35-23.1(b)(1);

(b) any guilty verdict, adjudication of delinquency, plea, placement in an enumerated diversionary program, or other entry of guilty shall then be dismissed pursuant to N.J.S.A. 2C:35-23.1(a);

(c) such cases shall be expunged pursuant to N.J.S.A. 2C:52-6(a) (excluding N.J.S.A. 39:4-49.1, which is not eligible for expungement pursuant to N.J.S.A. 2C:52-28);

(d) any associated active warrants for failure to appear shall be rescinded;

(e) any associated violations of pretrial monitoring shall be vacated; and

(f) any associated court-ordered driver's license suspensions or revocations for failure to appear shall be rescinded. Any rescission of a court-ordered driver's license suspension or revocation pursuant to this order is separate from any license restoration fee or process required by the New Jersey Motor Vehicle Commission.

(3) Select Cases After Sentencing (Adult) or After Disposition (Juvenile)

For cases in which the defendant or juvenile is or will be serving a sentence of incarceration, probation or parole, or other form of community supervision on July 1, 2021 as a result of a conviction or an adjudication of delinquency for the specific offenses, not including cases in which there was a conviction or adjudication for N.J.S.A. 39:4-49.1 (Operating Motor Vehicle in Possession of Controlled, Dangerous Substance):

- (a) any conviction, remaining sentence, juvenile disposition, ongoing supervision, any associated violation of probation, or unpaid court-ordered financial assessment including civil judgments for non-payment shall be vacated pursuant to N.J.S.A. 2C:35-23.1(b)(2);
- (b) any defendant or juvenile currently serving a term of incarceration shall be released;
- (c) any ongoing term of supervision, including terms for violations of probation, shall be terminated;
- (d) such cases shall be dismissed, pursuant to N.J.S.A. 2C:35-23.1(a);
- (e) such cases shall be expunged pursuant to N.J.S.A. 2C:52-6(a) (excluding N.J.S.A. 39:4-49.1, which is not eligible for expungement pursuant to N.J.S.A. 2C:52-28);
- (f) any associated active warrants for failure to appear, failure to pay, or failure to comply with parole or other community supervision shall be rescinded;
- (g) any associated court-ordered driver's license suspensions or revocations for failure to appear shall be rescinded. Any rescission of a court-ordered driver's license suspension or revocation pursuant to this order is separate from any license restoration fee or process required by the New Jersey Motor Vehicle Commission.

(4) Other Cases That Have Been Disposed

For cases in which a court has entered convictions or adjudications of delinquency for only the specific offenses or has dismissed cases due to completion of the conditional discharge program, not including cases in which there was a conviction or adjudication for N.J.S.A. 39:4-49.1 (Operating Motor Vehicle in Possession of Controlled, Dangerous Substance):

- (a) any remaining sentence, juvenile disposition, ongoing supervision, associated violation of probation, or unpaid court-ordered financial assessment, including civil judgments for non-payment, shall be vacated pursuant to N.J.S.A. 2C:52-6.1;
- (b) such cases shall be expunged pursuant to N.J.S.A. 2C:52-6.1;

(c) any associated active warrants for failure to appear or failure to pay shall be rescinded;

(d) any associated court-ordered driver's license suspensions or revocations for failure to appear shall be rescinded. Any rescission of a court-ordered driver's license suspension or revocation pursuant to this order is separate from any license restoration fee or process required by the New Jersey Motor Vehicle Commission.

It is **FURTHER ORDERED** that since the Judiciary will need to modify a number of its case management systems in order to implement the automated processes set forth in this Order, the Administrative Director of the Courts is directed to take such steps as are necessary to accomplish that as expeditiously as possible.

It is **FURTHER ORDERED** that the Administrative Director of the Courts shall provide lists of the cases that are subject to this Order to the Attorney General (who will share those lists with the New Jersey State Police and with county and local law enforcement agencies), the New Jersey Department of Corrections, the State Parole Board, and the County Jail Wardens so that respectively they can take appropriate actions related to those cases.

It is **FURTHER ORDERED** that, in addition to the lists of cases provided for in the preceding paragraph, the Administrative Director of the Courts also shall provide the Attorney General with lists of all cases currently pending adjudication that include the specific marijuana or hashish offenses listed above and other non-marijuana or hashish offenses that are subject to review pursuant to the statute and Attorney General Law Enforcement Directive No. 2021-1. The Attorney General will share those lists with county and municipal prosecutors so that they can take appropriate action related to those cases.

It is **FURTHER ORDERED** that any case not captured by the automated processes described above, depending on the status of the case, may be brought by motion to dismiss or motion to vacate to the court that had jurisdiction over the case

(Municipal Court or Superior Court) or by individual expungement petition to the Superior Court. Further, any legal or administrative issues related to a particular case included in the automated process shall be brought by motion before the court that had jurisdiction over the case (Municipal Court or Superior Court).

It is **FURTHER ORDERED** that the Administrative Director of the Courts shall develop a process that will allow individuals to inquire as to whether their particular case has been expunged pursuant to the provisions of this order and to receive a certification of such expungement. This process for expungement inquiry and certification shall be announced to the public upon completion of the automated processes described above.

For the Court,

A handwritten signature in blue ink, appearing to read "Shirley R. ...", is written over a horizontal line.

Chief Justice

Dated: July 1, 2021