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**Second Supplement to Directive # 23-06**

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**TO: Assignment Judges**

**FROM: Glenn A. Grant, J.A.D.** 

**SUBJ: Revised Standard for Criminal Background Checks of Grand Jurors**

**DATE: August 9, 2021**

Directive #23-06 (“Grand Jury Standards – Implementation and Questionnaire”) promulgated standard grand jury policies and procedures, which have been implemented statewide for over a decade.<sup>1</sup>

This Supplement to Directive #23-06 rescinds former Standard 2<sup>2</sup> and concludes the policy and practice of general background checks of grand jurors, effective immediately. The conclusion of this practice aligns with the Supreme Court’s holding in State v. Edwin Andujar, (A-6-20) (decided July 13, 2021), in which the Court established a new standard and process for individualized background checks of jurors.

<sup>1</sup> This directive has one previous supplement, issued on May 15, 2020 and updated on September 30, 2020.

<sup>2</sup> Standard 2 (“Background Checks on Grand Jurors”) provided that “[w]here the prosecuting authority advises the Judiciary of its interest in conducting criminal background checks on grand jurors, the Judiciary shall provide a list of jurors, with appropriate identifying information, for that purpose.” Those county prosecutors in the practice of conducting background checks on grand jurors who are scheduled to report for service would provide the results to the Judiciary for consideration by the judge responsible for the grand jury selection.

Going forward, consistent with the rationale set forth in Andujar, the court may permit the prosecuting attorney to run a criminal background check on a prospective grand juror only based on a reasonable, individualized, good-faith basis to believe that a record check might reveal pertinent information unlikely to be uncovered through the ordinary *voir dire* process.

1. If a prosecutor seeks to conduct such a background check prior to the empanelment date, then an application must be made to and approved by the Assignment Judge.
2. If a prosecutor seeks to conduct such a background check during voir dire, then an application must be made to and approved by the judge conducting grand jury selection.
3. The court on its own motion may ask the prosecutor to conduct a background check of a prospective grand juror during voir dire in order to determine whether the grand juror is statutorily eligible to serve.
4. If a question is raised as to whether an empaneled grand juror is eligible to serve, the issue must be raised to the Assignment Judge who will determine whether to permit a background check of the juror.

#### Determination of Eligibility to Serve as a Grand Juror

The Court anticipates that the most common situation will involve disclosure by the reporting grand juror during *voir dire* that they are uncertain whether their criminal background disqualifies them from grand jury service based on the criteria set forth in N.J.S.A. 2B:20-1. If the court determines that a background check is needed to resolve whether the prospective grand juror is qualified to serve, the prosecutor will facilitate the background check and share the results with the judge. The grand juror should generally be afforded an opportunity to explain and provide context for the results of a background check. Those communications should take place at sidebar outside of the presence of the other prospective grand jurors.

The court must avoid empanelment of individuals who are statutorily ineligible to serve. However, the court should not automatically dismiss the prospective grand juror when there is an issue of doubt. Accordingly, when a reasonable, individualized, good-faith basis for concern arises during *voir dire*, the judge should exercise discretion in determining whether to authorize a background check, or instead postpone service for a prospective grand juror. Relevant considerations include the amount of time needed to conduct a criminal background check and give the grand juror an opportunity to explain and provide context for the results.



### Safeguards to Minimize Need for Criminal Background Checks

Criminal background checks of individuals who complete qualification and report for grand jury service should rarely be necessary. Prospective jurors have been informed of the eligibility criteria established by N.J.S.A. 2B:20-1 and have advised that they are qualified to serve. They have reported to the court for potential selection to perform their civic duty. Grand Juror eligibility criteria are reviewed again during orientation. In addition to those safeguards, the judge conducting the grand jury selection must repeat the requirements for grand jury service and ask jurors to raise any questions about their qualification at sidebar. Judges are reminded to focus on and, as appropriate, elaborate on the criminal history question, especially as to any criminal offenses outside of New Jersey. Judges should ask grand jurors to disclose any pending charges and should remind them if they are currently serving a term of pretrial intervention (PTI) they are not eligible to serve.

Judges should also ask grand jurors to speak privately at sidebar if they are not sure about the status of their criminal background, especially as to any criminal offenses outside of New Jersey. In general, a robust *voir dire* process should reveal any issues that might preclude an individual from serving as a grand juror.

### Questions

Questions or comments regarding this Second Supplement to Directive #23-06 should be directed to the Office of the Administrative Director of the Courts at (609) 376-3000.

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