

A.A., B.B., C.C., D.D., E.E., AND F.F., on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

COLONEL PATRICK J. CALLAHAN, in his official capacity as Superintendent of State Police,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
DOCKET NO. MER-L-2001-23

Civil Action

**SECOND INTERIM
CONSENT ORDER**

This matter having been opened to the Court by Verified Complaint, in the form of a putative class action, against Colonel Patrick J. Callahan, the Superintendent of the New Jersey State Police, under whose supervision is the New Jersey State Police, Expungement Unit (hereinafter the “State Police”), responsible for processing judicial orders of expungement entered by the Superior Court of New Jersey; and

Whereas, the parties have been engaged in substantive and ongoing good faith efforts to resolve this matter through mutual agreement, and through mediation with the assistance of Justice Jaynee LaVecchia (ret.); and

Whereas, both parties agree that the Interim Consent Order entered by Douglas H. Hurd, P.J.Cv. on April 30, 2024 (the “First Interim Consent Order”), is fully incorporated herein by reference; and

Whereas, the First Interim Consent Order provided that the parties agreed to continue to discuss the State Police’s duty to promptly process any judicial order of expungement not delineated in the First Interim Consent Order; and

Whereas, the State Police has changed its internal processes to prioritize processing the expungement orders covered by the First Interim Consent Order, and with the guidance of the First Interim Consent Order, the State Police has processed 6,798 orders from April 30, 2024, to July 31, 2024; and

Whereas, the parties agree that those who obtain judicial orders of expungement should have the ability to learn the status of the processing of their judicial orders of expungement, and the State Police has engaged its technology vendor and various departments within the State to discuss the development of an online portal through which expungement petitioners can obtain the processing status of their judicial orders of expungement. Because implementation of this

portal is expected to take some time, the State Police agrees in the interim to publicly share online two types of information that will assist petitioners in determining whether their judicial orders of expungement have potentially been processed. First, the State Police will make publicly available online a running list of docket numbers of expungement orders that were processed after the implementation of this Second Interim Consent Order so that petitioners can confidentially compare their unique docket numbers to those that had been processed. Second, in the same location where the State Police is publicly making available the information described above, the State Police will also list a working phone number and email address for the Expungement Unit so that petitioners with questions about the processing of their judicial orders of expungement may contact the Expungement Unit; and

Whereas, the parties have agreed that, promptly following the entry of this Second Interim Consent Order, the State Police will begin to provide the Office of the Public Defender (“OPD”) with weekly updates as to the number of expungement orders processed in the preceding week, the total number of expungement orders awaiting processing, and other information as the parties may agree to share. Such weekly updates shall be accompanied by a certification signed by an authorized individual from the State Police; and

Whereas, in an effort to reduce the backlog of expedited expungement orders currently awaiting processing, the State Police has agreed to implement a technologically based process to bulk expunge expedited orders, and, since April 30, 2024, has expunged approximately 21,000 expedited expungement orders. The State Police will repeat this process on a quarterly basis hereafter; and

Whereas, recognizing the State Police’s lack of access to certain components of the eCourts Expungement Portal has contributed to the delays in processing expungement orders, the parties agree that the State Police shall continue to work with the Office of the Attorney General, the OPD, and Justice LaVecchia to seek expanded access to the portal for the State Police; and

Whereas, the parties have continued to discuss the areas of concern as to whether there exists a legal impediment to the State Police’s processing of a final expungement order, and now wish to submit to writing their mutual understanding about additional categories of expungement orders implicated in this same concern;

Therefore, be it known that the parties agree as follows:

1. The parties agree that, upon entry of this Second Interim Consent Order, in the event a county prosecutor files an objection to a pro se expungement petition due to the appearance of charges listed under the “Pending Municipal Charges” or “Pending Criminal Charges” headings on the petitioner’s Party Court History (“PCH”) form and the face of the petition does not contain a satisfactory explanation of the disposition of such charges, the OPD, after being assigned as counsel, shall henceforth take the following steps:

A. In cases where the final disposition of the charge in question is readily discernable by reference to another item on the PCH form, the OPD will henceforth notify the County Prosecutor who issued the objection, revise the petition to include a summary in the “Additional Case Details” section explaining how the charges

in question were disposed, and to the extent available attach any related documents to the revised petition, with the goal of ensuring that the State Police has access to the same information regarding the disposition as the Prosecutor and the Court. In all such cases, the State Police will promptly process the order granting the revised petition; or

B. In cases where the final disposition of the charge in question is not readily discernable by reference to the PCH form, the OPD will henceforth seek additional documentation attesting to the final disposition of the charge in question. This additional documentation may take the form of, but is not limited to, the following items: (1) a screenshot or printout from the Person Case Search and Manage (“PCSAM”) database maintained by the Administrative Office of the Courts (“AOC”), which contains the final disposition of the charge in question; (2) a Judgment of Conviction, or any other document issued by a Superior Court, which demonstrates the final disposition of the charge in question; or (3) a certified disposition issued by a Municipal Court, which demonstrates the final disposition of the charge in question. If neither the AOC database, nor the Superior Court, nor the Municipal Court possesses a record confirming the disposition of the charge in question, whether due to inexact bookkeeping, the old age of the documents sought, or any other reason, the OPD will seek a letter from the Court in which the charges are listed as apparently “pending” that attests to the absence of any such records; if that Court does not readily provide such a letter, an attorney from the OPD will attest to the same facts in a certification and upload the certification in lieu of records or a letter from the Court. Once in possession of this documentation or certification, the OPD will henceforth notify the County Prosecutor that issued the objection, upload the documentation to the eCourts Expungement Portal, and submit a revised petition that lists the dispositions of the charges in question in the “Additional Case Details” section, if known, with the goal of ensuring that the State Police has access to the same information regarding the disposition as the Prosecutor and the Court. Upon receipt of the order granting the revised petition that contains an explanation of the disposition of the pending charge as described above, the State Police will promptly process the order granting the revised petition; and

2. In recognition that the State Police’s current access privileges within the eCourts Expungement Portal limit the amount of documentation that is available to it when it processes a judicial order of expungement, and in further recognition that the computer databases maintained by the State Police and the Judiciary do not always accurately reflect the final disposition of criminal charges, including transferred or remanded charges, the parties agree that, upon entry of this Second Interim Consent Order, when the State Police identifies in a judicial order of expungement a charge or charges that have been transferred or remanded to a different court or appear to be active or otherwise pending a final disposition, the State Police shall examine the expungement petition, the judicial order of expungement, the PCH form, and all other documents in possession of the State Police to determine whether any such document lists the disposition of the charge or charges in question. When no such document lists the disposition, the State Police will take the following action:

A. For a Clean Slate expungement ordered pursuant to N.J.S.A. 2C:52-5.3, if the date listed of transfer, remand, or case initiation, whichever is later, is more than ten (10) years before the date the State Police is processing the judicial order

of expungement and the charge or charges in question do not pertain to a record of conviction of an offense enumerated as a non-expungable offense pursuant to N.J.S.A. 2C:52-2(b) or (c), the State Police will promptly process the order in its entirety, including the charge or charges that were transferred or remanded or for which no final disposition is listed; or

B. For a regular expungement ordered pursuant to N.J.S.A. 2C:52-2 and/or 2C:52-3, if the date listed of transfer, remand, or case initiation, whichever is later, is more than five (5) years before the date the State Police processes the judicial order of expungement and the charge or charges in question do not pertain to a record of conviction of an offense enumerated as a non-expungable offense pursuant to N.J.S.A. 2C:52-2(b) or (c), the State Police will promptly process the order in its entirety, including the charge or charges that were transferred or remanded or for which no final disposition is listed; or

C. For an ordinance expungement order pursuant to N.J.S.A. 2C:52-4, if the date listed of transfer, remand, or case initiation, whichever is later, is more than two (2) years before the date the State Police processes the judicial order of expungement and the charge or charges in question do not pertain to a record of conviction of an offense enumerated as a non-expungable offense pursuant to N.J.S.A. 2C:52-2(b) or (c), the State Police will promptly process the order in its entirety, including the charge or charges that were transferred or remanded or for which no final disposition is listed; or

D. If the date of transfer, remand, or case initiation, whichever is later, is sooner than the appropriate temporal threshold identified in paragraphs 2(A), 2(B), and 2(C) above, or if the charge or charges in question pertain to a record of conviction of an offense enumerated as a non-expungable offense pursuant to N.J.S.A. 2C:52-2(b) or (c), the State Police will not process the order, and instead will provide notice to the county prosecutor's office where the petition was filed as well as to either counsel for the petitioner, or if no counsel exists, to the OPD who will be responsible for providing documentation or a certification clarifying the final disposition of the charges in question as described in paragraphs 1(A) and 1(B) above, provided that, upon receipt of such documentation or certification, the State Police will promptly process the order on a prioritized schedule, and further provided that the State Police will not, under any circumstance, process a record of conviction designated as non-expungable under N.J.S.A. 2C:52-2(b) or (c); and

3. Understanding that in many counties the Judiciary may not have updated the status of a completed juvenile deferred disposition in the Family Automated Case Tracking System ("FACTS") to mark its successful completion, the parties agree that, upon entry of this Second Interim Consent Order, when the State Police identifies in a judicial order of expungement a juvenile case that received a deferred disposition, and the final disposition of that juvenile case is not readily apparent to the State Police based on Judiciary or State Police records, the State Police will take the following action:

A. When the end date of the deferred disposition period is more than six (6) months before the date the State Police processes the order and there is no affirmative indication in State Police or Judiciary records that the petitioner is still subject to the deferred disposition, the State Police will not object to, and will promptly process, the judicial order of expungement; or

B. When the end date of the deferred disposition period is less than six (6) months before the date the State Police processes the order or there is affirmative indication in State Police or Judiciary records that the deferred disposition is still being served by the petitioner or that the deferred disposition was revoked and the charges were reinstated and are still pending against the petitioner, the State Police will not process that order, but instead will provide notice to the county prosecutor's office where the petition was filed as well as to either counsel for the petitioner, or if no counsel exists, to the OPD who will be responsible for confirming whether the deferred disposition is still being served; and

4. The parties agree that, upon entry of this Second Interim Consent Order, when the State Police receives a judicial order of expungement that contains arrests, charges, or other references to criminal events that pertain not to the named petitioner but instead to another person, the State Police will take the following action:

A. If the judicial order of expungement was granted prior to the date this Second Interim Consent Order is approved and signed by the Honorable Douglas H. Hurd, P.J.Cv., the State Police will promptly comply with the expungement order in its entirety except that it will not expunge those records which, after due diligence by the State Police, have been determined not to pertain to the named petitioner; or

B. If the judicial order of expungement was granted on or subsequent to the date this Second Interim Consent Order is approved and signed by the Honorable Douglas H. Hurd, P.J.Cv., the State Police will not process that order, but instead will provide notice to the county prosecutor's office where the petition was filed as well as to either counsel for the petitioner, or if no counsel exists, to the OPD who will be responsible for obtaining a revised order that does not contain the arrests, charges, or any other references to criminal events that pertain to a person other than the named petitioner, and upon service of the revised order, the State Police will promptly process the same on a prioritized schedule; and

5. The parties agree that, upon entry of this Second Interim Consent Order, when a judicial order of expungement contains references to a criminal complaint, indictment, or other criminal event or record that does not match records held by the State Police (e.g., the expungement order contains a different complaint number than the State Police records do), the State Police will not process that order, but instead will provide notice, where such notice describes the precise mismatch between the order and the State Police records, when available, to the county prosecutor's office where the petition was filed as well as to either counsel for the petitioner, or if no counsel exists, to the OPD who will be responsible for obtaining a revised order containing corrected information, and upon service of the revised order, the State Police will promptly process the same on a prioritized schedule.

It is on this 19th August day of _____, 2024

ORDERED that:

The above be implemented within 10 days of entry of this order.

/s/ Douglas H. Hurd

Hon. Douglas H. Hurd, P.J.Cv.

We hereby consent to the form and entry of the within Consent order.

NEW JERSEY OFFICE OF THE PUBLIC DEFENDER



Michael R. Noveck, Deputy Public Defender
Attorney for Plaintiffs

CHIESA SHAHINIAN & GIANTOMASI PC



Matthew E. Beck, Esq.
Attorney for Defendant, Colonel Patrick J. Callahan