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TO: Assignment Judges
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FROM: Glenn A. Grant, J.A.D. 

SUBJ: Criminal Justice Reform – Pretrial Detention – Procedure for Filing Motions to Reopen Detention Orders Based on State v. Mercedes/State v. Travis and the Amendments to Rule 3:4A(b)(5)

DATE: May 29, 2018

This Directive provides the procedures for courts and litigants to use in making a motion to reopen a pretrial detention order as a result of the Supreme Court's May 1, 2018 decision in State v. Mercedes/State v. Travis (A-6-17/A-7-17) (slip opinion at 28-29) and amendment to Rule 3:4A(b)(5) (effective as of that date).

As articulated by the Court in Mercedes/Travis, the motion to reopen a pretrial detention order based on the amendment to R. 3:4(b)(5) is available only to defendants who are currently held in pretrial detention and “(1) the order of detention relied solely on a recommendation against release by the pretrial services program, (2) that recommendation was based only on the type of offense charged, and (3) that recommendation was not based on an offense described in N.J.S.A. 2A:162-19(b)” (i.e., a charge of murder or an offense subject to an ordinary or extended term of life imprisonment). Ibid.

If the motion to reopen is made by defendant's counsel, it must be submitted electronically through eCourts pursuant to the December 5, 2016 Supreme Court order mandating electronic filing in criminal matters. The filer must use the motion type entitled: “Motion - Reopen Detention Order.”

Additionally, such motions must be accompanied by a certification setting forth the facts supporting the applicant's position that the court (1) solely relied on a recommendation against release by the pretrial services program, and (2) the pretrial services recommendation was based solely upon the type of offense charged, and (3) the pretrial services recommendation was not based on an offense described in N.J.S.A. 2A:162-19(b). Litigants may refer to the Decision-Making Framework in determining whether the pretrial services recommendation relied solely on the type of the offense at <https://www.njcourts.gov/courts/assets/criminal/decmakframework.pdf>.

Further, if the pretrial detention order indicates that the court relied solely on the recommendation against release in its reasons for granting pretrial detention, or if it is ambiguous whether the court relied solely on a recommendation against release in granting pretrial detention, then the application must also be accompanied by a transcript of the proceedings. Pretrial detention

orders that clearly set forth multiple reasons for granting detention do not require a transcript and are likewise ineligible for reopening based on the Supreme Court's decision. See State v. Mercedes (slip op. at 29).

Finally, these motions to reopen, when feasible, should be scheduled before the judge who ordered detention, and shall be heard on an expedited basis.

Questions or comments regarding this Directive may be directed to Sue Callaghan, Assistant Director for Criminal Practice, by email at sue.callaghan@njcourts.gov or by phone at (609) 815-2900 x55300.

cc: Chief Justice Stuart Rabner
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