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To: Hon. Carmen Messano
Assignment Judges
Trial Court Administrators **Directive #08-22**

From: Glenn A. Grant, Administrative Director 

Subj: Criminal Justice Reform – (1) Amended by L. 2022, c. 43 to
Address Graves Act Offenses; (2) Amendments to Court Rule
3:4A(b)(5); (3) Changes to Decision-Making Framework (DMF)

Date: August 2, 2022

On June 30, 2022, Governor Murphy signed into law L. 2022, c. 43, which amended the Criminal Justice Reform Act (CJRA) (originally adopted as L. 2014, c. 31) to address specific Graves Act offenses. In response to that enactment, which was effective immediately, the Supreme Court has adopted amendments to Rule 3:4A(b)(5) and updates to the Decision-Making Framework (DMF) that serves as the basis for the Pretrial Services recommendation issued in each case pursuant to CJRA. This Directive describes the changes to the statute and the court rule and promulgates the revised DMF.

L. 2022, c. 43 requires Pretrial Services to recommend no release when a defendant has been charged with specific Graves Act offenses. The legislation also establishes that a pretrial recommendation of no release for specific Graves Act offenses may constitute prima facie evidence sufficient to overcome the presumption of release if the court finds probable cause to believe that a defendant committed such offenses. The court rule amendment and the revisions to the DMF conform to those statutory revisions.

I. Amendments to N.J.S.A. 2A:162-19 and 20 of the Criminal Justice Reform Act

A. N.J.S.A. 2A:162-20(f)

N.J.S.A. 2A:162-20(f) was amended to specify that Pretrial Services is required to recommend no release when a defendant is charged with specific Graves Act offenses. This section enumerates those specific Graves Act offenses that are excluded from this requirement. As amended, it reads as follows:

The release recommendation of the pretrial services program obtained using a risk assessment instrument under section 11 of P.L.2014, c.31 (C.2A:162-25). Pretrial services shall recommend no release when a defendant has been charged with any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:

- (1) subsection a. or d. of N.J.S.2C:39-3;
- (2) paragraph (1) or (2) of subsection a of N.J.S.2C:39-4;
- (3) subsection a. of section 1 of P.L. 1998, c.26 (C.2C:39-4.1); or
- (4) paragraph (1) of subsection b or paragraph (1) or (2) of subsection c of N.J.S.2C:39-5.1

B. 2A:162-19(g)

N.J.S.A. 2A:162-19 was amended to add subsection (g), which establishes that when a Motion for Pretrial Detention is filed against an eligible defendant who is charged with specific Graves Act offenses, a recommendation of no release issued by Pretrial Services may be considered by the court to establish prima facie evidence sufficient to overcome the presumption of release. This new subparagraph reads:

When a motion for pretrial detention is filed pursuant to subsection a. of this section, a pretrial recommendation of no release pursuant to subsection f. of section 6 of P.L.2014, c.31 (C.2A:162-20) may constitute prima facie evidence to overcome the presumption of release as set forth in subsection b. of section 4 of P.L.2014, c.31 (C.2A:162-18), if the court finds probable cause that the eligible defendant committed any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:

- (1) subsection a. or d. of N.J.S.2C:39-3;
- (2) paragraph (1) or (2) of subsection a. of N.J.S.2C:39-4;
- (3) subsection a. of section 1 of P.L. 1998, c.26 (C.2C:39-4.1);
- or
- (4) paragraph (1) of subsection b. or paragraph (1) or (2) of subsection c. of N.J.S.2C:39-5.

II. Impact on Practice; Court Rule Amendment

In terms of the impact on practice of this legislative change, first, the change to subsection (f) of N.J.S.A. 2A:162-20) requires Pretrial Services to issue a no release recommendation for defendants charged with specific Graves Act offenses. Given the nature and history of the Graves Act, this includes certain violent and serious offenses when the defendant used or was in possession of a firearm. The amendments to the CJRA also identify specifically excluded Graves Act offenses that will not on their own result in a recommendation of no release pursuant to N.J.S.A. 2A:162-20(f).

Second, the addition of paragraph (g) to N.J.S.A. 2A:162-19 creates a new category for purposes of detention hearings. While defendants charged with the crimes set forth in N.J.S.A. 2A:162-19(g) and 2A:162-20(f) are still subject to a presumption of release, N.J.S.A. 2A:162-19(g) allows the court to give greater weight to the Pretrial Services recommendation of no release if the court finds probable cause that the eligible defendant committed certain crimes for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to N.J.S.A. 2C:43-6(c) for a crime involving the use or possession of a firearm.

Importantly, N.J.S.A. 2A:162-19(g) **does not** create a presumption of detention for defendants charged with Graves Act offenses. The State continues to bear the burden of establishing by clear and convincing evidence that no amount of monetary bail, non-monetary conditions, or combination of monetary bail and conditions will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process. (N.J.S.A. 2A:162-19(e)(3).)

Finally, a recommendation of no release issued by Pretrial Services may be considered prima facie evidence **only** when that recommendation is a result of the defendant being charged with the enumerated offenses set forth in N.J.S.A. 2A:162-19(g) and N.J.S.A. 2A:162-20(f). **No other recommendation of no release may be considered to be prima facie evidence.**

In response to these amendments to the CJRA, the Supreme Court has amended R. 3:4A, the Pretrial Detention Rule, to incorporate the statutory creation of this new category of defendant into the Court Rules. The Court's August 1, 2022 order adopting the rule amendment, which was effective immediately, was published and posted by Notice to the Bar also dated August 1, 2022.

Specifically, the following language has been added to the end of R. 3:4A(b)(5):

When a motion for pretrial detention is filed pursuant to paragraph (a), the court may consider as prima facie evidence sufficient to overcome the presumption of release, a recommendation by the Pretrial Services Program that the defendant's release is not recommended, if such recommendation is made pursuant to N.J.S.A. 2A:162-20(f) and the court finds probable cause that the eligible defendant committed any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.A. 2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:

(i) N.J.S.A. 2C:39-3(a) (destructive devices) or N.J.S.A. 2C:39-3(d) (defaced firearms);

(ii) N.J.S.A. 2C:39-4(a)(1) or N.J.S.A. 2C:4(a)(2) (possession of weapons for unlawful purposes);

(iii) N.J.S.A. 2C:39-4.1(a) (weapons; controlled dangerous substances and other offenses); or

(iv) N.J.S.A. 2C:39-5(b)(1) (unlawful possessions of weapon – handgun), N.J.S.A. 2C:39-5(c)(1)-(2) (unlawful possessions of weapon – rifles and shotguns)

Although such recommendation by the Pretrial Services Program may constitute sufficient evidence upon which the court may order pretrial detention, nothing herein shall preclude the court from considering other relevant information presented by the prosecutor or the defendant in determining whether no amount of monetary bail, non-monetary bail conditions of pretrial release, or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct the criminal justice process.

III. Changes to the Decision-Making Framework (DMF)

To operationalize these statutory amendments, the Court has revised the DMF to add two new steps. The revised DMF is appended here as Attachment 1. New Step 3 in the DMF sets forth those firearm related offenses that automatically result in a recommendation of no release pursuant to N.J.S.A. 2A:162-20(f). If it is determined that a defendant's current charges include one of these firearm-related offenses, the result will be a Pretrial Services recommendation of **"No Release Recommended (Charge(s) include Graves Offenses subject to N.J.S.A. 2A:162-20(f))."**

New Step 4 of the DMF addresses those offenses that do not on their own implicate the Graves Act, but that when committed with a firearm are subject to the Graves Act (N.J.S.A. 2C:43-6c). This new step will require the determination of whether the defendant's current charges include one of these "non-firearm" related offenses and that the defendant has a current firearms related charge. A list of firearms-related offenses is appended here as Attachment 2. In order for a defendant to receive a Pretrial Services recommendation of No Release pursuant to new Step 4 of the DMF, an offense contained in this Firearms Offense List must be found in addition to one of the non-gun related offenses contained in Step 4. If it is determined that both required charges are present in a defendant's current charges, the result will be a final recommendation of **"No Release Recommended (Charge(s) include Graves Offenses subject to N.J.S.A. 2A:162-20(f))."**

Former Steps 3 and 4 in the DMF have been renumbered as Steps 5 and 6. Former Steps 5 through 10 also have been renumbered as Steps 7 through 12.

Conclusion

Any questions or comments may be directed to the Criminal Practice Division, by phone at (609) 815-2900, ext. 55300, or by email at AOC-CrimPrac.mbx@njcourts.gov.

Attachments: (1) Updated Decision-Making Framework
(2) Firearms Offense List

cc Chief Justice Stuart Rabner
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Pretrial Release Recommendation Decision Making Framework (DMF)
[Revised August 2, 2022]

Process for Identifying the Pretrial Release/Detention Recommendation

Step 1: Complete the PSA to generate the FTA scale, NCA scale, and NVCA flag.

Step 2: Determine if any current charge is Murder or subject to life imprisonment and therefore is subject to a presumption of detention pursuant to N.J.S.A. 2A:162-19(b):

- Murder or felony murder (N.J.S.A. 2C:11-3(a)(1),(2) or (3))
- Aggravated sexual assault (N.J.S.A. 2C:14-2(a)(1))
- Human trafficking (N.J.S.A. 2C:13-8(a)(2) or (3))
- Tampering/damage involving nuclear electric generating plant (N.J.S.A. 2C:17-7)
- Nuclear electric generating plant; damaging/tampering with equipment which results in death (N.J.S.A. 2C:17-8)
- Leader of narcotics trafficking network (N.J.S.A. 2C:35-3)
- Terrorism (N.J.S.A. 2C:38-2(a)(1), (2), (3) or (4))
- Producing/possessing chemical weapons, biological agents or nuclear or radiological devices (N.J.S.A. 2C:38-3(a))
- Leader of firearms trafficking network (N.J.S.A. 2C:39-16)

- If yes, the final recommendation is No Release Recommended.

- If no, continue to **Step 3**.

Step 3: Determine if any current charge is a Graves Act offense subject to an automatic recommendation of No Release Recommended pursuant to N.J.S.A. 2A:162-20(f):

- Prohibited weapons and devices – sawed-off shotgun (N.J.S.A. 2C:39-3(b))
- Unlawful possession of a weapon – machine gun (N.J.S.A. 2C:39-5(a))
- Unlawful possession of a weapon – assault firearms (N.J.S.A. 2C:39-5(f))
- Certain persons not to have weapons (N.J.S.A. 2C:39-7(a), 2C:39-7(b)(2) or (3))
 - N.J.S.A. 2C:39-7(a) is only a Graves Act offense if it includes the use or possession of a firearm.
- Weapons – manu/transport/disp/defacement (N.J.S.A. 2C:39-9(a), (b), (e), (g))

- If yes, the final recommendation is No Release Recommended.

- If no, continue to **Step 4**.

Step 4: Determine if any current charge is a:

- Aggravated manslaughter or manslaughter (N.J.S.A. 2C:11-4(a)(1) or (2), 2C:11-4(b)(1) or (2))
- Aggravated assault (N.J.S.A. 2C:12-1(b)(1), through (13))
- Kidnapping (N.J.S.A. 2C:13-1(a), (b), (b)(1), through (b)(4), or (c)(2))
- Aggravated sexual assault (N.J.S.A. 2C:14-2(a)(2)(a), (b) or (c), 2C:14-2(a)(3) through (7))
- Criminal sexual contact (N.J.S.A. 2C:14-3(a))
- First degree robbery (N.J.S.A. 2C:15-1(a)(1),(2) or (3))

Pretrial Release Recommendation Decision Making Framework (DMF)

[Revised August 2, 2022]

- Burglary (N.J.S.A. 2C:18-2(a)(1), (2), (3), (b)(1), or (b)(2))
- Escape (N.J.S.A. 2C:29-5(a))
- Absconding from parole (N.J.S.A. 2C:29-5(b))
- Permitting or facilitating escape (N.J.S.A. 2C:29-5(c))
- Determine if the defendant is **ALSO** charged with an offense involving the use or possession of a firearm.
- If yes to **BOTH**, the combination of offenses makes this a Graves Act offense, and as required by N.J.S.A. 2A:162-20(f) the final recommendation is No Release Recommended.
- If no, continue to **Step 5**.

Step 5: Determine if the PSA generated a score of 6 on the FTA scale and/or NCA scale.

- If yes, the preliminary recommendation is No Release Recommended, and proceed to **Step 12**.
- If no, continue to **Step 6**.

Step 6: Determine if there is an NVCA flag and one of the current charges is violent.

- If yes, the preliminary recommendation is No Release Recommended, and proceed to **Step 12**.
- If no, continue to **Step 7**.

Step 7: Determine if any current charge, not captured by **Step 4** above, is:

- Escape (N.J.S.A. 2C:29-5(a))
- Aggravated manslaughter or manslaughter (N.J.S.A. 2C:11-4(a)(1) or (2), 2C:11-4(b)(1) or (2))
- Aggravated sexual assault (N.J.S.A. 2C:14-2(a)(2)(a), (b) or (c), 2C:14-2(a)(3) through (7))
- Sexual assault (N.J.S.A. 2C:14-2(b), 2C:14-(c)(1))
- First degree robbery (N.J.S.A. 2C:15-1(a)(1),(2) or (3))
- Carjacking (N.J.S.A. 2C:15-2(a)(1),(2),(3) or (4))
- Possession of weapon for unlawful purpose (N.J.S.A. 2C:39-4(b), 2C:39-4(c))
- Possession of firearm on school property w/o permission (N.J.S.A. 2C:39-5(e)(1))
- Certain persons not to have weapons (N.J.S.A. 2C:39-7(b)(1),
- Transport firearms into state for unlawful sale/transfer (N.J.S.A. 2C:39-9(i))
- If yes, the final recommendation is No Release Recommended.
- If no, continue to **Step 8**.

Step 8: Determine if the defendant has previously been arrested on two separate occasions and those charges were still pending at the time of the current offense.

- If yes, the preliminary recommendation is No Release Recommended, and proceed to **Step 12**.
- If no, continue to **Step 9**.

Pretrial Release Recommendation Decision Making Framework (DMF)

[Revised August 2, 2022]

Step 9: Apply the FTA and NCA scales to the DMF Matrix to determine preliminary recommendation.

Step 10: Determine if any current charge is No Early Release Act (NERA) not included in Step 2, 4, or 7.

- If yes, increase the preliminary recommendation as follows to the revised preliminary recommendation and proceed to **Step 11**:
 - Release ROR = Release with PML 1
 - Release with PML 1 = Release with PML 2
 - Release with PML 2 = Release with PML 3
 - Release with PML 3 = Release with PML 3 + EM/HD
 - Release with PML 3 + EM/ HD = No Release Recommended
- If no, proceed to **Step 11**.

Step 11: Determine if any current charge is one of the following weapons charges:

- Prohibited weapons and devices – destructive devices (N.J.S.A. 2C:39-3(a)) (non-Graves Act)
- Prohibited weapons and devices – defaced firearms (N.J.S.A. 2C:39-3(d))
- Possession of firearm while committing CDS/bias crime (N.J.S.A. 2C:39-4.1(a))
- Poss. of weapon for unlawful purpose (N.J.S.A. 2C:39-4(a)(1) or (2))
- Unlawful possession of a weapon (N.J.S.A. 2C: 39-5(b)(1), 2C:39-5(c)(1) or (2))
- If yes, the preliminary recommendation from Step 9 or the revised preliminary recommendation from Step 10 is increased to the final recommendation as follows:
 - Release ROR = Release with PML 1
 - Release with PML 1 = Release with PML 2
 - Release with PML 2 = Release with PML 3
 - Release with PML 3 = Release with PML 3 + EM/HD
 - Release with PML 3 + EM/ HD = No Release Recommended
- If no, proceed to **Step 12**.

Step 12: Determine if the highest current charge is an indictable offense or a disorderly persons offense that is domestic violence related and is therefore eligible for pretrial detention.

- If yes, the preliminary recommendation from Steps 5, 6, or 8 is the final recommendation.
- If no, any preliminary recommendation of Release PML 3 + EM/HD or No Release Recommended is decreased to Release with PML 3 – Not Legally Eligible for Detention.

Pretrial Release Recommendation Decision Making Framework (DMF)
[Revised August 2, 2022]

All defendants released on ROR and any pretrial monitoring level (PML) will receive automated court date reminders and ongoing criminal history checks. Other monitoring services will be provided as shown in Table 1 below.

Table 1. Pretrial Monitoring Level Contacts and Conditions Monitoring

| Pretrial Monitoring Level | Phone Contact | Face to Face Contact | Conditions Monitoring |
|----------------------------------|----------------------|-----------------------------|------------------------------|
| PML 1 | 1 per month | None | Yes |
| PML 2 | 1 per month | 1 per month | Yes |
| PML 3 | 1 every other week | 1 every other week | Yes |
| PML 3 + EM/HD | 1 every other week | 1 every other week | Yes |

Pretrial Release Recommendation Decision Making Framework (DMF)
[August 2022]

DMF MATRIX

| | NCA 1 | NCA 2 | NCA 3 | NCA 4 | NCA 5 | NCA 6 |
|-------|---|--|--|---|--|---|
| FTA 1 | Risk Level Green – Recommendation ROR | Risk Level Green – Recommendation ROR | | | | |
| FTA 2 | Risk Level Green – Recommendation ROR | Risk Level Green – Recommendation ROR | Risk Level Light Green – Recommendation PML 1 | Risk Level Yellow – Recommendation PML 2 | Risk Level Light Orange – Recommendation PML 3 | |
| FTA 3 | | Risk Level Light Green – Recommendation PML 1 | Risk Level Light Green – Recommendation PML 1 | Risk Level Yellow – Recommendation PML 2 | Risk Level Light Orange – Recommendation PML 3 | Risk Level Red – No Release Recommended |
| FTA 4 | | Risk Level Light Green – Recommendation PML 1 | Risk Level Light Green – Recommendation PML 1 | Risk Level Yellow – Recommendation PML 2 | Risk Level Light Orange – Recommendation PML 3 | Risk Level Red – No Release Recommended |
| FTA 5 | | Risk Level Yellow – Recommendation PML 2 | Risk Level Yellow – Recommendation PML 2 | Risk Level Light Orange – Recommendation PML 3 | Risk Level Dark Orange – Recommendation PML 3 + EM/HD | Risk Level Red – No Release Recommended |
| FTA 6 | | | | Risk Level Red – No Release Recommended | Risk Level Red – No Release Recommended | Risk Level Red – No Release Recommended |

OFFENSES INVOLVING A FIREARM

| Statute | Degree | Short Description |
|---------------|--------|---|
| 2C:39-16 | 1 | LEADER OF FIREARMS TRAFFICKING NETWORKS |
| 2C:39-3(M) | 3 | PROHIBITED WEAP/DEVICES COVERT/UNDETECTABLE FIREARMS |
| 2C:39-3B | 3 | PROHIBITED WEAPONS AND DEVICES - SAWED-OFF SHOTGUN |
| 2C:39-3D | 4 | PROHIBITED WEAPONS AND DEVICES - DEFACED FIREARMS |
| 2C:39-3N | 3 | PROHIBITED WEAPONS - FIREARM WITHOUT SERIAL NUMBER |
| 2C:39-4.1A | 2 | POSSESSION OF FIREARM WHILE COMMITTING CDS/BIAS CRIME |
| 2C:39-4A(1) | 2 | POSS OF WEAPON FOR UNLAWFUL PURPOSE-FIREARM-ANYONE |
| 2C:39-4A(2) | 2 | POSS OF WEAPON FOR UNLAWFUL PURPOSE-COMMUNITY GUN |
| 2C:39-5A | 2 | UNLAWFUL POSS WEAP- MACHINE GUN |
| 2C:39-5B(1) | 1 | UNLAWFUL POSS WEAPON-HANDGUNS WITHOUT PERMIT |
| 2C:39-5B(1) | 2 | UNLAWFUL POSS WEAPON-HANDGUNS WITHOUT PERMIT |
| 2C:39-5B(2) | 3 | UNLAWFUL POSS WEAPON - HANDGUNS AIR/SPRING/PISTOL |
| 2C:39-5C(1) | 3 | UNLAWFUL POSS WEAP - RIFLES/SHOTGUNS |
| 2C:39-5C(2) | 3 | UNLAWFUL POSS WEAP - RIFLE/SHOTGUN LOADED |
| 2C:39-5E(1) | 3 | UNLAWFUL POSSESSION OF WEAPONS AT EDU INSTIT. |
| 2C:39-5F | 2 | UNLAWFUL POSSESSION OF WEAPONS - ASSAULT FIREARM |
| 2C:39-7A | 4 | CERTAIN PERSONS NOT TO HAVE WEAP-CONVICTED CRIME |
| 2C:39-7B(1) | 2 | CERT PERSON NOT TO HAVE WEAP PRIOR CONV 2C:16-1, ETC. |
| 2C:39-7B(2) | 3 | CERTAIN PERSONS NOT TO HAVE WEAPONS PRIOR DP DV |
| 2C:39-7B(3) | 3 | CERTAIN PERSONS NOT TO HAVE WEAP-PROHIBITED BY DVA 1991 |
| 2C:39-7B(4) | 3 | CERTAIN PERSONS NOT TO HAVE WEAPONS PURSUANT TO ERPO |
| 2C:39-9(L)(1) | 3 | WEAPONS-MANUFACTURE USING 3D PRINTER - UNLICENSED |
| 2C:39-9(M) | 3 | WEAPONS/MANU/TRANSPORTS COVERT/UNDETECTABLE FIREARMS |
| 2C:39-9A | 3 | WEAPONS-MANU/TRANSPORT/DISP/DEFACEMENT- MACHINE GUN |
| 2C:39-9B | 3 | WEAPONS-MANU/TRANSP/DISP/DEFACEMENT-SAWED OFF SHOTGUN |
| 2C:39-9E | 3 | WEAPONS-MANU/TRANSP/DISP/DEFACEMENT-DEF DEFACED FIREARM |
| 2C:39-9E | 4 | WEAPONS-MANU/TRANSP/DISP/DEFACEMENT-DEFACED FIREARM |
| 2C:39-9G | 3 | WEAPONS-MANU/TRANSP/DISP/DEFACEMENT-ASSAULT FIREARMS |
| 2C:39-9I | 2 | WEAPONS-MANU/TRANSP/DISP/DEFACEMENT-INTO STATE |
| 2C:39-9M | 3 | WEAPONS-MANU/TRANSP/DISP - GHOST/3D PRINTED GUN |
| 2C:39-9N | 3 | WEAPONS-TRANSPORTS/SHIPS/SELLS/DISP W/O SERIAL NO. |