



## State of New Jersey

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April 7, 2017

Dear Judge Grant:

As we have discussed at our regular monthly meetings, over the past several months, my Office has remained in close contact with law enforcement officers across the State to elicit feedback on the early phases of Criminal Justice Reform implementation. Specifically, we have asked prosecutors and police for their assessment of the factors and processes employed in the Public Safety Assessment (“PSA”). The responsive commentary has been thoughtful and instructive. My purpose in writing is to share this information and request that the Courts consider making certain modifications to the PSA and the Decision Making Framework (“DMF”) employed by the Pretrial Services Program in formulating its pretrial release/detention recommendation.

Specifically, law enforcement’s position is that the PSA should be modified to include the firearms and eluding offenses identified below among those offenses already categorized as “violent” by the risk factor and outcome definitions. Moreover, the DMF should be modified so that these firearms and eluding offenses, along with those cases in which an individual offends while he is on pretrial release or post-conviction supervision, automatically will trigger a Pretrial Services recommendation against release, regardless of an individual defendant’s PSA scores.

### Firearms Cases

Much of the criticism from law enforcement of the PSA and DMF has focused on cases involving weapons—predominantly firearms. Perhaps the best examples are those cases in which a defendant has a prior conviction for one or more specified offenses that make him/her a “certain person not to possess firearms” under N.J.S.A. 2C:39-7b and those charges which subject a defendant to the mandatory sentencing provisions of the Graves Act, N.J.S.A. 2C:43-6c.

The PSA’s risk factors and formula and the DMF appear to undervalue the danger posed by defendants in Graves Act cases involving unlawful possession of a firearm (N.J.S.A. 2C:39-5), possession of a firearm for an unlawful purpose (N.J.S.A. 2C:39-4a1), possession of a firearms in the course of committing a CDS distribution offense (N.J.S.A. 2C:39-4.1a), and/or



certain persons not to have firearms (N.J.S.A. 2C:39-7b). Under the current system, none of these charges—absent a significant prior criminal history or an additional qualifying charge—triggers a New Violent Criminal Activity (“NVCA”) flag or a Pretrial Services recommendation against release. Considering the serious nature of these crimes, the danger unlawful firearms pose to the community, and the significant penalties associated with these offenses—including mandatory sentences of imprisonment with mandatory minimum terms—we strongly recommend that the PSA (in particular, the Violent Offense List Appendix)<sup>1</sup> and/or the DMF be supplemented and modified.

As Your Honor is aware, under the current DMF, the charges of escape (N.J.S.A. 2C:29-5.a), murder, aggravated manslaughter, or manslaughter (N.J.S.A. 2C:11-3, 11-4), aggravated sexual assault or sexual assault (N.J.S.A. 2C:14-2a, b, c.1), and robbery or carjacking (N.J.S.A. 2C:15-1, 15-2) will result in an automatic recommendation from Pretrial Services of “No Release Recommended”—regardless of an individual defendant’s PSA scores. In addition, if the PSA resulted in a NVCA flag and the current charge is violent, the Pretrial Services recommendation also will be against release. We respectfully submit that the above-referenced firearms offenses likewise should trigger an NVCA flag or an automatic recommendation against release. For example, a defendant who is a “certain person” under the law not to possess a firearm and who is now charged with possession of such a weapon should automatically receive a recommendation of “No Release Recommended,” regardless of his PSA score.

Prosecutor’s offices throughout New Jersey overwhelmingly have identified as a grave concern the PSA’s undervaluing of the danger associated with criminal firearms cases. The following case summaries illustrate how the PSA and DMF underestimate the danger posed by defendants charged with firearms offenses:

State v. Shakor Twitty (W-2017-000159-1602 Passaic): Defendant fled an area which police were canvassing after a burglary. While fleeing, defendant discarded a backpack that he had in his possession. The backpack was recovered, and a .45 caliber Ruger semiautomatic handgun and a high capacity magazine were found inside. Defendant was charged with, among other offenses, Possession of a Weapon for Unlawful Purpose (N.J.S.A. 2C:39-4a1), Possession of Prohibited Weapons and Devices - Large Capacity Magazine (N.J.S.A. 2C:39-3j), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5b1), and Certain Persons Not to Have Weapon (N.J.S.A. 2C:39-7b1). Defendant’s PSA scores were FTA 3, NCA 3 with no NVCA flag. The Pretrial Services recommendation was “Release with Conditions – Monthly Reporting,” and the judge so ordered.

State v. Agustin Chagoya (W-2017-000093-1607 Passaic): Defendant pointed a handgun at the victim (the boyfriend of his step-daughter) while stating “I have this for you.” Defendant was charged with Aggravated Assault – Knowingly Pointing a Firearm at Another (N.J.S.A. 2C:12-1b4), Terroristic Threats (N.J.S.A. 2C:12-3b), Possession of a Weapon for an Unlawful Purpose (N.J.S.A. 2C:39-4a1) and Unlawful Possession of a Weapon without a Permit (N.J.S.A. 2C:39-5b1). The PSA scores were FTA 2, NCA 3, with no NVCA flag. The recommendation of Pretrial Services was “Release with

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<sup>1</sup> This list is annexed to the document entitled “Public Safety Assessment New Jersey Risk Factor and Outcome Definitions Effective 3-1-2017.”

Conditions – Monthly Reporting.” The judge accepted Pretrial Services recommendation and ordered monthly telephonic reporting.

State v. Kenneth Price (W-2017-000591-1608 Passaic): Defendant was observed by undercover officers operating a motor vehicle with dark tinted window and no front license plate in a high crime area in Paterson. The vehicle was stopped, and multiple glassine wax folds were observed on back seat. Defendant was ordered out of the vehicle, and he admitted to having a weapon (a handgun loaded with hollow point bullets) in his possession. An occupant of the vehicle admitted that he visited Paterson for the purpose of buying heroin. Defendant was charged with Possession of a Weapon for an Unlawful Purpose (N.J.S.A. 2C:39-4a1), Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5b1), and Prohibited Weapons and Devices (N.J.S.A. 2C:39-3f1). Defendant’s PSA scores were FTA 1, NCA 1, with no NVCA flag. The judge ordered defendant released on his own recognizance in accordance with the Pretrial Services recommendation.

It bears noting that in the each of the above matters, the State—despite the obvious severity of the conduct—did not file motions for pretrial detention. In those cases, the low PSA scores and Pretrial Services recommendations for release posed significant practical obstacles to detention. Without modification of the PSA and/or DMF, our communities will face the dangers of those who choose, among other things, to terrorize others by pointing firearms at them, engage in illegal drug trade with firearms at their ready, and possess firearms when their prior illegal conduct has rendered them ineligible to possess them.

### 2<sup>nd</sup> Degree Eluding Cases

Another offense meriting consideration for enhanced treatment for PSA and DMF purposes is 2<sup>nd</sup> degree Eluding an Officer while Operating a Motor Vehicle with a Risk of Death or Injury to any Person (N.J.S.A. 2C:29-2b). For law enforcement, it is disconcerting that a defendant who has engaged in a dangerous police chase, which puts lives in jeopardy, ordinarily would not be subject to pretrial detention.

A matter out of Union County serves as an example. In State v. David Crooks (W-2017-000065-2019), a police officer observed a motor vehicle with the driver’s side door lock hanging out of the cylinder. After being advised by dispatch that the vehicle was stolen, the officer began to follow the vehicle as it pulled off of a state highway and into the parking lot of a retail establishment. When the driver of the vehicle noticed the marked patrol car behind him, he exited the parking lot onto the state highway westbound, drove perpendicular in heavy traffic across all lanes of travel, entered a gas station located in the center median, and exited the lot onto the state highway eastbound. The officer then activated his overhead lights and audible siren, in an attempt to conduct a stop of the vehicle. At this point, the defendant began to accelerate, reaching speed of approximately 60 MPH when the posted speed limit was 45 MPH. Another officer entered the pursuit, during which the driver passed multiple cars on the shoulder and served around and cut off multiple cars—all of this during heavy traffic on the state highway. While fleeing, the driver struck a sign at the entrance to the Garden State Parkway. The sign subsequently flew into the roadway, almost striking one officer’s vehicle. During the

pursuit, the driver lost control of his vehicle on multiple occasions. Ultimately, the vehicle hit a curb and careened across all lanes of travel of the state highway, spun out of control, slid backwards, and came to rest against the curb on the shoulder near another commercial establishment on the state highway.

Among other offenses, the defendant was charged with 2<sup>nd</sup> degree Eluding (N.J.S.A. 2C:29-2b). The defendant had numerous indictable and disorderly persons convictions with a bevy of prior sentences to incarceration. The PSA scores were FTA 3, NCA 4 with no NVCA flag. The recommendation of Pretrial Services was “Release with Conditions - Bi-Weekly Reporting.” The judge released the defendant and ordered telephonic and in-person reporting, each once per month.

Again, in light of the dangerousness of defendant’s actions it is proposed that the offense of 2<sup>nd</sup> degree Eluding be considered a “violent” offense for PSA risk factor and outcome purposes and that the DMF be modified to include this offense as one which would automatically trigger a Pretrial Services recommendation of “No Release Recommended.”

#### Crimes Committed While on Pretrial Release, Probation or Parole

The PSA’s risk factors and outcome definitions and the DMF also fail to account for the significance of crimes that are committed by an individual when he is on pretrial release for another offense or while he is on some form of post-conviction supervision. Where an individual chooses to ignore the most fundamental condition of pretrial release or post-conviction supervision (i.e., not to commit any additional offenses), it appears axiomatic that there exists exceptionally strong evidence that no conditions of release will ensure the protection of the safety of the community, thus necessitating the individual’s pretrial detention.

The following case summaries are offered to illustrate the lack of significance that the PSA and DMF place upon those who offend while on pretrial release or post-conviction supervision:

State v. Juan M. Almonte-Peralta (W-2017-000265-102 Passaic): Defendant was arrested on February 24, 2017, and charged with, among other offenses, Burglary (N.J.S.A. 2C:18-2a1), Theft (N.J.S.A. 2C:20-3a), Impersonating a Law Enforcement Officer (N.J.S.A. 2C:28-8), and Resisting Arrest (N.J.S.A. 2C:20-3a). At the time of this arrest, defendant was out on monetary bail for pending charges from 2016 that included, among others, 1<sup>st</sup> degree Robbery (N.J.S.A. 2C:15-1) and Aggravated Assault (N.J.S.A. 2C:12-1b2). Defendant also was on probation at the time of arrest. The PSA scores were FTA 3, NCA 4, with no NVCA flag. Pretrial Services recommended “Release with Conditions – Bi-Monthly Reporting (Twice per Month).” The State’s motion for pretrial detention was denied, and the judge released defendant on home supervision with electronic monitoring.

State v. Denzel W. Johnson (W-2017-000064-1429 Morris): On February 4, 2017, Defendant was charged with Burglary (N.J.S.A. 2C:18-2a1), Theft (N.J.S.A. 2C:20-3a), and Hindering (2C:29-3b1). At the time of his arrest, defendant was on pretrial release

for crimes including Receiving Stolen Property (N.J.S.A. 2C:20-7a), Possession of CDS (N.J.S.A. 2C:35-10a1), Possession of CDS with Intent to Distribute (N.J.S.A. 2C:35-5b5), and Possession with Intent to Distribute within 500 Feet of Public Property (N.J.S.A. 2C:35-7.1a). Those crimes were allegedly committed on January 20, 2017. Defendant was also on probation in Passaic and Morris Counties for prior offenses including Resisting Arrest/Eluding (N.J.S.A. 2C:29-2b), Possession of CDS with Intent to Distribute (N.J.S.A. 2C:35-5b11), and Receiving Stolen Property (N.J.S.A. 2C:20-7). Those offenses took place in 2014 and 2016. Defendant's PSA scores were FTA 3, NCA 5, with no NVCA flag. The Pretrial Services recommendation was "Release with Conditions – Weekly Reporting." Defendant was released at first appearance with a requirement that he report to Pretrial Services telephonically once every other week.

State v. Alize D. Nulls (W-2017-003411-0714 Essex): 21 year old Defendant committed a robbery upon a victim and inflicted a deep laceration wound over victim's eye which caused profuse bleeding. Defendant was on parole for an offense of Unlawful Possession of a Weapon (handgun) (N.J.S.A. 2C:39-5b) out of Essex County (he was sentenced on January 22, 2016). Defendant has an extremely extensive juvenile history. Defendant's PSA scores were FTA 2, NCA 4, with no NCVA flag. Pretrial Services recommended "Release with Conditions – Weekly Reporting (NERA)". The State's motion for pretrial detention was denied, and defendant was released and required to report to Pretrial Services telephonically every other week.

State v. William C. McNeal (W-2017-000180-0514 Cape May): During the course of a narcotics investigation, a search warrant was executed at Defendant's residence. Marijuana packaged for distribution was located in the house. Defendant admitted to being the owner/possessor of the marijuana. Among other offenses, defendant was charged with 3<sup>rd</sup> degree Possessing/Distributing within 500 Feet of Certain Public Property (N.J.S.A. 2C:35-7.1). Defendant has prior indictable convictions dating back to 1992, including two prior violent convictions for Aggravated Assault on a Police Officer (N.J.S.A. 2C:12-1b5a). At the time of this arrest, defendant was on parole for prior offenses. Defendant's PSA scores were FTA 3, NCA 4, with no NVCA flag. The recommendation from Pretrial Services was "Release with Conditions – Bi-Monthly Reporting (Twice Per Month)." The State's motion for pretrial detention was denied, and defendant was released and required to report telephonically every other week.

Again, that an individual would choose to re-offend while on pretrial release monitoring or post-conviction supervision serves as a clear indicator that he is a significant risk to the safety of the community. Accordingly, modifying the DMF to require an automatic Pretrial Services recommendation against release is reasonable and appropriate.

We respectfully suggest that the modifications outlined above will enhance the ability of law enforcement and the courts to identify and manage risk moving forward.

I would like to thank Your Honor and Chief Justice Rabner for your ongoing partnership in this vital reform effort.

Sincerely yours,



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