



CRIMINAL JUSTICE REFORM IN NJ: Charging decisions and their implications for defendants

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- ▶ The views and opinions expressed by the presenter are not those of the State of New Jersey, the Middlesex County Prosecutor's Office or other public agencies.



CRIMINAL COMPLAINTS UNTIL JANUARY 1, 2017

Summons Complaint

Complaint signed for criminal offense and the offender released without conditions other than appearing for the next scheduled court date in either Municipal or Superior Court.

Warrant Complaint

Complaint signed for criminal offense and a monetary bail set as a condition of release. Bail could be posted at the Police Department and the offender released as soon as bail posted. Limited ancillary conditions beyond bail.

BAIL REFORM IN A NUTSHELL

- ▶ As of January 1, 2017, New Jersey discarded the system of cash bail as the standard condition of release for defendants incarcerated on warrant complaints.
- ▶ It was been replaced with a risk-based algorithm (Public Safety Assessment or “PSA”) which determines non-monetary release conditions for those individuals charged on warrant complaints
- ▶ Why?
- ▶ What does the PSA measure and how?
- ▶ What does the PSA fail to measure?

CRIMINAL COMPLAINTS AFTER JANUARY 1, 2017

SUMMONS COMPLAINT

Complaint signed and defendant released without any conditions. Court date assigned on the complaint in either Municipal Court or Central Judicial Processing (CJP) Court.

Each county has its own CJP schedule.

WARRANT COMPLAINT- DEFENDANT DETAINED

Detention motion filed no later than initial appearance (usually within 24 hours of arrest) and motion scheduled within 3 court days of initial appearance. The defendant is held pending that hearing.

WARRANT COMPLAINT- DEFENDANT RELEASED

No detention motion filed by the State in advance of the initial appearance. Defendant released on non-monetary conditions and given reporting schedule and court date prior to release.

SUMMONS COMPLAINTS - WHAT TO KNOW

- ▶ Defendant's court date will be listed on the complaint itself.
- ▶ Defendant must appear for Court. Proceedings may be either live or virtual via Zoom. Further court dates will then be assigned.
- ▶ Defendant will be given the opportunity to apply for a Public Defender or will be given time to hire private counsel.
- ▶ Defendant must be fingerprinted if that was not done at arrest.
- ▶ Failure to appear for court will result in a Bench Warrant being issued and a cash bail set by the Court.

WARRANT COMPLAINT + DETENTION MOTION - WHAT TO KNOW

- ▶ The State, having reviewed the charges, the defendant's criminal record, the PSA and (if applicable) the concerns of the victim, moves to incarcerate the defendant until the case is resolved by plea or trial.
- ▶ Discovery that the State relies upon to justify detention **MUST** be turned over to defense counsel in advance of the hearing.
- ▶ Either party may request one adjournment. This allows time for additional discovery or for the defense to provide documents in support of release. This may include treatment records related to a mental condition or other medical documentation that the Court will consider. Counsel can also request an evaluation for risk and/or competency. These will delay the hearing on the motion.



WHAT KIND OF CHARGES ARE LIKELY TO RESULT IN A MOTION BEING FILED?

- ▶ The State can file on any indictable offense as well as Domestic Violence cases regardless of the degree of the offense.
- ▶ GENERALLY, the following are most likely to lead to a filing: 1st and 2nd degree crimes of violence, sex offenses, gun charges, residential burglaries, repeat or serious domestic violence offenders.
- ▶ Every case and defendant is evaluated individually.
- ▶ Other factors include whether the defendant is already on monitoring, has pending charges and/or has a record of not appearing, as well as a prior history of convictions.



THE DETENTION HEARING

- ▶ The State has the burden to establish probable cause for the charges listed in the complaint and can rely on any information that has been provided to defense counsel. This is a very low standard and is often not challenged for the purposes of the hearing.
- ▶ The State must then, using that same information, explain why there are no conditions of release that can adequately address the following:
 - ▶ The appearance of the defendant in Court as directed
 - ▶ The potential harm to a victim or the community
 - ▶ Subversion of the process.



THE DETENTION HEARING, cont.

- ▶ Defense counsel has the right to present any relevant facts and information specific to their client to rebut the State's arguments to secure their client's release.
- ▶ Communication is key - present information or documents in advance of the hearing to the State. The State can always withdraw the motion and agree to release on conditions.
- ▶ If the motion proceeds to a hearing, the Court will determine whether the State has met its burden and will detain the defendant OR will hold that the State has failed to meet that burden and will release the defendant on conditions of pre-trial release and monitoring.

MOTION TO DETAIN GRANTED. NOW WHAT?

- ▶ State must indict within 90 days.
- ▶ Then the case should go to trial within 180 days. BUT...
- ▶ Court appearances and plea negotiations continue through this time period.
- ▶ Case “must” be tried within 2 years if no resolution.
- ▶ During this period, the defendant can seek to reopen the detention hearing and ask to be released if there is a change in circumstances.
- ▶ Communication between the defendant, their counsel and the State is key.
- ▶ Use this time to secure treatment options, medical records, etc.



MOTION TO DETAIN NOT FILED OR DENIED. NOW WHAT?

- ▶ Defendant is released on reporting conditions. Must comply with reporting requirements and other conditions imposed.
- ▶ These may include orders for treatment, no contact orders, or being banned from a specific location.
- ▶ Failure to comply with release conditions can lead to a Violation of Monitoring
- ▶ State can move to Revoke Release if the nature of the violation is serious or if the defendant is arrested for new charges.



RELEASE CONDITIONS - TERMINOLOGY AND REQUIREMENTS

- ▶ ROR - Defendant need only appear for court and remain offense free. Must abide by any no contact order entered by the Court.
- ▶ LEVEL 1 - Telephonic reporting once each month. Must also abide by any additional conditions imposed by the Court.
- ▶ LEVEL 2 - Reporting once a month in person and once a month by phone. Comply with all other conditions.
- ▶ LEVEL 3 - Weekly reporting, alternating between telephonic and in person.
- ▶ LEVEL 3+ - Same but additional conditions can include Home Detention and/or Electronic Monitoring.



COMMON ISSUES THAT NEED TO BE ADDRESSED PRIOR TO OR DURING RELEASE

- ▶ Homelessness or housing challenges.
- ▶ Out-of-State residence.
- ▶ Technical ability to report.
- ▶ Treatment schedules.
- ▶ Employment - fixed location vs. mobile.
- ▶ Changes in circumstances.
- ▶ COMMUNICATE, COMMUNICATE, COMMUNICATE



QUESTIONS?

THANK YOU FOR COMING!