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**TO: Assignment Judges
Trial Court Administrators** **DIRECTIVE #17-21**

FROM: Glenn A. Grant, J.A.D. 

SUBJ: Criminal Justice Reform – Update to Parenthetical Language on Public Safety Assessment (PSA)

DATE: August 11, 2021

Under the Criminal Justice Reform Act (CJRA), "[t]he Administrative Director of the Courts shall establish and maintain a Statewide Pretrial Services Program which shall provide pretrial services to effectuate the purposes of [this] section." N.J.S.A. 2A:162-25(a). This includes the creation and use of a risk assessment instrument "approved by the Administrative Director of the Courts." N.J.S.A. 2A:162-25(c). This Directive promulgates revisions approved by the Supreme Court to the parenthetical language at the top of the Public Safety Assessment (PSA) so as to better reflect the underlying charges that result in a recommendation of no release based on certain charges, including if a charge is alleged to have constituted an attempt, conspiracy, or solicitation to commit the offense.

These changes will appear on PSAs on or about September 1, 2021. These changes are for purposes of clarity only and will not affect the risk-assessment calculation, the scores, or the level of the recommendation.

I. Recent Appellate Decisions Have Raised Concerns with the Current Language.

Several Appellate Division decisions have articulated an issue with the parenthetical language that provides a brief description for why a recommendation was returned at the top of the PSA, specifically related to charges including murder or attempted murder. State v. Adams, A-001239-20T6 (Decided February 9, 2021); State v. T.A.H., A-003016-19T6 (Decided May 04, 2020); and State v. C.J.T., A-001801-18T6 (Decided Jan. 24, 2019).

Currently, there are two recommendations that appear on the top of the PSA when a defendant is charged with murder or attempted murder:

- (1) If charged with murder (N.J.S.A. 2C:11-3), the recommendation is “No Release Recommended (Subject to life imprisonment per statute).” This is used because a murder charge would subject the defendant to life imprisonment if found guilty.
- (2) If charged with attempted murder (N.J.S.A. 2C:5-1 and 2C:11-3), the recommendation is “NRR (Charge(s) include murder).” This is because 2C:11-3 appears in the auxiliary (“Aux Charge”) column of the PSA.

The above recommendations have caused confusion. First, while it is true that a murder conviction could subject a defendant to a sentence to life imprisonment, referring to the murder charge itself is simpler and clearer. Second, rather than referring to murder and expecting stakeholders to see that there is an auxiliary column identifying it as an attempted murder, referring instead to the attempted murder charge itself is simpler and clearer.

Although the issue has only been raised for murder/attempted murder, to prevent confusion and promote consistency the same logic of including inchoate language will be applied to all recommendations in which the language cites to a specific charge. The chart below includes the changes to murder and attempted murder, and all other charges that produce a recommendation that names a charge (Manslaughter, Sex Assault (NERA), Robbery, Carjacking, and Escape).

II. The Updated Language Clarifies the Recommendations without Impacting the PSA.

The following changes to the recommendation language appearing at the top of the PSA have been adopted:

Charge:	Current recommendation language	Change to clarify and include inchoate language
<i>Murder (NJSA 2C:11-3 in Charge)</i>	NRR (Subject to life imprisonment per statute)	NRR (Charge(s) include murder)
<i>Attempted murder (NJSA 2C:11-3 in Aux)</i>	NRR (Charge(s) include murder)	NRR (Charge(s) include attempt/conspiracy/solicit – murder)
<i>Attempted manslaughter (NJSA 2C:11-4 in Aux)</i>	NRR (Charge(s) include manslaughter)	NRR (Charge(s) include attempt/conspiracy/solicit – manslaughter)
<i>Attempted sex assault (NJSA 2C:14-2 in Aux)</i>	NRR (Charge(s) include sex. assault (Nera Charge))	NRR (Charge(s) include attempt/conspiracy/solicit – sex assault (NERA Charge))
<i>Attempted robbery (NJSA 2C:15-1,2 in Aux)</i>	NRR (Charge(s) include robbery or carjacking)	NRR (Charge(s) include attempt/conspiracy/solicit – robbery or carjacking)
<i>Attempted escape (NJSA 2C:29-5 in Aux)</i>	NRR (Charge(s) include escape)	NRR (Charge(s) include attempt/conspiracy/solicit – escape)

The modifications above bring the language in line with the way practitioners treat the recommendations and is a more sensible representation of the charges. The new language clarifies that the PSA is returning a recommendation of no release, and recognizes the underlying charge is inchoate. It does not change the recommendation level (i.e., NRR) for these offenses. This merely changes the explanatory language on how the NRR was derived.

Any questions or comments may be directed to Justin M. Patterson Moles, Statewide Pretrial Services Manager, by email at justin.moles@njcourts.gov, or by phone at (609) 815-2900 Ext 55315.

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