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**TO: Hon. Thomas W. Sumners
Assignment Judges
Trial Court Administrators**

DIRECTIVE #13-24

Questions may be directed to the Criminal Practice Division at 609-815-2900, x55300

FROM: Glenn A. Grant, J.A.D., Acting Administrative Director

SUBJ: Criminal – Supreme Court Action to Address Home Invasion Burglary and Residential Burglary: (1) Relaxation of Rule 3:3-1(f) and (2) Amendments to the Decision Making Framework

DATE: November 22, 2024

The Supreme Court has relaxed the Court Rules and amended the Decision Making Framework (DMF) to align with L. 2024, c. 83. That recent enactment established the crimes of home invasion burglary and residential burglary and amended N.J.S.A. 2C:43-6(c) (the Graves Act) and N.J.S.A. 2C:43-7.2(d) (the No Early Release Act (NERA)) to incorporate these new offenses into both sentencing enhancement statutes. This directive publishes the Court's November 19, 2024 rule relaxation order and promulgates the amended DMF.

Relaxation of Rule 3:3-1(f)

The Court in the attached November 19, 2024 Order relaxed and supplemented Rule 3:3-1(f) (“Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant (CDR-2) is Presumed”) so as to include home invasion burglary (N.J.S.A. 2C:18-2.1) and residential burglary (N.J.S.A. 2C:18-2.2) among the list of offenses for which there shall be a presumption that a complaint-warrant shall issue. The Court has referred to the Criminal Practice Committee the

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development of proposed amendments that will supersede this interim rule relaxation.

Amendments to the Decision-Making Framework (DMF)

By adding home invasion burglary and residential burglary to subparagraph c of N.J.S.A. 2C:43-6, these new offenses are subject to N.J.S.A. 2A:162-20(f), which requires pretrial services to recommend no release when a defendant has been charged with 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.

The Court has amended Step 4 of the DMF to incorporate home invasion burglary (2C:18-2.1) and residential burglary (2C:18-2.2) among 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.

Further, Step 7 of the DMF has been amended to provide that home invasion burglary (a crime that requires bodily injury or the use of a weapon) is a crime of such a serious nature that those charged with this offense must receive a recommendation of no release. If a defendant's current charges include home invasion burglary, pretrial services shall recommend either "No Release Recommended (Charge(s) include Home Invasion Burglary)" or "No Release Recommended (Charge(s) include attempt/conspiracy/solicit Home Invasion Burglary)".

Questions

Questions regarding this directive, the Court's November 19, 2024 Order, or the amended DMF should be directed to the AOC Criminal Practice Division by email at AOC_CrimPrac.mbx@njcourts.gov.

Attachments: (1) Supreme Court's November 19, 2024 Order
 (2) Decision Making Framework (November 2024)

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Criminal – Supreme Court Action to Address Home Invasion Burglary and Residential Burglary:

(1) Relaxation of Rule 3:3-1(f) and (2) Amendments to the Decision Making Framework

November 22, 2024

cc: Chief Justice Stuart Rabner

Supreme Court

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Public Defender Jennifer Sellitti

Hon. Heidi Willis Currier

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Nicholas W. Salamon, Chief, Criminal Practice

Stephanie Ullman, Assistant Chief, Criminal Practice

Virginia Spitale, Assistant Chief, Criminal Practice

SUPREME COURT OF NEW JERSEY

With the October 18, 2024 enactment of L. 2024, c. 83 having established new offenses of home invasion burglary (as a crime of the first degree) and residential burglary (as a crime of the second degree), IT IS ORDERED, pursuant to N.J. Const., Art. VI, sec. 2, para. 3, that effective immediately, the provisions of Rule 3:3-1(f) (“Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant (CDR-2) is Presumed”) of the Rules Governing the Courts of the State of New Jersey are relaxed and supplemented so as to include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed (a) home invasion burglary (N.J.S.A. 2C:18-2.1) or (b) residential burglary (N.J.S.A. 2C:18-2.2). This rule relaxation shall remain in effect pending development and adoption of appropriate rule amendments to be proposed by the Criminal Practice Committee.

For the Court,



Chief Justice

Dated: November 19, 2024

Pretrial Release Recommendation Decision Making Framework (DMF)
[November 2024]

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/dis/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))

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- First degree robbery (N.J.S.A. 2C:15-1(a)(1),(2) or (3))
- Home Invasion Burglary – Inflict BI/Armed (N.J.S.A. 2C:18-2.1)
- Residential Burglary – Commit Offense Therein (N.J.S.A. 2C:18-2.2)
- 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))
- Home Invasion Burglary – Inflict BI/Armed (N.J.S.A. 2C:18-2.1)
- 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**.

Pretrial Release Recommendation Decision Making Framework (DMF)
[November 2024]

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**.

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**.

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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)
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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

Monitoring Level	Phone Contacts	Face to Face Contacts	Additional Conditions of Monitoring Permitted	Home Detention or Electronic Monitoring
ROR	None	None	Limited*	No
PML 1	1 per month	None	Yes	No
PML 2	1 per month	1 per month	Yes	No
PML 3	1 every other week	1 every other week	Yes	No
PML 3+ HD/EM	1 every other week	1 every other week	Yes	Yes
<i>* No contact with Victim and No Contact with Witnesses permitted for all levels including ROR</i>				

Pretrial Release Recommendation Decision Making Framework (DMF) [November 2024]

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.