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VIA EMAIL
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Hughes Justice Complex
Comments on Pretrial Release, Pretrial Detention and Speedy Trial Rules (Criminal)
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Re: Comments Regarding Court Rules to Implement the Pretrial Release, Pretrial Detention and Speedy Trial Aspects of the Bail Reform Law.

Dear Judge Grant:

On behalf of the American Civil Liberties Union of New Jersey (ACLU-NJ), the Drug Policy Alliance (DPA), the Latino Action Network (LAN), the New Jersey State Conference of the National Association for the Advancement of Colored People (NAACP), and the New Jersey Institute for Social Justice (the Institute), we submit the following comments regarding the Rules addressing pretrial release. The five undersigned organizations (collectively "the organizations") are designated by statute to serve on the Pretrial Services Program Review Commission.

As you are aware, the organizations were vocal supporters of A1910/S946, the comprehensive bail reform legislation signed into law on August 11, 2014 (*The Bail Reform Law*). The reforms passed by the Legislature and signed by the Governor should curb a long-standing injustice faced by poor people and, disproportionately, by people of color who are often held in jail for months, and even years because they cannot afford bail. In practice, the success of the law in addressing this problematic reality will be dictated by the strength of the procedures set forth in the Court Rules.

With that in mind, the organizations respectfully submit comments on several subjects contained in Part 1 and Part 2 of the *Report of the Supreme Court Committee on Criminal Practice on Recommended Court Rules to Implement the Bail Reform Law*: 1) bail schedules; 2) affordable bail; 3) temporary detention; 4) Municipal Court Judges; 5) presumption of charging by complaint-summons; 6) monetary bail; 7) presumptions of detention; 8) *prima facie* evidence; 9) discovery at first appearances; 10) delays attributable to defendants; 11) speedy trial limitations

based on the filing of motions; and 12) speedy trial limitations based on complex case designations.

Non-Rule Recommendations

Bail Schedules

The Criminal Practice Committee noted that bail schedules "may help perpetuate the current system of setting monetary bail and are inconsistent with the intent of *The Bail Reform Law*. . . ."[1] The Committee, however, appeared to support the retention of those schedules for cases that occur prior to the effective date of the law. Instead, we strongly urge that New Jersey immediately stop using bail schedules, as doing so is not only bad public policy but it also violates constitutional equal protection guarantees.

The American Bar Association has explained:

> Regular use of bail schedules often unintentionally fosters the unnecessary detention of misdemeanants, indigents, and nondangerous defendants because they are unable to afford the sum mandated by the schedule. Such detentions are costly and inefficient, and subject defendants to a congeries of often devastating and avoidable consequences, including the loss of employment, residence, and community ties.[2]

In making Rules related to bail schedules, the Court need not rely exclusively on the policy reasons as to why bail schedules perpetuate our broken system of pretrial release and detention: bail schedules violate Equal Protection.

In the recent Statement of Interest of the United States filed in *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC,[3] a case about improper bail practices in the State of Alabama, the federal government asserted that "It is the position of the United States that, as courts have long recognized, any bail or bond schedule that mandates payment of pre-fixed amounts for different offenses in order to gain pretrial release, without any regard for indigence, not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy."[4]

While *Varden* addressed so-called "fixed-amount bonds," the issue remains the same: where monetary bails that fail to account for the indigency of a defendant, they violate the Constitution. **To avoid the constitutional concerns and as a matter of sound public policy, we urge the Court discontinue the use of bail schedules immediately.**

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[1] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release* (May 9, 2016) p. 103

[2] Lindsey Carlson, *Bail Schedules, A Violation of Judicial Discretion?* CRIMINAL JUSTICE, Vol. 26, No. 1 (Spring 2011) available at: http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/cjsp11_bail.authcheckdam.pdf.

[3] Available at: https://www.justice.gov/file/340461/download

[4] *Id.* at 1.

Affordable Bail

The Bail Law prevents courts from issuing money bails designed to detain defendants.[5] But, judges should be given guidance on how they can avoid doing so. To achieve that goal, the following language should be added: "A person for whom monetary bail is imposed and who, after 24 hours from the time of the issuance of the monetary bail, continues to be detained as a result of inability to meet the monetary bail, shall upon application be entitled to have the monetary bail reviewed by the judge who imposed it within 24 hours. Unless the monetary bail is amended and the person is thereupon released, the judge shall set forth in writing the reasons for requiring the particular monetary bail."

Such a rule is procedural rather than substantive in nature – and therefore within the clear authority of the Court to regulate – insofar as it addresses the procedure judges must follow when they set monetary bails that result in detention, it does not directly forbid bails that result in detention.

Ultimately, the Criminal Practice Committee chose not to suggest any mechanism for ensuring that money bails not be set in order to detain defendants, suggesting instead that the Legislature take up the issue.[6] Such an abdication to the Legislature is neither necessary nor appropriate.

It is of course the constitutional authority of this Court to "make rules governing the administration of all the courts in the State and, subject to law, the practice and procedure in all such courts." N.J. Const., Art. VI, §2, ¶3. The task of ensuring that judges heed the statutory limits placed upon them by avoiding setting monetary bails designed to result in the detention of defendants is a rule dealing with the administration of the courts, and thus falls within this Court's rule-making authority. The New Jersey Constitution "not only gives the Supreme Court the rule-making power, but it imposes on the Supreme Court an active responsibility for making such rules."[7]

We also urge the Court to adopt a Rule that requires judges who set money bails that result in detention to justify that decision in writing.

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[5] *N.J.S.A.* 2A:162-17c(1)

[6] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release*, p. 104

[7] *Winberry v. Salisbury*, 5 N.J. 240, 245 (1950).

Part I Rules

Temporary Detention

As a preliminary matter, we would like to comment on the authorization of the State to detain individuals for the purpose of completing a risk assessment and making a pretrial release decision. According to *The Bail Reform Law*, "[a]n eligible defendant…shall be temporarily detained to allow the Pretrial Services Program to prepare a risk assessment with recommendations on conditions of release…and for the court to issue a pretrial release decision."[8] It is our understanding, as is posited throughout the Criminal Practice Committee commentary, that this language has been interpreted to mandate the automatic transportation of eligible defendants to jail for up to 48 hours. We do not interpret the statute in that way and do not believe that interpretation aligns with the intent of the legislature.

We read "temporarily detained," as it is written in the statute, to mean just that. While we understand there may be initial logistical implementation reasons to transport eligible defendants to jail to complete the risk assessment, we caution against the use of language asserting that the law requires such action. In fact, the spirit of *The Bail Reform Law* goes against this very notion, and rather seeks to limit any amount of time an individual spends in jail pending trial. As was catalogued during the many legislative hearings on *The Bail Reform Law*, spending even just a short amount of time in jail can have devastating consequences for individuals, their families and communities.[9]

The law does not require all eligible defendants be transported to jail, but rather requires a court to make "a pretrial release decision for an eligible defendant without unnecessary delay, but in no case later than 48 hours after the eligible defendant's commitment to jail."[10] The clause "but in no case" signifies that 48 hours after a defendant's commitment to jail is the absolute time limit on when a pretrial release decision must be made. There is nothing in the law that would foreclose the option of having the pretrial release decision made sooner or without committing the defendant to jail, resources and technology allowing.

We request that the Judiciary consider the possibility that in the future, eligible defendants may not need to be transported and committed to jail for pretrial services to complete the risk assessment and make a pretrial release recommendation. Such a streamlined and expeditious process would also save the State additional dollars, since many costs are associated with transport and booking processes. In fact, other jurisdictions that have already implemented pretrial reform specifically avoid jail booking, if at all possible, because of the time and labor involved.[11] The two most expensive days in jail are the day the person is booked and the day the person is processed out.

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[8] *N.J.S.A.* 2A:162-16.

[9] Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, *The Hidden Costs of Pretrial Detention*, The Laura and John Arnold Foundation (2013) available at: http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf.

[10] *N.J.S.A.* 2A:162-17.

[11] According to the Pretrial Justice Institute, the leading national organization on pretrial reform, jurisdictions attempt to avoid jail booking prior to making a determination about an individual's pretrial release whenever possible. For

Municipal Court Judges

The Committee recommends that Municipal Court Judges be permitted to conduct first appearances. We disagree with this recommendation and join the Public Defender in his concerns over this rule proposal. Under *The Bail Reform Law*, the first appearance is a critical point in the pretrial process. It is at this stage, that the court will make a pretrial release decision and may impose conditions of release. Because Municipal Court Judges typically set higher bails than Superior Court Judges in our current system, we are concerned that they may also impose more restrictive conditions of release in the new system. The over imposition of conditions of pretrial release for low-risk individuals produces poor outcomes and wastes resources.[12] Conditions should be narrowly tailored for a specific defendant with the purpose of reducing his or her risk of not appearing in court or committing a new offense. Blanket conditions should not exist. **If Municipal Court Judges are going to be involved in first appearance hearings, we recommend they be sufficiently trained to understand the concerns of over-conditioning.**

Presumption of Charging by Complaint-Summons

As the Criminal Practice Committee acknowledges, under *The Bail Reform Law*, the decision to issue a complaint-warrant or a complaint-summons has "heightened importance and practical ramifications."[13] The Committee recommends making changes to *R.* 3:3-1 which governs the issuance of an arrest warrant or summons. Section (d) of the rule provides grounds for overcoming the presumption of charging by a complaint-summons. Because of the significance of this decision point, we take issue with three of the sections in proposed *R.* 3:3-1(d), in particular sections (d)(2), (d)(3) and (d)(8), and raise concerns over the inappropriate reach of these grounds and potential for undermining the intent of the law. The Court should remove sections (d)(2), (d)(3) and (d)(8) from the proposed rule or, at the very least, should place restrictions on the use of (d)(3) and (d)(8).

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example, in Delaware, anyone arrested is taken by the arresting officer to a magistrate, who then makes a bail decision. The magistrates operate 24/7, so the police are not holding on to the person for too long. A risk assessment is automatically populated from information input into their system by the arresting officer, and is available to the magistrate at the bail hearing. If the magistrate releases the person on their own recognizance or an unsecured bond, the person leaves directly from the court facility, without having to stop at the jail. In the District of Columbia (D.C.), a person arrested after court hours remains in police custody until being transported to the courthouse the following day for a bail hearing. In D.C., police have a central holding facility where people spend the night. The pretrial services program does a risk assessment before the person appears in court. There are also jurisdictions like Allegheny County, PA, where the person is brought to the jail, but held in a waiting area until they are escorted into the courtroom that is located in the jail. This is another jurisdiction where magistrates sit 24/7, so the waiting period is short. The pretrial services program has office space adjacent to the waiting area, so is able to get the information needed to do a risk assessment, which is presented to the magistrate at first appearance. If the person is released by the magistrate, the person collects his or her belongings and is free to leave. If a bond is set that the person cannot post immediately, only then is that person booked into the jail.

[12] Marie VanNostrand & Gena Keebler, *Pretrial Risk Assessment in the Federal Court* (2009) available at: http://www.pretrial.org/download/risk-assessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20(2009).pdf.

[13] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release* (May 9, 2016) p. 27.

Proposed *R.* 3:3-1(d)(2) would overcome the presumption of charging by complaint-summons if, "there is reason to believe that the defendant is dangerous to self if released on a summons."[14] As the Committee correctly notes, "*The Bail Reform Law* does not specifically refer to the risk that a defendant poses to himself/herself, but rather refers to the risk that defendant 'poses to the safety of any other person or community.'"[15] As such, section (d)(2) should be removed from the rule. It is beyond the scope of the Committee, given the specific reference in *The Bail Reform Law* to the safety of other people and the community, and the lack of reference to an individual's risk to self, to propose a court rule that would place separate emphasis on the danger an individual poses to himself/herself.

Moreover, the Committee notes that "such risk [to oneself] is clearly relevant to the likelihood of appearing in court when required, and because the underlying cause of the danger to self may be correlated to the risk of committing new criminal activity (*e.g.*, untreated opiate addiction, which often co-occurs with depression and suicidal behavior) that might be managed through court-ordered interventions and supervision."[16] Despite the Committee's contention, the risk a defendant poses to himself/herself is not a factor in the State's chosen risk assessment tool, the PSA-Court, because the risk an individual poses to himself/herself is not statistically significant to assess an individual's likelihood of failing to appear in court or committing another criminal offense. By making such a declaration about the significance of that factor, the Committee is operating on its own assumption, rather than subscribing to the principles of evidence- and risk-based decision making, thereby undermining the intent of the law on its face.

Furthermore, given the documented research on the impacts associated with any period of detention, particularly for people struggling with mental health issues, proposing a court rule that would potentially result in the issuance of more complaint-warrants rather than complaint-summons, for individuals who pose a risk only to themselves, is problematic. Since the intent of *The Bail Reform Law* is to limit the amount of time individuals spend in jail, the Committee should not propose a rule to expand the amount of time individuals spend in jail solely because they are deemed a risk to themselves. While it is commendable of the Committee to recognize that pretrial services may provide assistance to these individuals, the court should not further entangle people in the criminal justice system for the sole purpose of providing them services. Spending any amount of time in jail can have devastating consequences for individuals, families and communities, and can often exacerbate difficult situations for already vulnerable populations.[17] **We urge the Court to remove section (d)(2) from the rule.**

In that vein, we have similar concerns with *R.* 3:3-1(d)(3) and (d)(8). Section (d)(3) provides that the presumption for the issuance of a complaint-summons can be overcome if, "there is reason to believe that the defendant will pose a danger to the safety of any other person or the community if released on summons."[18] Section (d)(8) provides that the presumption can be overcome if,

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[14] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release* (May 9, 2016) p. 22.
[15] *Id.* at p. 31.
[16] *Id.*
[17] See #unconvicted, a series of stories collected by the Pretrial Justice Institute that demonstrates the harsh realities of pretrial detention, available at: http://www.pretrial.org/the-problem/pretrial-injustice/.
[18] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release* (May 9, 2016) p. 22.

"there is reason to believe that the monitoring of pretrial release conditions by the pretrial services programs…is necessary to protect any victim, witness, other specified person, or the community."[19] These grounds are so broad they swallow the presumption of the issuance of a complaint-summons. Additionally, we see them in direct conflict with the Committee's proposed changes to *R.* 3:2-2, which, as proposed, would allow the court to impose certain restraining orders/release conditions on defendants who are charged on a complaint-summons.

If under the proposed changes to *R.* 3:2-2, the court is able to issue restraining orders/release conditions when issuing a complaint-summons to protect other people and the community, then *R.* 3:3-1(d)(3) and (d)(8) seem to only serve the function of expanding the number of people who will be charged by complaint-warrants, thus undermining the intent of the law to limit the use of pretrial detention.

The Court should remove section (d)(3) and (d)(8) from the rule, or at the very least should add qualifying language to both sections as follows, "there is reason to believe that the protections provided by R. 3:2-2 are insufficient and…"

Monetary Bail

We agree with the Criminal Practice Committee's recommendation to the remove the *Johnson* factors from *R.* 3:26-1(a) because it furthers the intent of *The Bail Reform Law.* We also agree with the Committee in that, "*The Bail Reform Law* establishes a clear preference for non-monetary conditions of release and that release on monetary conditions, while allowable, is available only when ROR or on non-monetary conditions will not suffice. The Committee agrees that keeping the *Johnson* factors will send the wrong message that nothing has change when monetary bail needs to be set."[20]

Additionally, we support the Committee's proposed recommendation to *R.* 3:26-1(c) that addresses crimes with bail restrictions under our current money based system. The Committee correctly clarified the limited application of the *Rule* to those cases where monetary bail, or monetary bail with conditions, are the conditions of release set by the judge.

Presumptions of Detention

The Committee recommended that the Legislature make statutory changes to *The Bail Reform Law* to expand the presumptions of pretrial detention to include serious first- and second-degree violent crimes. This recommendation undermines the intent of *The Bail Reform Law* and attempts to advance bad public policy.

As the United States Supreme Court wrote in *United State v. Salerno*, "[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[21] The intent of *The Bail Reform Law* is to limit pretrial detention, not to expand it. Pretrial detention

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[19] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release* (May 9, 2016) p. 22.
[20] *Id.* at p. 72-73.
[21] *United States v. Salerno*, 481 *U.S.* 739, 755 (1987).

can have devastating consequences for individuals, their families and communities. As part of *The Bail Reform Law,* the Legislature included a process for prosecutors to request pretrial detention of defendants.[22] Preventative detention is available for all defendants, not just those charged with a crimes that carry a presumption of pretrial detention. As such, there is no reason to expand the presumption of detention to additional crimes. There is already a way for courts to detain truly dangerous individuals, regardless of with what crime they were charged.

The Committee justified its recommendation by speculating a concern that detention hearings may take a significant amount of time in cases where there is no presumption, and thus expanding the list to include serious violent crimes would limit the amount of time necessary to hold such hearings in cases where the most likely result would be detention. It is bad public policy to legislate based on problems that do not yet exist, especially when such a statutory change will significantly implicate individuals' liberty rights. Because there is no actual proof that the system as constructed, with limited presumptions of detention, will not work, it is inappropriate to make such a recommendation at this time.

Moreover, judges are entirely qualified to manage preventative detention hearings, facilitate these hearings efficiently and effectively, and will avoid the unnecessary delay that the Committee is concerned that these hearings will cause.

In a non-rule recommendation, The Committee also recommends that the Legislature consider amending *The Bail Reform Law* to provide for a presumption of detention where a motion for release revocation was made by the prosecutor. For the reasons stated above, this recommendation is inappropriate, premature and constitutes bad public policy. There is already a mechanism for release revocation, and there is no need at this time, to include a presumption of detention when a motion for release revocation is made by a prosecutor.

Prima Facie Evidence

The Committee recommended that *R.* 3:4A(b)(5) include a provision that would permit the court to consider as *prima facie* evidence sufficient to overcome the presumption of release, a recommendation made by the Pretrial Services Program that the defendant's release is not recommended or, if released, released on maximum conditions. This proposal undermines the intent of *The Bail Reform Law*, and additionally could result in the unnecessary detention of certain individuals. The Court should remove the reference to the recommendation as *prima facie* evidence to overcome the presumption of release from the rule.

We agree with the Public Defender that:

> [T]he issue is similar to the presumption issue. It is based on speculation and adoption of such a rule is premature. Perhaps more importantly, this proposed rule would in essence be a substantive addition to the statute. The Court should not adopt this rule for the same reason it should not add a list of crimes for which there would be a presumption of detention. The legislature did not

[22] *N.J.S.A.* 2A:162-18.

> include such a provision in the statute. To do so would constitute improper rule-making.[23]

The Committee once again supported this proposal under the guise that it will be too difficult to detain certain individuals under *The Bail Reform Law*. This however, is the very intent of *The Bail Reform Law*—that pretrial detention should be limited. As *Salerno* reminds us, "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[24] **The Court should remove the *prima facie* provision from the proposed rule.**

Discovery

We concur with the Committee in its proposal for *R.* 3:4-2 governing discovery to be provided at the first appearance in cases in which the State is seeking detention.[25] We join the Public Defender in emphasizing that *The Bail Reform Law* requires the Court to consider the weight of the evidence against the defendant in making the detention/release decision at the detention hearing, and fairness dictates that defendants have access to all available discovery, including that which is arguably exculpatory or that which the defense could use to demonstrate weaknesses in the case. As noted above, we are confident that judges can facilitate detention hearings efficiently and effectively. It is axiomatic that discovery need not be limited to evidence that is admissible at trial (or at a hearing).

PART II

Speedy Trial Rules

Attributable to Defendant

As a threshold matter, it is worth summarizing both the rationale for, and the mechanism for calculating violations of, speedy trial provisions of *The Bail Law.* As the Joint Committee on Criminal Justice explained:

> Defendants suffer when they are incarcerated before trial. When incarcerated for even short periods of time, defendants risk losing their only method of support (whether that is a job or public benefits), are frequently unable to access the medications they need to maintain their physical and mental health, and face significant barriers to maintaining contact with their families.[26]

Citing *Barker v. Wingo*, the Joint Committee noted that "The Court also recognized that as a result of their inability to prepare a defense and their desire to be released from jail, individuals

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[23] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 2 Pretrial Detention and Speedy Trial* (May 12, 2016) p. 171.
[24] *Salerno*, 481 *U.S.* at 755.
[25] *Report Of The Supreme Court Committee On Criminal Practice On Recommended Court Rules To Implement The Bail Reform Law Part 1 Pretrial Release* (May 9, 2016) p. 46.
[26] Report of the Joint Committee on Criminal Justice, March 10, 2014, p. 69.

subject to pretrial detention are more likely to plead guilty than those who are released pretrial."[27] Because of these significant harms, the Joint Committee recommended, and the Legislature adopted, a mechanism for ensuring that defendants do not languish in jail for long periods of time while theoretically presumed innocent.

In short, the statute provides for separate speedy trial limits for the pre-indictment period (90 days, subject to excludable time)[28] and the post-indictment period (180 days, also subject to excludable time).[29] But each separate limitation is also governed by an overall limit, whereby defendants must be tried within two years of their detention, subject only to extension based on delays attributable to defendants.[30] Interpretation of that provision is the single biggest decision the Court must make to ensure *The Bail Law* lives up to its promise to make our criminal justice system fairer. Simply put, Rules that weaken that provision – and make exceptions to the two-year absolute limit the rule rather than the exception – will render the speedy trial protections meaningless and jeopardize the efficacy of *The Bail Law*.

As proposed, the Rules treat as "attributable to defendant": 1) competency evaluations, but only where a defendant seeks the evaluation; 2) drug court applications; 3) the filing of motions, other than those responsive to unreasonable prosecutorial actions; 4) continuance requests from defendants, other than those responsive to unreasonable prosecutorial actions; 5) the time defendant is detained in another jurisdiction[31]; 6) the time resulting from defendant's failing to appear for a proceeding[32]; 7) time resulting from failing of the defendant to provide timely discovery; and 8) for other reasons where the delay resulted from unreasonable acts or omissions of the defendant.[33]

The only time that should be attributable to defendants for the purposes of this section are delays that result from unreasonable acts or omissions of the defendant. It is absurd to suggest that the defendant has created a delay by engaging in behavior that does not constitute foot dragging, but rather the minimum required effort to wage an effective defense. The proposed Rules doubly penalize (in the initial excludable time calculation, which is required by statute, and in the extension of what should be a near-absolute limit) defendants for filing motions where the failure to so file may constitute ineffective assistance of counsel.[34] The proposed Rules doubly penalize defendants who seek a competency determination where the trial court lacks jurisdiction if the defendant is incompetent. The proposed Rules doubly penalize defendants who seek treatment through the Drug Court program. In addition to undermining *The Bail Law*, these Rules encourage horrible lawyering – forcing defense counsel to choose between getting their client

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[27] *Id.*
[28] *N.J.S.A.* 2A:162-22a(1)(a)
[29] *N.J.S.A.* 2A:162-22a(2)(a)
[30] *Id.*
[31] This is a puzzling provision, insofar as the speedy trial provisions only apply where a defendant has been detained. It is unclear how such a situation would occur.
[32] This too should be exceedingly rare because the defendant will necessarily be in custody.
[33] *Report of the Supreme Court Committee on Criminal Practice on Recommended Court Rules to Implement the Bail Reform Law Part 2 Pretrial Detention and Speedy Trial* (May 12, 2016) p. 61-62.
[34] *State v. Allah*, 170 *N.J.* 269, 290 (2002) (ineffective assistance of counsel for failing to file motion to dismiss on double jeopardy grounds). *See also State v. Fisher*, 156 *N.J.* 494, 501 (1998) (ineffective assistance of counsel when counsel fails to file a motion to suppress on a meritorious Fourth Amendment claim and defendant satisfies the performance and prejudice prongs of the *Strickland/Fritz* test).

out of jail in a timely manner (with all the attendant consequences for failing to do so) and fully advocating on their client's behalf.

The absolute limit on two years before a trial begins should only be extended where the defendant has done something that unreasonably delays the trial.

Filing of Motions

Whether or not the Court limits the categories of actions that are considered delays attributable to defendants, it should provide meaningful limitations on the amount of time that will be excluded from speedy trial calculations for the filing of motions. If it does not, it will encourage game-playing by prosecutors seeking to extend the time within which a trial must commence. After all, why wouldn't a prosecutor concerned with an impending speedy trial deadline file any non-frivolous motion in limine?

It is critical to remember that a tight limit on excludable time associated with the filing of motions neither mandates that motions be disposed of within a given period of time nor dictates the dismissal of an indictment where motions languish for longer than the allotted time. Instead, a 30 day limit on excludable time would mean that if a court takes 45 days to decide a motion, 15 days count against the speedy trial limit; and, should that push the speedy trial calculation over the 180 day threshold, the remedy is release rather than dismissal.

The Court should limit the excludable time attributable to the filing of a motion to 30 days, unless the motion is unusually complicated, in which case an additional 30 days of excludable time may be added.

Complex Cases

There can be no doubt that certain cases are uniquely complex and therefore require the exclusion of some time under the speedy trial provisions of *The Bail Law*. Indeed, the law itself requires it.[35] However, such excludable time should not be indefinite. **Given the generous speedy trial limits already provided within *The Bail Law*, excludable time for cases designated complex should not exceed 60 days.**

[35] *N.J.S.A.* 2A:162-22b(1)(g).

Conclusion

The undersigned members of the Pretrial Services Commission believe in the promise of *The Bail Reform Law*. If properly implemented, it will place New Jersey at the vanguard among states seeking to make their criminal justice systems smarter and fairer. But the success of those efforts will be heavily influenced by the strength of the rules the Court adopts. We urge you to consider the above recommendations through that lens.

Respectfully submitted,

American Civil Liberties Union of New Jersey (ACLU-NJ)
Drug Policy Alliance (DPA)
Latino Action Network (LAN)
National Association for the Advancement of Colored People (NAACP) New Jersey State Conference
New Jersey Institute for Social Justice (NJISJ)