



# Bail Reform in NJ

HOW WILL IT AFFECT FOREIGN NATIONALS?

NO ONE REALLY KNOWS HOW IT WILL AFFECT ANYONE YET!

# Bail Reform's Objective



**What's the point of bail reform?**

To keep violent offenders locked up before trial, and to free non-violent offenders who previously couldn't afford to post bail.

# New Rules NJSA 2A:162-15

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- Shift Resource-based system (money bail \$) to Risk-based system
- Non-Monetary release and conditions
- Possible Worst case outcome – no bail/no release

# Complaint Warrant vs. Complaint Summons

## Eligible Defendant for Risk-based Release

- ▶ Defendant who receives a warrant
- ▶ Involves an indictable or a disorderly persons offense
- ▶ Eligible Defendant who violates conditions of bail
- ▶ See R. 3:3-1 (e) and (f)
- ▶ Held for 48 hours for pretrial risk assessment

## Non-Eligible Defendant for Risk-based Release

- ▶ Defendant who receives a summons
- ▶ Defendant is released on summons
- ▶ See R. 3:3-1 (c)

# Risk Assessment Hearing

## NJSA 2A:162-17

- ▶ Within 48 hours of commitment to Jail
- ▶ Decision based on risk assessment and any information provided by prosecutor or defendant:
  - ▶ Likelihood D will be arrested for new crime?
  - ▶ Likelihood D will be arrested for new violent crime?
  - ▶ Failure to Appear likely?
  - ▶ Age, current charge, prior conviction and sentences, prior FTA's
- ▶ Defendant to receive release conditions in writing

# Forms of Release

## NJSA 2A:162-16(b)

- ▶ ROR
- ▶ Non-monetary release with conditions
  - ▶ 12 possible conditions (including curfew, treatment and electronic monitoring)
- ▶ Monetary Bail
- ▶ Some combination of \$ and conditions

# Pretrial Detention Hearing

## NJSA 2A:162-19

- ▶ Detention
  - ▶ No release at all
  - ▶ Only on the State's motion – (not court request)
  - ▶ If court grants motion, D can appeal to Appellate Division (NJSA 2A:162-18(c))
- ▶ Right to counsel and cross-examination of witnesses
- ▶ Prosecutor to establish PC for the offense (preponderance standard)
- ▶ Judge to consider many factors (NJSA 2A:162-20)
  - ▶ Order of Detention must include written findings of fact and reasons for detention (NJSA 2A:162-21)

# A complaint warrant shall be issued when a judicial officer finds pursuant to R. 3:3-1 (a) that there is probable cause to believe D committed:

- ▶ murder, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, robbery, carjacking, or escape
- ▶ attempted to commit any of the foregoing crimes, or where the defendant has been extradited from another state for the current charge
- ▶ a violation of Chapter 35 of Title 2C that constitutes a first or second degree crime
- ▶ a crime involving the possession or use of a firearm
- ▶ the following first or second degree crimes subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), vehicular homicide (N.J.S.A. 2C:11-5), aggravated assault (N.J.S.A. 2C:12-1(b)), disarming a law enforcement officer (N.J.S.A. 2C:12-11), kidnapping (N.J.S.A. 2C:13-1), aggravated arson (N.J.S.A. 2C:17-1(a)(1)), burglary (N.J.S.A. 2C:18-2), extortion (N.J.S.A. 2C:20-5), booby traps in manufacturing or distribution facilities (N.J.S.A. 2C:35-4.1(b)), strict liability for drug induced deaths (N.J.S.A. 2C:35-9), terrorism (N.J.S.A. 2C:38-2), producing or possessing chemical weapons, biological agents or nuclear or radiological devices (N.J.S.A. 2C:38-3), racketeering (N.J.S.A. 2C:41-2), firearms trafficking (N.J.S.A. 2C:39-9(i)), causing or permitting a child to engage in a prohibited sexual act knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance (N.J.S.A. 2C:24-4(b)(3)) or finds that there is probable cause to believe that the defendant attempted to commit any of the foregoing crimes



# Impact on Foreign Nationals charged????

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- Prosecutors will be filling motions for pretrial detention on Endangering Welfare of a Minor (sexual and non-sexual) NJSA 2A-162-19a(4) [we have seen some relief from immigration mandatory detention – now we might be stuck with state mandatory pretrial detention]
- Any issuance of a warrant automatically results in 48 hours of detention. Low-hanging fruit for ICE?
- Any domestic violence
- Any firearms offense
- Megans Law – Failure to Register