

NOTICE TO THE BAR

**PRETRIAL DETENTION – AMENDMENTS TO RULE 3:4A(b)(5) IN ACCORDANCE
WITH L. 2022, C. 43 – “NO RELEASE” RECOMMENDATION IN CERTAIN
FIREARMS-RELATED CASES AS PRIMA FACIE EVIDENCE TO OVERCOME
PRESUMPTION OF PRETRIAL RELEASE**

L. 2022, c. 43, enacted June 30, 2022 and effective as of that date, amended the Criminal Justice Reform Act to address specific Graves Act or firearms-related cases. Those statutory revisions require Pretrial Services to recommend “no release” when a defendant has been charged with specific firearms-related offenses. The legislation also established that a pretrial recommendation of “no release” for those offenses may constitute prima facie evidence sufficient to overcome the presumption of pretrial release.

The Supreme Court by order dated August 1, 2022 (attached to this notice) has adopted amendments to Rule 3:4A(b)(5) to incorporate the substance of those statutory revisions relating to cases with firearms-related charges. The amendments to the rule are effective immediately.

The Court also made revisions to the Decision-Making Framework (DMF) to incorporate the statutory changes. The revised DMF will be promulgated by administrative directive.

Questions regarding this notice may be directed to Donna Westhoven, Assistant Director for Criminal Practice, at 609-815-2900 ext. 55300 or donna.westhoven@njcourts.gov.

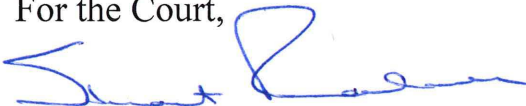


Glenn A. Grant
Administrative Director of the Courts

Dated: August 1, 2022

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rule 3:4A (“Pretrial Detention”) of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

For the Court,

Chief Justice

Dated: August 1, 2022

Rule 3:4A. Pretrial Detention

(a) ... no change

(b) Hearing on Motion.

(1) ... no change

(2) ... no change

(3) ... no change

(4) ... no change

(5) Presumption of release. Except when a presumption of detention is required pursuant to paragraph (b)(4), when a motion for pretrial detention is filed pursuant to paragraph (a), there shall be a rebuttable presumption that some amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. The standard of proof for the rebuttal of the presumption of pretrial release shall be by clear and convincing evidence. To determine whether a motion for pretrial detention should be granted, the court may take into account information about the factors listed in in N.J.S.A. 2A:162-20.

When a motion for pretrial detention is filed pursuant to paragraph (a), the court may consider as prima facie evidence sufficient to overcome the presumption of release, a recommendation by the Pretrial Services Program that the defendant's release is not recommended, if such recommendation is made pursuant to N.J.S.A. 2A:162-20(f) and the court finds probable cause that the eligible defendant committed any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.A. 2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:

(i) N.J.S.A. 2C:39-3(a) (destructive devices) or N.J.S.A. 2C:39-3(d) (defaced firearms);

(ii) N.J.S.A. 2C:39-4(a)(1) or N.J.S.A. 2C:4(a)(2) (possession of weapons for unlawful purposes);

(iii) N.J.S.A. 2C:39-4.1(a) (weapons; controlled dangerous substances and other offenses); or

(iv) N.J.S.A. 2C:39-5(b)(1) (unlawful possessions of weapon – handgun), N.J.S.A. 2C:39-5(c)(1)-(2) (unlawful possessions of weapon – rifles and shotguns).

Although such recommendation by the Pretrial Services Program may constitute sufficient evidence upon which the court may order pretrial detention, nothing herein shall preclude the court from considering other relevant information presented by the prosecutor or the defendant in determining whether no amount of monetary bail, non-monetary bail conditions of pretrial release, or a combination of monetary bail and conditions would reasonably assure the defendant’s appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct the criminal justice process.

(c) ... no change

(d) ... no change

(e) ... no change

Note: Adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended July 28, 2017 to be effective September 1, 2017; paragraph (b)(5) amended May 1, 2018 to be effective immediately; subparagraphs (b)(1) and (b)(2) amended July 27, 2018 to be effective September 1, 2018; paragraph (e) amended April 17, 2019 to be effective May 1, 2019; subparagraph (b)(5) amended August 1, 2022 to be effective immediately.