

BWCs, CEDs and Bail Reform 2017 New Police Chiefs Orientation



Joseph F. Walsh, DAG

N. J. Division of Criminal Justice

Prosecutors Supervision & Training Bureau

609-984-1034

walshj@njdcj.org

March 7, 2017



Body Worn Cameras (BWCs)

- Potentially important evidence in many types of investigations.
- BWCs will be in service in approximately 250 Police Departments by the end of 2017, including the NJSP.
- Attorney General's Directive #2015-1 issued on July 28, 2015 controls.
- http://www.nj.gov/oag/dcj/agguide/directives/2015-1_BWC.pdf
- BWC PowerPoint on DCJ Website or NJ Learn.
- <http://www.nj.gov/oag/dcj/pdfs/Body-Worn-Cameras-2015.pdf>

Establishing Uniform Statewide Standards While Permitting Departmental Policies to Address Local Concerns

- 1) All policies must limit the discretion of individual officers in the field.
- 2) Decision to activate BWC must be based on objective criteria as listed in the Directive and the individual department's policy.
- 3) Reasons for exercising discretion on BWC de-activation must be documented.
- 4) Law enforcement agencies can adapt BWC policies to address local concerns, as long as they are consistent with AG Directive No. 2015-1.

Establishing Uniform Statewide Standards While Permitting Departmental Policies to Address Local Concerns (continued)

- 5) Directive is designed to help police departments balance police safety, accountability and transparency with consideration for the privacy interests of the public.
- 6) Each law enforcement agency will decide whether to acquire BWCs, which officers will be equipped with them and the circumstances under which they will be deployed, consistent with Directive 2015-1.
- 7) Each department will develop its own policy or SOP concerning BWC's.
- 8) Once an officer is equipped with a BWC, the Directive and local SOP will provide guidance on how the device will be used.



Reasons for Deploying BWCs

- BWCs provide objective evidence of what took place in a police-citizen encounter.
- BWCs discourage all parties from engaging in inappropriate conduct and from providing false information about an encounter.
- BWC recordings capture accurate visual depictions of evidence including where and how evidence was found.



Reasons for Deploying BWCs

(continued)

- BWC recordings capture the physical appearance of suspects and victims.
- BWC audio recordings document witness and suspect statements.
- BWCs are not intended to replace accurate, professional police reports and officer testimony. Rather, BWCs will serve to supplement and corroborate these important law enforcement tools.

Practical and Policy-Related Differences Between BWCs and Vehicle-Mounted Video Cameras

- Many police departments have been utilizing vehicle-mounted cameras for years and have established policies in place.
- Although experience with MVRs or “dash-cams” is useful, existing dash-cam policies cannot simply be copied and applied to BWCs.
- BWCs raise additional privacy issues that dash-cam policies were not required to address.

Officers Authorized to Wear/Use BWCs

- 1) Chief law enforcement officer of the department shall decide which officers will be equipped with BWCs and which types of assignments shall require use of BWCs.
- 2) In situations involving a task force, team or unit composed of officers from multiple agencies, the chief law enforcement officer of the agency overseeing the task force, team or unit shall make the determination concerning the deployment/use of BWCs. This shall be the County Prosecutor in the case of a countywide task force.

Officers Authorized to Wear/Use BWCs (continued)

- 3) Officers shall not wear BWCs unless authorized to do so and not until they have received training on the proper use of the BWC, departmental policy and AG Directive No. 2015-1.
- 4) Agencies may develop pilot programs to determine under what circumstances/duty assignments the deployment of BWCs would be most useful.

Training

- Departments that deploy BWCs shall designate one or more training officers and shall establish a training program to ensure officers are familiar with department policy and the statewide Directive.

General Policy Considerations

- Until knowledge of BWCs becomes universal, citizens shall be given notice about the use of BWCs and about the rules surrounding deployment of BWCs, as stated in AG Directive No. 2015-1 & SOP established by the agency.
- Public notice will discourage the provoking of officers and the filing of false complaints against officers.

General Public Notice

- Departments that acquire BWCs shall post a statement on their website, or on the municipality's website, notifying the public about the acquisition and use of BWCs.
- Posting shall include a picture of a BWC and how it will be worn by officers.

Specific Notice to Certain Individuals During an Encounter

- Whenever BWC activation is required:
(1) during an encounter inside a civilian's residence or (2) with a person reasonably believed to be a crime victim, the officer shall verbally notify the person that the BWC has been activated.
- Verbal notification is not necessary if it is unsafe or not feasible to do so, but the reasons for the failure to notify should be documented on the BWC recording or in a report.
- Lack of verbal notification in these circumstances shall not affect the admissibility of any statement or evidence.

BWCs Used Only in Performance of Official Duties

- BWCs shall be activated only while in performance of official police duties.
- BWCs shall not be activated for personal purposes, while on breaks, when engaged in police union business, or during conversations involving counseling, personnel evaluations, or other similar supervisory interaction.

Circumstances When Activation by a Uniformed Officer is Generally Required

Unless a specific provision of AG Directive 2015-1 directs that a BWC not be activated, uniformed officers equipped with BWC's are required to activate their BWCs, as soon as it is safe and practicable to do so, when involved in any of the following circumstances:

- 1) Officer initiates an investigative detention, including motor vehicle stops, criminal suspicion stops, and checkpoint/roadblock stops.
- 2) Officer is responding to a call for service and is at or near the location of the call.
- 3) Officer is conducting a motorist aid or community caretaking check.

Circumstances When Activation by a Uniformed Officer is Generally Required (continued)

- 4) Officer is interviewing a witness in the course of investigating a criminal offense.
- 5) Officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded (recording of stationhouse custodial interrogations per Rule 3:17).
- 6) Officer is making an arrest.
- 7) Officer is conducting a protective frisk for weapons.
- 8) Officer is conducting any kind of search, including a consensual search.

Circumstances When Activation by a Uniformed Officer is Generally Required (continued)

- 9) Officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or another officer on scene may be required to use constructive authority or force.
- 10) Officer uses constructive authority or force, or reasonably believes it may be used, in any type of encounter not otherwise listed. In this situation the officer should articulate the facts supporting the need for heightened caution on the recording and/or in related police reports.
- 11) Officer is transporting an arrestee to a police station, county jail or other place of confinement, hospital, or any medical care or mental health facility.



Circumstances When Activation by a Uniformed Officer is Generally Required (continued)

- 12) Officer reasonably believes that any other officer on scene has undertaken or is engaged in any of the above listed police actions/activities.

AG Directive 2015-1 recognizes that MANY police-citizen encounters will involve more than one of the above listed circumstances, any one of which requires the activation of a BWC. In addition, a police-citizen encounter that initially did not require BWC activation may change/escalate into a situation requiring activation. Nothing in the Directive should be construed or applied in a manner that jeopardizes officer safety by distracting the officer's attention from an immediate need to use constructive authority or force.

Authority to Specify Additional Police Activities When Uniformed Officers Must Activate BWCs

- An agency may create a policy with additional circumstances in which an officer must activate a BWC, in addition to those required in the Directive, as long as the policy is consistent with the AG Directive.
- Any department policy must limit the discretion of officers and must clearly establish the objective circumstances that require activation.



Continuous Recording Pending Completion of Encounter

- In situations requiring activation, BWC should be activated by the officer before arrival at the scene whenever possible.
- **When required to be activated, a BWC must remain activated throughout the entire encounter/event and shall not be deactivated until the event is concluded (unless an exception applies).**
- When a BWC is activated for the transport of an arrestee, it shall remain activated until the officer is no longer in the presence of the arrestee (arrestee is secured in processing room/holding cell or the arrestee is transferred to other law enforcement or medical personnel).



Special Activation Rules Governing Deadly-Force Incidents and Other Exigent Circumstances Where Officers Are in Danger

- Officer shall activate the BWC before arriving at a scene where the officer knows or reasonably believes that police deadly force has been or is being employed OR a scene where an officer has requested emergency assistance (officer in distress, shots fired, etc.).
- Notwithstanding any other provision, an officer shall not de-activate the BWC unless instructed to do so by the prosecutor or designee supervising the investigation of the deadly force incident. See AG's Supplemental Law Enforcement Directive Amending Directive 2006-5, issued 7-28-15.



De-Activation at the Request of a Civilian Providing Information/Cooperation

- Officer may de-activate a BWC when a civilian requests that it be turned off under circumstances where it appears the civilian will not provide information/cooperation unless the request is granted.
- Request for de-activation must be self-initiated by the civilian and not suggested by the officer.
- In making the decision, officer shall consider privacy/safety interests of citizen, location of the encounter and the need for the information.



De-Activation During Criminal Investigation Strategy/Planning Discussions

- 1) Unless the officer's agency policy provides otherwise, an officer may de-activate a BWC while discussing criminal investigation strategy and planning if:
 - a) the discussion is not in front of a civilian, or
 - b) the officer not actively collecting evidence.
 - c) The agency's policy may limit this authority.

- 2) Officer shall narrate the circumstances of the de-activation on the BWC recording.



Re-Activation When Reason for De-Activation No Longer Exists

- Any de-activated BWC shall be re-activated when the circumstances justifying de-activation no longer exist, and the officer would otherwise be required to activate the BWC (the officer is involved in investigative activities that require activation under AG Directive 2015-1, see Section 5).

De-Activation/Removal of BWC From Alcohol Breath Testing Area

- If the BWC model selected by a department produces radio-frequency interference when activated or in standby mode, the device shall be de-activated or removed (if necessary) while in the area where an electronic alcohol breath testing device is being used.
- Officers should narrate the reason for de-activation/removal of the BWC prior to doing so and then re-activate when safe and practicable following the completion of breath testing.

Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities

- If a department acquires a BWC with enhanced audio/video capabilities that capture images or conversations beyond what the officer can see or hear (**infrared night vision, thermal imaging, sound amplification**), that feature shall not be used without approval from the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee.

Procedures to Protect Integrity of BWC Recordings

- Every department that uses BWCs shall establish a system to ensure proper handling and storage of all BWC recordings.
- The system shall:
 - 1) Ensure that all recordings are uploaded to a secure data storage system in a timely fashion.
 - 2) Prevent tampering with or deletion of recorded data.
 - 3) Prevent unauthorized access to recordings.
 - 4) Document all instances when recordings are accessed, viewed, copied, disseminated, or deleted.
 - 5) Permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.



Specified Authorized Purposes for Accessing/Using Stored BWC Recordings

No law enforcement officer or civilian employee shall access, view, copy, disseminate or use a stored BWC recording except for an official purpose. Access and use are only permitted:

- 1) When relevant to and in furtherance of a criminal investigation or prosecution, an internal affairs investigation, or a management review process to identify possible police misconduct.
- 2) To assist the officer whose BWC made the recording in preparing his or her report, unless a use-of-force investigation is being conducted in which case an officer who is a principal or witness must get permission from the prosecutor overseeing that investigation (See AG's Supplemental Law Enforcement Directive Amending Directive 2006-5, issued 7-28-15).
- 3) When relevant to a supervisor's reviews of an officer's actions.
- 4) **To show to a civilian who intends to file a complaint against an officer, in order to demonstrate to the civilian what actually occurred during the encounter.**



Specified Authorized Purposes for Accessing/Using Stored BWC Recordings (Con't)

- 5) To comply with the State's discovery obligation in prosecutions and any other legal obligations.
- 6) To show the recording to a civilian, a non-law enforcement entity, or the public when the County Prosecutor or designee or the DCJ Director or designee determines that the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.
- 7) For training purposes, after the recording has been edited so that the identity of individuals depicted cannot be determined.
- 8) To conduct an audit to ensure compliance with State and department policy.
- 9) To enhance officer and public safety by providing intelligence in preparation for a raid/warrant execution, when approved by County Prosecutor, DCJ Director or designees.
- 10) Other purposes when approved by County Prosecutor, DCJ Director or designees.



Authorization for Access to BWC Recordings Related to Use-of-Force Investigations

Only the prosecutor overseeing a police use-of-force investigation may authorize a civilian or law enforcement principal/witness to be given access to or view a BWC recording of the incident under investigation, including the on-scene investigation of the incident. See AG's Supplemental Law Enforcement Directive Amending Directive 2006-5, issued 7-28-15.



Undercover Officers and CI's

Section 7.2 of the Directive

- Officer shall not activate or shall de-activate an activated BWC if the BWC would capture the image of an undercover officer or confidential informant or pose a safety risk to either person.
- Exceptions: (1) If the danger posed to an officer (active shooter, actual police use of force, officer in distress, etc.) requires the BWC to be activated, in such case the officer shall inform a supervisor that the image of an undercover officer or confidential informant was recorded, or (2) Whenever activation is expressly authorized by a supervisor.

Undercover Officers and CI's

- Any BWC video that captures U/C Officer or CI should be “tagged” ...See Section 9.3 of Directive
- Prosecutor may seek a Protective Order to avoid disclosure of such video in discovery in order to protect Undercover Officers and Confidential Informant's...See Section 9.5 of Directive



Civil Litigation

- In civil litigation the defense goal is to have the matter dismissed before it proceeds to a jury trial
- Often the case involves multiple counts, multiple defendants and numerous theories of potential liability
- Motions to Dismiss
- Motions for Summary Judgment
- Is there any defense or type of immunity we can assert before jury trial?



Qualified Immunity

- In New Jersey, the **qualified-immunity doctrine** is applied...to civil rights claims brought against law enforcement officials engaged in their discretionary functions, including arresting or charging an individual based on probable cause to believe that a criminal offense has occurred.



Qualified Immunity

- Whether a police officer is entitled to qualified immunity is determined by application of a two-prong test. See [Wood v. Moss, 134 S. Ct. 2056 \(2014\)](#). The first inquiry asks whether the facts alleged, taken in the light most favorable to the party asserting the injury, show that the challenged conduct violated a statutory or constitutional right. Second, the court must determine whether the right was clearly established. Courts reviewing qualified-immunity claims are free to address the two prongs in any order.
- When a plaintiff asserts that he or she was unlawfully arrested, a law enforcement officer can defend such a claim by establishing either that he or she acted with probable cause, or, even if probable cause did not exist, that a reasonable police officer could have believed in its existence. If officers of reasonable competence could disagree on the issue of probable cause, the doctrine of qualified immunity should be applied.

-Morillo v. Torres, 222 N.J. 104, 117 (2015)



Summary Judgment

Summary judgment is appropriate where the Court is satisfied that "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Celotex Corp. v. Catrett, 477 U.S. 317, 330; Fed. R. Civ. P. 56(c).

Conducted Energy Devices

- Review the Compilation of Attorney General Supplemental Policy on Conducted Energy Devices [as of March 3, 2016]
- http://www.nj.gov/oag/dcj/agguide/directives/2016-3-3_Supplemental-Policy-on-Conducted-Energy-Devices.pdf
- Combines all AG Directives and DCJ Director Memos on CEDs issued since 2010.

Conducted Energy Devices

- Training Requirements (Section VII)
- Deployment Requirements (Sections V, VI and VIII)...Know the Four Situations (see page 5 of the Compilation)
- Investigation and Reporting Requirements (Section X)

Amended Section V

V. Authorization to Use Conducted Energy Devices

1. An officer authorized to use a conducted energy device pursuant to this supplemental policy may fire and/or discharge the device during an actual operation only where:



Option 1

a.(i) the officer believes such force is reasonably necessary to prevent the person against whom the device is targeted from **causing death or serious bodily injury** to him/herself, an officer, or any other person;



Finish the Calculation

b. the individual **will not voluntarily submit to custody** after having been given a **reasonable opportunity** to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force.

OR





Option 2

(ii) the person against whom the device is targeted is armed with an **object** that the officer **reasonably believes** could be used as a **deadly weapon**, *and* the person **refuses the officer's command** to put down or surrender the object after having been given a reasonable opportunity to do so;



Finish the Calculation

b. the individual **will not voluntarily submit to custody** after having been given a **reasonable opportunity** to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force.

OR





Option 3

(iii) the officer believes such force is **reasonably necessary** to **prevent** the **immediate flight** of an individual whom the officer has **probable cause** to believe has committed an offense in which the suspect **caused or attempted to cause death or serious bodily injury**;



Finish the Calculation

b. the individual **will not voluntarily submit to custody** after having been given a **reasonable opportunity** to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force.

OR



Option 4

(iv) the person against whom the device is targeted **resists a lawful arrest by using or threatening to use physical force or violence against** the officer or another in a manner and to a degree that the officer reasonably believes creates a **substantial risk of causing bodily injury** to the officer, a victim, or a bystander;



Finish the Calculation

b. the individual **will not voluntarily submit to custody** after having been given a **reasonable opportunity** to do so considering the exigency of the situation and the immediacy of the need to employ law enforcement force.





Office of the Attorney General, State of New Jersey
CONDUCTED ENERGY DEVICE DEPLOYMENT REVIEW REPORT

Agency					
Officer's Name		Badge #	Supervisor's Name		Badge #
Case #	CED Incident #	Date of Deployment	Time of Deployment *	Location	
CED Model	CED Serial #		Cartridge Serial #	Cartridge Serial #	

PART I: OFFICER

PART I: TO BE COMPLETED BY OFFICER WHO DEPLOYED CED

	Yes	No	N/A
1. Was the pre-operational check performed?			
2. Did the device malfunction? (If yes, explain in narrative.)			
3. Probe deployment?			
4. Did both probes make contact with the subject?			
5. Was the drive stun mode utilized?			
6. Was more than one discharge cycle necessary?			
7. Was the subject handcuffed during discharge?			
8. Did the deployment avoid the need to employ deadly force?			
9. Did the deployment avoid injury to the CED operator?			
10. Was the subject injured as a result of deployment?			
11. Was the subject transported to a medical facility?			
12. Use of Force Report completed?			

NARRATIVE (Continue on additional pages if necessary.)

OFFICER'S SIGNATURE	BADGE	DATE	PAGE 1 of _____
---------------------	-------	------	-----------------

* Record accurate local time of CED deployment, including EST (Eastern Standard Time) or EDT (Eastern Daylight Time). Note that the time displayed on the CED video will often be displayed in GMT (Greenwich Mean Time). If so, this cannot be adjusted by the law enforcement agency.

PART II: SUPERVISOR

	Yes	No	N/A
13. Was the CED involved in the deployment equipped with an Internal CED Camera?			
a. Was the deployment fully recorded by the Internal CED Camera? <i>(If not, explain in narrative.)</i>			
b. Was the CED video data downloaded and stored for the investigation? <i>(If not, explain in narrative.)</i>			
14. Was the officer involved in the CED deployment equipped with a Body Worn Camera (BWC)?			
a. Was the deployment fully recorded by the BWC? <i>(If not, explain in narrative.)</i>			
b. Was the BWC data downloaded and stored for the investigation? <i>(If not, explain in narrative.)</i>			
15. Were additional officers on-scene at the time of the incident equipped with Body Worn Cameras (BWCs)?			
a. Was the BWC data from the additional officers downloaded and stored for the investigation? <i>(If not, explain in narrative.)</i>			
16. Was the CED deployment captured on any patrol car MVRs (dash-cams)?			
a. Was the MVR (dash-cam) data downloaded and stored for the investigation? <i>(If not, explain in narrative.)</i>			
17. To your knowledge, was the CED deployment captured on any video recorded by third parties (Examples: civilian bystanders with cellphones or cameras, surveillance systems from nearby businesses or homes, television news crews?) <i>(If yes, explain in narrative.)</i>			
a. Was the third party video data downloaded and stored for the investigation? <i>(If not, explain in narrative.)</i>			
18. Was the CED's Internal Data (non-video) downloaded and stored for the investigation? <i>(If not, explain in narrative.)</i>			
19. Did the CED operator comply with the Attorney General's CED policy?			

ACTION TAKEN OR RECOMMENDED

- Additional Training
 Written Performance, Counseling
 Referral to Internal Affairs
 Allegation notification and policy review intervention between supervisor and CED Operator
 IA Case # _____
 Commendation or other form of recognition of remarkable performance
 Evaluation and/or referral for mandatory professional assistance
 Verbal Counseling
 Review of SOP with/Subordinate
 No Further Action

NARRATIVE *(Continue on additional pages if necessary)*



Criminal Justice Reform

AKA: Bail Reform

- LiveScan and “Back-linking” of Fingerprint Records
- eCDR enhancements and the PSA
- Designated Supervisory Officer Review and the “Portal”
- Complaint-Warrant vs. Complaint-Summons Decisions

NJSP CRIMINAL JUSTICE REFORM PROCESSING PROCEDURE (DCJ 1/1/2017)



STEP 1: Must Live Scan (Note: some counties require contact with on-call AP before Live Scan)

- All indictable offenses
- DV cases when:
 - Signs of injury or weapon involved
 - Warrant in effect
 - PC for contempt of FRO/TRO
- Habitual criminal
- Shoplifting
- Prostitution
- Narcotics case

STEP 2: Search following:

- CCH
- NCIC
- Out of state CCH/III/Multi-State
- DV Central Registry
- Sexual Assault Registry
- Juvenile Central Registry
- Expunged Records (when available)

STEP 3: Mandatory Complaint-Warrant
Present crime is one of following: (R. 3:3-1(e))

- Murder
- Aggravated manslaughter
- Manslaughter
- Aggravated sexual assault
- Sexual assault
- Robbery
- Carjacking
- Escape
- Attempt to commit any of above
- Def. been extradited from another state for current charge or lawful detainer has been lodged against him or her

If Yes:
Obtain "screener" approval to apply for warrant.

If No:
Go to Step 4.

STEP 4: Presumption for Complaint-Warrant (R. 3:3-1(f) and AGD 4.5)
If one of following is true:

- Failure to Appear or New Criminal Activity Score of 4, 5, or 6
- New Violent Criminal Activity flag
- Present offense committed while on release for other crime or offense
- Def. has juvenile adjudication within last 10 years for crimes:
 - Involving Firearm
 - Subject to NERA if adult
 - Or attempt of above
- Def. has out of state pending charge/conviction involving actual/threatened violence or unlawful possession/use of firearm

OR, present crime is one of following or attempt of:

- Violation of DV restraining order/condition
- Violation of sex assault protection order/condition
- Bail jumping
- Witness tampering/retaliation
- Witness obstruction
- Chapter 35 first/second-degree crime
- Possession/use of firearm
- Vehicular homicide
- Second-degree aggravated assault
- Disarming law enforcement officer
- Kidnapping
- Aggravated arson
- Second-degree burglary
- Extortion
- Booby traps in drug manuf. or dist. facilities
- Strict liability for drug-induced deaths
- Terrorism
- Producing/possessing chemical weapons/biological agents/radiological devices
- Racketeering
- Firearms trafficking
- Cause/permit child to engage in sexual act
- Domestic violence cases where condition is necessary for immediate safety of victim

If Yes:
Presumption to apply for complaint-warrant.
Obtain "screener" approval to apply for warrant.

If No:
Presumption to issue complaint-summons.
Obtain "screener" approval to issue summons.

If you want to overcome the presumption and issue a summons, proceed to Step 5.

If you want to overcome the presumption and apply for a warrant, proceed to Step 6.

Note:
Definition of "Screener"
"Screener" is either prosecutor or supervisory officer as specified by each county (see Summary of Counties Charging Directives).

NJSP CRIMINAL JUSTICE REFORM PROCESSING PROCEDURE (DCJ 1/1/2017)

STEP 5: Overcome Presumption of Warrant

The "screener" must determine:

- Interests of public safety and justice not served by warrant

In making this determination, "screener" shall consider:

- Pretrial services program monitoring conditions
- Reasonable assurances of appearance
- Safety of others in community
- Whether def. will obstruct or attempt to obstruct criminal justice process

The "screener" must document reasons for decision.

If Yes:

Obtain "screener" approval to issue summons.

If No:

Obtain "screener" approval to apply for warrant.

Note:

"Unreasonable" delay with Live Scan or eCDR systems

In accordance with subsection 4.5.6 of AG Directive, summons/warrant decision is made by applying provisions and presumptions of Section 4 that do not require the PSA.

STEP 6: Overcome Presumption Summons:

The "screener" must determine that complaint-warrant is necessary to:

- Protect safety of victim/community, OR
- Reasonably assure def.'s appearance in court when required, OR
- Prevent def. from obstructing or attempting to obstruct criminal justice process,

AND

- One of following is true from Rule 3:3-1(d):

- 1) Def. has been served with summons and has failed to appear;
- 2) Reason to believe def. is dangerous to self if released on summons;
- 3) Reason to believe def. will pose danger to safety of any person or community if released on a summons;
- 4) One or more outstanding warrants for def.;
- 5) Def.'s identity/address not known and warrant is necessary to subject def. to jurisdiction of court;
- 6) Reason to believe def. will obstruct or attempt to obstruct criminal justice process if released on summons;
- 7) Reason to believe def. will not appear in response to summons; or
- 8) Reason to believe monitoring of pretrial release conditions by pretrial services program is necessary to protect victim/witness/other specified person/community.

Application must advise court of specific factor in Rule 3:3-1(d) and specific facts or circumstances State is relying on to overcome presumption.

If Yes:

Obtain "screener" approval to apply for warrant.

If No:

Obtain "screener" approval to issue summons.

Mandatory Notifications to Prosecutor's Office:

1. Denial of Application for Complaint-Warrant
2. Reason to believe a motion for pretrial detention or revocation of release may be filed by the Prosecutor's Office, for example:
 - When the complaint-warrant charges murder in violation of 2C:11-3;
 - When the complaint-warrant charges any offense that would subject defendant to a regular or extended term of life imprisonment;
 - When the complaint-warrant charges a first- or second-degree offense and defendant is on pretrial release, probation, or parole for an unrelated charge;
 - When the complaint-warrant charges a first- or second-degree offense and the risk assessment results in a FTA or NCA score of 5 or 6;
 - When the complaint-warrant charges a first- or second-degree offense and the risk assessment NCA score is 4 or greater and within the past 10 years the offender has a juvenile adjudication for an offense that would fall under the Graves Act or the No Early Release Act;
 - When the complaint-warrant charges a first- or second-degree offense that was committed while on release or on probation, ISP, PTI, or pending sentencing/appeal
 - When the risk assessment raises a NVCA flag.

First Appearances After Issuance of Complaint-Warrant

Section 6 of the AG Directive



First Appearances

- Within **48 hours** of jail commitment.
- Appearance by police not generally needed.

Three Scenarios at First Appearance Hearing

- ROR Release of Defendant
- Defendant Released on “Conditions”
- State Files Motion for Pretrial Detention

Police Officer's Role

- Make sure that the prosecutor is in possession of information that was not a part of the PSA “calculation” and that may impact decisions such as:
 - Whether to file a pretrial detention motion?
 - What are appropriate “release conditions?”



Release Conditions-General

- Prosecutor may request any appropriate conditions listed in N.J.S.A. 2A:162-17(b).

EXAMPLES: No contact; remain in custody of another person; employment; education; reporting; curfew; no weapons; no alcohol or drugs; medical/psych exam; home supervision; electronic monitoring; OR any other condition that assures “The TRIAD”.



VICTIM and WITNESS SAFETY

- **NO CONTACT** with victims and/or witnesses, see N.J.S.A. 2A:162-17b(1)(b) and (c).
- This release condition may be **IN ADDITION** to Orders issued pursuant to Prevention of Domestic Violence Act, 2C:21-25(a), SORO, SASPA or DORO orders.
- Advise victims/witnesses of release conditions.

Pretrial Detention Motions

Section 7 the of AG Directive

Pretrial Detention Hearings

Pretrial detention hearings will be held only in those instances in which a prosecutor has filed a motion for detention.

Prosecutors will take the position that it is unnecessary to call officers as witnesses at these hearings, judges may determine otherwise.

Pretrial Detention Hearings

Generally speaking, the State must make a probable cause showing and demonstrate a basis for pretrial detention under the Bail Reform Law.

General presumption is against detention except in cases where defendant is charged with murder or is facing a term of life imprisonment.

Criminal Justice Reform

The Future

- Individual Appeals (on Denials of PDM)
- Discovery Issues (State v. Robinson scheduled in Supreme Court in late March)
- Legislative Adjustments/Statutory Amendments
- Amendments to Court Rules
- AG Directive
- The PSA and the DMF (Decision Making Framework)

Criminal Justice Reform

The Future

- March 3, 2017: **“No Release Recommended”** replaces “Release Not Recommended, If Released Weekly Reporting + HD/EM” in the AOC’s DMF.
- EM Case Violation Responses...the Role of the Municipal and State Police.

Questions/Comments/Suggestions

Joseph F. Walsh

Deputy Attorney General

N.J. Division of Criminal Justice

Prosecutor's Supervision & Training Bureau

(609) 984-1034

walshj@njdcj.org