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TO: ALL BERGEN COUNTY CHIEFS OF POLICE, POLICE DIRECTORS,
OFFICERS-IN-CHARGE, AND SHERIFF MICHAEL SAUDINO

FROM: PROSECUTOR GURBIR S. GREWAL

DATE: NOVEMBER 28, 2016

SUBJECT: BERGEN COUNTY PROSECUTOR'S OFFICE LAW ENFORCEMENT
DIRECTIVE NO. 2016-1 ESTABLISHING A SYSTEM OF COMPLAINT
APPROVAL (the "DIRECTIVE")

I. INTRODUCTION

On October 11, 2016, the Attorney General issued Law Enforcement Directive No. 2016-6 "Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform" (hereinafter, the "AG Directive"). The AG Directive is hereby adopted and made part of this Directive, both of which are binding on all law enforcement agencies operating in Bergen County and their officers (hereinafter "County LE Agencies") effective January 1, 2017. Section 3 of AG Directive instructs the County Prosecutor to implement a method of "pre-charging case screening." In keeping with the spirit of the AG Directive and the demonstrated experience and judgment of County LE Agencies, the Bergen County Prosecutor's Office ("BCPO" or "the Office") has adopted the collaborative complaint approval process set forth below. Section 3.2 of the AG Directive and any other provisions that are impacted by this Directive are hereby amended as set forth below, and County LE Agencies are hereby directed to implement and comply with the following policies, procedures, standards, and practices with respect to complaint approval.

II. DESIGNATION OF A SUPERVISORY OFFICER

The AG Directive authorizes the County Prosecutor to determine the method for pre-charging case screening. The Chief or Director of each County LE Agency shall designate at least one Supervisory Officer (hereinafter “SO”) to review all charging decisions of the respective agency effective January 1, 2017. The SO shall be (1) the officer on duty in charge of booking procedures, or (2) the highest-ranking officer on duty or in the police station on any given shift. Additionally, the SO must be available to law enforcement officers in his/her department on a full time basis; that is, 24 hours a day, 7 days a week. The SO will have various complaint approval responsibilities as outlined in Section III, infra. An SO designated pursuant to this subsection shall have authority to review/approve charging decisions only in cases where the arrest was made by an officer from the SO’s department. An SO shall not be authorized to review or approve a charging decision for an arrest made by any other agency.

III. COMPLAINT-SUMMONS v. COMPLAINT-WARRANT

A. Issuance of a Complaint-Summons is Presumed

In any case where there is probable cause to believe that a defendant has committed any indictable crime, disorderly persons offense, or petty disorderly persons offense, a law enforcement officer shall issue a complaint-summons, with **three notable exceptions**. Those **exceptions** are:

1. those crimes which must be placed on a complaint-warrant, pursuant to New Jersey Court Rule 3:3-1e (Section III(B) infra);
2. those crimes which give rise to a presumption in favor of a complaint-warrant pursuant to Rule 3:3-1f and the AG Directive (Section III(C) infra); and
3. those circumstances where, upon consultation with an Assistant Prosecutor, it is determined that application for a complaint-warrant is reasonably necessary to ensure defendant’s appearance in court, protect the safety of a victim or the community, or assure that defendant will not obstruct or attempt to obstruct the criminal justice process, pursuant to Rule 3:3-1(d) and the AG Directive (Section IV(A) infra).

B. Issuance of a Complaint-Warrant is Required

Pursuant to Rule 3:3-1e, a law enforcement officer is mandated to apply for (and the judicial officer to issue) a complaint-warrant when there is probable cause to believe that defendant committed:

1. murder;
2. aggravated manslaughter;

3. manslaughter;
4. aggravated sexual assault;
5. sexual assault;
6. robbery;
7. carjacking;
8. escape; or
9. the attempt to commit any of these above crimes.

Additionally, if the defendant has been extradited from another state to face the current charge, application for a complaint-warrant is mandated.

C. Application for a Complaint-Warrant is Presumed

1. Pursuant to Rule 3:3-1f, it is presumed that a law enforcement officer will apply for a complaint-warrant when there is probable cause to believe that defendant committed:
 - a. any of the following crimes subject to the No Early Release Act:
 - i. vehicular homicide;
 - ii. aggravated assault;
 - iii. disarming a law enforcement officer;
 - iv. kidnapping;
 - v. aggravated arson;
 - vi. burglary;
 - vii. extortion;
 - viii. use of booby traps in manufacturing or distribution facilities;
 - ix. strict liability drug induced deaths; or
 - x. terrorism;
 - b. any 1st or 2nd degree drug charge (Chapter 35);
 - c. any crime involving the possession or use of a firearm;
 - d. producing or possessing chemical weapons, biological agents, or nuclear or radiological devices;
 - e. racketeering ;

- f. firearms trafficking; or
 - g. causing or permitting a child to engage in a prohibited sex act knowing that it may be reproduced, reconstructed, or used as part of an exhibition or performance or the attempt to commit any of those crimes.
2. AG Directive Section 4.5 also creates a series of presumptions governing when a law enforcement officer is presumed to apply for a complaint-warrant. They are:
- a. either the failure to appear (“FTA”) or new criminal activity (“NCA”) score is 4, 5 or 6 or if there is an new violent criminal activity (“NVCA”) flag (AG Directive Section 4.5.1); or
 - b. the charge is a violation of a domestic violence restraining order or release condition **or** the Sexual Assault Survivor Prevention Act or release condition (AG Directive Section 4.5.2);
 - c. the defendant is charged with bail jumping, witness tampering, or hindering apprehension under either N.J.S.A 2C:29-3 a(3) or b(3) (AG Directive Section 4.5.3);
 - d. the present offense was committed while defendant was on release for another offense or while on any type of post-conviction supervision (AG Directive Section 4.5.5);
 - e. the defendant was adjudicated delinquent within the last 10 years for a crime that would either be subject to NERA if committed by an adult, or was a crime involving a firearm (AG Directive Section 4.5.7);
 - f. the defendant has an out of state pending charge or conviction that involves actual or threatened violence or the use of a firearm (AG Directive Section 4.5.8).

IV. OVERCOMING A PRESUMPTION¹

The framework of rebuttable presumptions established by both Court Rule and the AG Directive outlined above is designed to channel law enforcement discretion, not eliminate it. A presumption is the starting point for case-specific analysis, but does not necessarily dictate the outcome of that analysis. Rather, it requires a law enforcement officer to articulate and document specific reasons if the determination is made to diverge from a presumptive outcome.

¹ To overcome a presumption, an Assistant Prosecutor must be contacted. See Section V (E) and (F), supra.

Furthermore, nothing in this Directive restricts the SO from considering any relevant fact or circumstance, including those that do not automatically trigger a presumption. For example, in determining whether to apply for a complaint-warrant or to seek pretrial detention, a defendant's juvenile adjudications of delinquency for non-violent offenses that occurred more than 10 years ago may be considered, even though those adjudications would not trigger a presumption of applying for a complaint-warrant under AG Directive Section 4.5.7. So too, for example, a defendant's prior probation violations may be considered as an indication of disrespect for judicial authority or unwillingness or inability to obey court orders, notwithstanding that such violations do not invoke a presumption and are not otherwise specifically referenced in this Directive. Those types of historical facts are relevant, not because they establish a presumption, but rather because they may become part of the totality of the circumstances used to overcome a presumption of issuing a complaint-summons (AG Directive Section 4.5.9).

Finally, prior to making a determination as to whether a complaint-warrant or complaint-summons should be issued, the SO **must** check the following databases: criminal case history (in-state and out-of-state), juvenile history, domestic violence central registry, sexual assault registry, and expunged records².

A. Overcoming a Presumption for Issuance of a Complaint-Summons

Pursuant to R. 3:3-1d, there are circumstances where an application for a complaint-warrant is reasonably necessary to protect the safety of a victim or the community, ensure defendant's appearance, or assure that defendant will not obstruct or attempt to obstruct the criminal justice process.

1. In General

In determining whether to apply for a complaint-warrant when a complaint-summons is presumed, one or more of the following factors must exist:

- a. defendant has been served with summons for a prior indictable crime and failed to appear;
- b. there is a reason to believe defendant is dangerous to self, or will pose a danger to the safety of any other person or the community;
- c. there exists one or more outstanding warrants for defendant;
- d. defendant's address or identity is unknown;
- e. there is reason to believe that defendant will obstruct or attempt to obstruct criminal justice process;
- f. there is reason to believe defendant will not appear in response to a summons; or

² Until N.J.S.A 2C:52-1 et seq. is amended, expungement records will not be available.

- g. there is reason to believe monitoring by pretrial release is necessary to protect any victim, witness, other specified person, or community.

2. Domestic Violence³

AG Directive Section 4.6 contains a series of considerations specific to cases involving domestic violence which are outlined below.

- a. In determining whether to overcome the presumption for a complaint-summons and make application for a complaint-warrant, AG Directive Section 4.6.2 requires that the following be considered:
 - i. the nature and extent of the victim's injuries;
 - ii. whether there was a weapon used or threatened;
 - iii. whether defendant has previously violated a restraining order as well as the nature of those violations;⁴ and
 - iv. whether defendant possesses or has access to any firearms that for some practical reason are unable to be seized prior to defendant's release on a complaint-summons.
- b. Whether the issuance of a complaint-warrant (resulting in defendant's being in custody for up to 48 hours) will exacerbate the situation, discourage cooperation from the victim, or advance (or impede) the general interests of justice, shall be considered. (AG Directive Section 4.6.1).
- c. Pursuant to AG Directive Section 4.6.3, a complaint-warrant **shall** be sought in domestic violence cases where the imposition of a no-contact order or other condition of release is reasonably necessary to assure the immediate protection of the victim. The issuance of a complaint-warrant also allows for the possibility of pre-trial detention, revocation of release, the placement of an ankle bracelet, etc.

B. Overcoming a Presumption for Application for a Complaint-Warrant

In a circumstance where a complaint-warrant is presumed, a law enforcement officer may issue a summons if it is determined that neither the interests of victim or public safety nor the

³ AG Directive Section 4.1 specifically notes that the mandatory arrest provision of the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-21(a)) is not offended by the release of a defendant on a complaint-summons after his/her "arrest" (i.e., defendant taken into custody, transported to police headquarters, fingerprinted, etc.).

⁴ Remember, if the instant offense is committed in violation of a current restraining order, a warrant is **presumed**. See AG Directive Section 4.5.2 and Section C(2)(b), supra.

interests of justice are served by issuance of a complaint-warrant. In making that determination, consider whether without the monitoring by Pretrial Services:

1. there are “reasonable assurances” that defendant will appear in court;
2. the safety of any other person or the community will be protected; and
3. the defendant will not obstruct the criminal justice process.

V. RESPONSIBILITIES OF A SUPERVISORY OFFICER

In furtherance of the above, the circumstances under which an SO may approve a complaint-warrant or summons are set forth below. As set forth below, in certain circumstances an SO may be required to consult with an Assistant Prosecutor. To that end, a specialized 24-hour complaint approval hotline has been established. That phone number is (201) 226-5895. An on-call assistant prosecutor will be available on a full-time, round-the-clock basis to consult with an SO in those circumstances detailed above. SOs will call this hotline for complaint approval advice. All other legal advice calls shall be placed to the Assistant Prosecutor designated as the legal advisor for each agency.

- A. An SO may approve any request from officers within his/her department for any indictable crime charged on a summons;
- B. An SO may approve a request to charge any disorderly persons or petty disorderly persons offense on a summons, with the exception of certain domestic violence cases, discussed fully in Section IV(A)(2), supra.
- C. An SO may approve an application for a complaint-warrant when there is probable cause to believe that defendant committed an offense for which a warrant is mandated pursuant to Rule 3:3-1e. See Section III(B), supra.
- D. An SO may approve an application for a complaint-warrant when there is probable cause to believe that defendant committed an offense under circumstances giving rise to a presumption in favor of a complaint-warrant pursuant to Rule 3:3-1f. See Section III(C), supra.
- E. An SO must contact and receive approval from the on-call AP when an officer seeks to apply for a warrant where a summons is presumed, pursuant to R. 3:3-1. See Section IV(A), supra.
- F. An SO must receive approval from the on-call Assistant Prosecutor when an officer seeks to issue a summons where a warrant is presumed, pursuant to R. 3:3-1g. See Section IV(B), supra.

- G. An SO must contact the on-call Assistant Prosecutor when a defendant is arrested and charged with two or more offenses committed in multiple counties (e.g., a series of burglaries committed in different jurisdictions, eluding that crosses a county border, drug distribution activities occurring in multiple counties, etc.).
- H. An SO should contact the on-call Assistant Prosecutor where the SO believes the indictable charge will most likely be downgraded at screening so that the on-call Assistant Prosecutor may authorize the SO to sign a disorderly persons or petty disorderly persons offense in lieu of an indictable crim
- I. Nothing in this Directive is meant to discourage an SO from contacting the on-call Assistant Prosecutor to discuss the application of the presumptions and/or the charging decision.

VI. REPORTING REQUIREMENTS

A. Denial of Complaint-Warrant

If an application for complaint-warrant is denied by the court, the SO must notify the BCPO. If the complaint-warrant is denied during normal business hours, the SO will call the complaint approval hotline that day. If the complaint-warrant is denied overnight (between 4:30 p.m. and 8:30 a.m.), the SO will call the complaint approval hotline during normal business hours the following day or email the BCPO Intake at Intake@bcpo.net.

B. Pre-Trial Detention / Revocation of Release

An SO shall notify the BCPO if the SO has reason to believe that a motion for pretrial detention or revocation of release should be filed. Such notification will provide the Office additional time within which to make the determination to seek pretrial detention or revocation of release, and to prepare for the detention/revocation hearing. An SO may notify the Office during normal business hours by calling the complaint approval hotline. If an SO makes the determination that notification is appropriate overnight (between 4:30 p.m. and 8:30 a.m.), the SO may call the complaint approval hotline during normal business hours the following day or email the BCPO Intake at Intake@bcpo.net.

VII. FINGERPRINTING REQUIREMENTS

Upon the arrest of an adult for any offense for which fingerprinting is required by statute, (N.J.S.A. 53:1-15 and N.J.S.A. 53:1-18.1), the law enforcement agency making the arrest shall take and submit the fingerprints of the person by using a Live Scan system capable of initiating the automated pretrial risk-assessment process.⁵ When a defendant is arrested and fingerprinted

⁵ N.J.S.A. 53:1-15 provides in pertinent part that:

[A]ny ... law enforcement agencies and officers shall, immediately upon the arrest of any person for an indictable offense, or for [a “mandatory arrest” for a domestic violence offense] or of any person

at the time of complaint processing, the LiveScan fingerprinting must be completed before beginning an eCDR complaint. Once the Live Scan confirmation is received, the law enforcement officer or agency shall proceed to the eCDR system to begin generating a complaint. No qualifying complaint-summons shall be issued by a law enforcement officer, and no application for a complaint-warrant shall be submitted by a law enforcement officer to a judge or other judicial officer authorized to approve a complaint-warrant, unless the law enforcement agency making the arrest has initiated the automated pretrial risk-assessment process.

VIII. PROBABLE CAUSE AFFIDAVIT AND PLEIR

In every instance where a law enforcement officer is applying for a complaint-warrant, or submitting a CDR to an SO or AP for the determination of whether to apply for a complaint-warrant, the law enforcement officer must complete both the Affidavit of Probable Cause and the Preliminary Law Enforcement Incident Report (“PLEIR”) through the eCDR system. Those documents are necessary to inform all parties of the nature and circumstances of the offense prior to the defendant’s first appearance, which will occur the very next day (with the exception of Sundays).

IX. MANDATORY TRAINING

The BCPO will conduct a series of training sessions on Criminal Justice Reform, to include the topics contained in this Directive. All law enforcement officers designated as Supervisory Officers within the definition set forth in this Directive shall be required to attend one of those training sessions. Registration for those trainings will be through the Bergen County Law and Public Safety Institute.

believed to be wanted for an indictable offense, or believed to be a habitual criminal, or within a reasonable time after the filing of a complaint by a law enforcement officer charging any person with an indictable offense, or upon the arrest of any person for shoplifting ... or upon the arrest of any person for prostitution, pursuant to N.J.S. 2C:34-1 ... take the finger prints of such person.

N.J.S.A. 53:1-18.1 further requires fingerprinting immediately upon the arrest of any person charged with any offense "relating to narcotic or dangerous drugs, whether the same shall be indictable or otherwise."