

To: New Jersey Law Revision Commission
From: Chris Mrakovic
Re: Contempt Charges for Violations of Conditions of Pre-Trial Release
(*State v. McCray*, 243 N.J. 196 (2020))
Date: November 09, 2020

MEMORANDUM

Executive Summary

The Criminal Justice Reform Act (“CJRA”) fundamentally changed the nature of pre-trial release in New Jersey.¹ In lieu of cash bail or a commercial surety, the statute authorizes the pre-trial release of a criminal defendant subject to the conditions set by the trial judge.² The statute explicitly allows for the revocation of pre-trial release if the defendant violates a condition set by the judge.³ The statute is silent regarding the criminal penalties that may be brought against violators. This question was examined by the New Jersey Supreme Court in *State v. McCray*.⁴

Statute Considered

N.J.S. 2A:162-24 provides:

Upon motion of a prosecutor, when an eligible defendant is released from custody before trial pursuant to section 3 or 8 of P.L.2014, c. 31 (C.2A:162-17 or C.2A:162-22), the court, upon a finding that the eligible defendant while on release has violated a restraining order or condition of release, or upon a finding of probable cause to believe that the eligible defendant has committed a new crime while on release, may not revoke the eligible defendant's release and order that the eligible defendant be detained pending trial unless the court, after considering all relevant circumstances including but not limited to the nature and seriousness of the violation or criminal act committed, finds clear and convincing evidence that no monetary bail, non-monetary conditions of release or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

Background

McCray was a consolidated appeal involving two criminal defendants. The first defendant was charged with second-degree robbery and granted pre-trial release subject to a number of

¹ N.J. STAT. ANN. 2A:162-15 *et seq.* (West 2020).

² N.J. STAT. ANN. 2A:162-15 (West 2020).

³ N.J. STAT. ANN. 2A:162-24 (West 2020).

⁴ *State v. McCray*, 243 N.J. 196 (2020).

conditions including that he not commit any offense during the period of release.⁵ He was subsequently charged with theft and credit card fraud offenses committed during his release.⁶ A grand jury indicted the defendant for fourth-degree contempt, contrary to N.J.S. 2C:29-9(a), for violating the condition of his release.⁷ The trial judge dismissed the contempt charge, noting that it was incompatible with the legislative intent of the CJRA.⁸ In addition, the Court observed that language permitting contempt charges for violations of conditions of release was removed from the CJRA before it was enacted by the Legislature.⁹

The second defendant was charged with seven counts of possession and distribution of heroin.¹⁰ This defendant was also released pending trial subject to conditions including a curfew.¹¹ During his release, the defendant was stopped by police past curfew.¹² Officers found Percocet during a search incident to arrest, and the defendant was charged with possession.¹³ He was also charged with fourth-degree contempt, contrary to N.J.S. 2C:29-9(a), for violating the terms of his release by breaking curfew.¹⁴ The trial judge dismissed the contempt charge, also finding it incompatible with the legislative intent of the CJRA.¹⁵

The Appellate Division reversed in both cases.¹⁶ The Court acknowledged that language allowing contempt charges was removed from the CJRA, but noted that no reason was provided explaining the deletion.¹⁷ Without a statement of legislative intent, the Appellate Division determined that the State is not precluded from bringing contempt charges under the plain language of the statute.¹⁸

Analysis

The New Jersey Supreme Court largely agreed with the trial courts, and reversed the Appellate Division, holding that the legislative history demonstrates that the CJRA does not allow contempt charges for violations of pre-trial release.¹⁹ The Court noted that the draft bill of the CJRA included language explicitly allowing “contempt of court proceedings or criminal sanctions” to effectuate conditions of pre-trial release.²⁰ This language was removed before the

⁵ *Id.* at 201, 202.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 203.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 204.

¹⁹ *Id.* at 201.

²⁰ *Id.* at 210 (citing S. 946/A. 1910, § 1 (Jan. 2014)).

bill became law.²¹ The Court found that the removal indicated legislative intent that contempt charges not be used to enforce conditions of pre-trial release.²²

The Court also examined the contempt statute, N.J.S. 2C:29-9. Although the Court acknowledged that this statute allows for the prosecution of a defendant who “purposely or knowingly disobeys a judicial order or protective order,” it found that the legislative history of the CJRA described above prevents its applicability to conditions of pre-trial release.²³

However, the Court determined that contempt charges for violating no-contact orders under the Prevention of Domestic Violence Act, the Sexual Assault Survivor Protection Act, the Extreme Risk Protective Order Act, and stalking offenses are permissible because they are expressly listed in N.J.S. 2C:29-9.²⁴

Pending Bills

Bills have been introduced in both houses seeking to amend N.J.S. 2C:29-9 to more explicitly state that a defendant is guilty of a fourth-degree offense for violating a no-contact order as a condition of pre-trial release.²⁵ The bills also state that a defendant is guilty of a fourth-degree offense for violating a pre-trial order of home detention.²⁶ There is also pending legislation amending N.J.S. 2A:162-24 to provide that pre-trial release shall not be revoked for marijuana offenses.²⁷

None of the pending bills address the issue that is the subject of this Memorandum: the absence of language in N.J.S. 2A:162-24 directing defendants and defense attorneys to N.J.S. 2C:29-9, and explaining how those provisions intersect with N.J.S. 2A:162-24.

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether or not it would be useful to modify N.J.S. 2A:162-24 to clarify that criminal contempt charges are not available for violations of conditions of pre-trial release except for violations of no-contact orders as listed in N.J.S. 2C:29-9.

²¹ *Id.* at 211.

²² *Id.* at 212.

²³ *Id.* at 214 (quoting N.J.S. 2C:29-9).

²⁴ *Id.* at 217.

²⁵ 2020 N.J. A.B. 4590.

²⁶ *Id.*

²⁷ 2020 N.J. S.B. 2535.