

HOW DOES CRIMINAL JUSTICE REFORM IMPACT YOUR CLIENTS WITH DEVELOPMENTAL DISABILITIES WHEN THEY ARE ARRESTED FOR A CRIMINAL OFFENSE IN NEW JERSEY?

Presented By: Marcy M. McMann, Esq.

Criminal Offenses

- Unlike every other state except Maine, New Jersey does not have felonies and misdemeanors
- In New Jersey, all criminal matters are broken down as follows:
 - Crimes (a.k.a. indictable)
 - Disorderly persons
 - Petty disorderly persons
 - Local ordinance
 - Motor vehicle

What's The Difference?

- When a person is charged with a crime, they are facing a possible State Prison term of incarceration
- When a person is charged with a disorderly persons offense, they are facing a maximum term of 180 days in the County Jail

Crimes and Offenses

Crimes: State Prison

- 1st Degree: Between 10 and 20 years
- 2nd Degree: Between 5 and 10 years
- 3rd Degree: Between 3 and 5 years
- 4th Degree: Not to exceed 18 months

Offenses: County Jail

- Disorderly persons offense: Up to 180 days
- Petty disorderly persons offense: Up to 30 days
- Local ordinance: Up to 90 days
- Motor vehicle: Up to 180 days and loss of license

Superior vs. Municipal Court

Superior Court

- Statewide jurisdiction
- Court in County Building
 - County where crime allegedly occurred
- Crimes
 - Includes lesser charges arising out of the same incident
- Potential state prison
- Prosecutor
- Public Defender
 - Indigent
 - Defendant has a mental disease or defect

Municipal Court

- Limited Jurisdiction
- Court in Town
 - Some towns share a court
 - Town hall or police building
- Offenses, local ordinance, motor vehicle and parking
 - Cannot hear crimes
- Maximum 180 days in jail
- Prosecutor
- Public defender
 - Indigent
AND
 - Crimes of magnitude or Defendant has a mental disease or defect

Entering The Criminal Justice System

- Police involvement
 - Your client is stopped on the street, stopped in a car or someone calls 911
- Police determine if criminal charges should be filed
 - Your client may be arrested
- If your client is arrested, he is taken to the police station and processed (fingerprinted and photographed)
- Your client is served with the complaint
 - Citizens may sign a complaint but the Municipal Court will review for probable cause

Criminal Complaints

- Municipal Court Judge or designated court administrator determines if there is probable cause to issue the complaint
 - Probable Cause: Set of facts that would lead a reasonable person to believe this person committed the offense
- Complaint will be a summons or warrant
 - Type of complaint determines if detained in jail
- All Complaint Forms have two parts
 - Top part says if summons or warrant
 - Middle part says what you are charged with
 - Bottom part gives court date and conditions or release

Pre-Criminal Justice Reform

- Release largely based on defendant's ability to pay money bail
 - This is known as a Resource-Based System
- If summons complaint, defendant was processed, released and given a court date to come back
- If a warrant complaint, defendant arrested, processed, and amount of bail set (with or without 10% option)
 - Bail could be paid with cash, bond or property

Public Safety Assessment (PSA)

- Objective, data driven information about the risks a defendant poses if released before trial
 - Assesses likelihood that defendant will be arrested for a new crime, arrested for a new violent crime or fail to appear in court
 - Risk measures based on:
 - Prior criminal convictions
 - Prior sentences
 - Prior failures to appear in court
 - Current charge
 - Current age
- ** Not include substance abuse, mental health and developmental disability

Criminal Justice Reform

➤ Summons complaint

- Processed and released.
- Given a date to return to court
- Fail to appear- arrested- reviewed in 12 hours
 - Release ROR or set bail
 - No need for risk assessment

➤ Warrant complaint

- Arrested
- Processed
- Detained in jail pending a hearing
 - Initial hearing within 48 hours
 - Most defendants released with conditions

Detention Process

- Within 48 hours, court will review defendant's detention status
 - Released with conditions
 - OR
 - Detained pending further review
- If State files a motion for detention, defendant remains in jail pending a hearing to be held within 3 business days
 - Defendant can ask for an extension of an additional 5 business days
 - Can extend time for hearing for good cause

Types of Pretrial Release

- ROR
- Non-monetary conditions
 - Least restrictive to assure appearance, protection of community and that defendant will not obstruct or attempt to obstruct the criminal justice process
 - Report to Pretrial Services
 - Different levels of monitoring
 - Monitor not supervise
 - Not commit a new offense
 - Other Conditions
 - No contact with victim
 - Substance abuse and mental health treatment
 - Other reasonable conditions
- Monetary bail
- Monetary bail with conditions

Detention Hearing

- Superior Court Judge
- Rebuttable presumption of detention if court finds probable cause that defendant
 - Committed murder, or
 - A crime subject to ordinary or extended term of imprisonment
- All other cases, a rebuttable presumption of release

Detention Decision

- Nature and circumstances of the offense
- Weight of the evidence
- History and characteristics of defendant
 - Character
 - Physical and mental condition
 - Family ties
 - Employment
 - Financial resources
 - Community ties including length of residence
 - Past conduct
 - Drug and alcohol abuse
 - On probation, parole or other release pending trial, sentencing, appeal or completion of sentence at the time of the offense

Detention Decision (Continued)

- Nature and seriousness of the danger to any other person or the community
- Nature and risk of obstructing or attempting to obstruct the criminal justice process; and
- Release recommendation of the Pre-Trial Services Unit including the Public Safety Assessment (PSA)

If the court decides to release the defendant, the court will set conditions of release. Separate from domestic violence restraining order

Speedy Trial

- Speedy trial only applies to detained defendants or in jail due to inability to post bail
- Indictment within 90 days of detention, not counting excludable time
 - Can be extended for 45 days
- Post-Indictment- trial within 180 days, not counting excludable time.
 - Can be extended
- Overall time limit is 2 years from date of detention order
 - If prosecutor not ready to proceed to jury selection, opening argument or motions reserved for time of trial
 - Excludes time attributed to the defendant

Client Must Appear In Court

- Failure to appear at the assigned court date will result in a warrant for your client.
- Client risks being arrested and held in the county jail pending disposition of the case.
- When you go to court, check in with the court clerk and let them know you are there.
 - Identify yourself and be prepared to explain to the clerk or judge what your client's needs are
 - Americans with Disabilities Act must be complied with!

If The Client Cannot Appear In Court

- Superior Court: Contact the Criminal Division Manager's Office or the Judge's Team Leader
- Municipal Court: Contact the Municipal Court Administrator
- All courts listed at www.njcourtsonline.org or number is on the letter

Disposition of Case

- Administratively dismissed
- No billed by grand jury
 - Grand jury only reviews indictable charges
- Plead guilty
- Trial
 - Not guilty
 - Guilty
 - Hung jury- do another trial

Remember

- Having a conviction for a disorderly persons offense or a petty disorderly persons offense is not the same as having a conviction for a crime
- Convictions for disorderly persons or petty disorderly persons do not give rise to the same legal disadvantages as a conviction for a crime.

Employment

- If an employment application asks whether the applicant has been convicted of a crime, someone with a disorderly persons or petty disorderly persons conviction can say they have not.
- If an application asks if they have any offenses, then you may have to reveal any municipal court convictions
- Make sure client does not withhold info s/he needs to provide

Criminal Justice Advocacy Program

- Director Jessica S. Oppenheim, Esq.
- What We Do
 - Clearinghouse of Information on Developmental and Intellectual Disabilities
 - Assist DDD clients in navigating Criminal Justice System
 - Training
- CJAP handles clients who have been charged with indictable offenses
- CJAP provides technical assistance and/or assistance to clients who have been charged with disorderly persons offenses

Jessica S. Oppenheim, Esq.

Director of the Criminal Justice Advocacy Program

The ARC of New Jersey

985 Livingston Avenue

North Brunswick, New Jersey

732-246-2525 ext. 31

Direct line and Fax line: 732-828-0988

www.arcnj.org



Presented By:

Marcy M. McMann, Esq.
Law Office of Stephen S. Weinstein
20 North Park Place
Suite 301
Morristown, New Jersey 07960
973-267-5200
Fax 973-538-1779
Email: Marcy@sswp.com

The background of the slide features several faint, concentric circles in a lighter shade of blue, resembling ripples in water, located in the bottom right quadrant.