

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:21. SENTENCE AND JUDGMENT; WITHDRAWAL OF PLEA; PRESENTENCE
INVESTIGATION; PROBATION

Rule 3:21-1. Withdrawal of Plea

A motion to withdraw a plea of guilty or non vult shall be made before sentencing, but the court may permit it to be made thereafter to correct a manifest injustice.

Note: Source-R.R. 3:7-10(a).

Rule 3:21-2. Presentence Procedure

(a) Investigation. Before the imposition of a sentence or the granting of probation court support staff shall make a presentence investigation in accordance with N.J.S.A. 2C:44-6 and report to the court. The report shall contain all presentence material having any bearing whatever on the sentence and shall be furnished to the defendant and the prosecutor.

(b) Examination. After the presentence investigation and before imposing sentence, the court may order, pursuant to N.J.S.A. 2C:44-6(c), a physical or mental examination of the defendant provided that the defendant may not be committed to an institution for the purpose of that examination. The examination report shall be furnished to the defendant and the prosecuting attorney.

(c) Transmittal of Reports. If a custodial sentence is imposed, court staff shall, within fifteen days thereafter, transmit a copy of the presentence report and the examination report, if any, to the person in charge of the institution to which the defendant has been committed.

Note: Source-R.R. 3:7-10(b). Amended July 7, 1971 to be effective September 13, 1971; amended June 29, 1973 to be effective September 10, 1973; amended August 27, 1974 to be effective September 9, 1974; amended July 29, 1977 to be effective September 6, 1977; amended July 16, 1979 to be effective September 10, 1979; paragraph designations and new paragraph (b) adopted and paragraph (c) amended August 28, 1979, to be effective September 1, 1979; paragraph (a) amended September 28, 1982, to be effective immediately; paragraphs (a) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a) and (b) amended July 13, 1994 to be effective January 1, 1995; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended July 28, 2017 to be effective September 1, 2017.

Rule 3:21-3. Diagnostic Center Report

Whenever the defendant is convicted of an offense enumerated in N.J.S.A 2C:47-1 et seq., the court, before imposing sentence or making disposition of the offender under

the provisions of said chapter, shall furnish to the prosecutor, defendant or defendant's attorney a copy of the report of the Diagnostic Center, shall advise defendant of the opportunity to be heard thereon, and shall afford the defendant such hearing. The report of the Diagnostic Center shall be confidential unless otherwise provided by rule, statute or court order.

Note: Adopted February 25, 1969 to be effective September 8, 1969. Amended August 28, 1979 to be effective September 1, 1979; amended July 13, 1994 to be effective January 1, 1995.

Rule 3:21-4. Sentence

(a) Imposition of Sentence; Conditions of Release. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the conditions of release.

(b) Presence of Defendant; Statement. Sentence shall not be imposed unless the defendant is present or has filed a written waiver of the right to be present. Before imposing sentence the court shall address the defendant personally and ask the defendant if he or she wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment. The defendant may answer personally or by his or her attorney.

(c) Sentence to Probation. The court, at time of sentence, shall inform defendants sentenced to probation what penalties might be imposed on revocation should they not adhere to the conditions of their probation.

(d) Extradition. Nothing herein contained shall be construed as affecting the provisions of N.J.S. 2A:160-5 (relating to extradition) or the power of the court to resentence a defendant after reversal of the judgment by reason of error in the sentence.

(e) Extended or Enhanced Term of Imprisonment; Sentence Pursuant to N.J.S.A. 2C:35-8. A motion pursuant to N.J.S.A. 2C:44-3 or N.J.S.A. 2C:43-6(f) for the imposition of an extended term of imprisonment, or a motion for enhanced sentence pursuant to N.J.S.A. 2C:35-8, shall be filed with the court by the prosecutor within 14 days of the entry of the defendant's guilty plea or the return of the verdict. Where the defendant is pleading guilty pursuant to a negotiated disposition, the prosecutor shall make the motion at or prior to the plea. If the negotiated disposition includes the recommendation of an extended term, the prosecutor's oral notice and the recordation of the extended term exposure in the plea form completed by defendant and reviewed on the record shall serve as the State's motion. For good cause shown the court may extend the time for filing the motion. The sentence shall include a determination as to whether the defendant was convicted and sentenced to an extended term of imprisonment as provided in N.J.S.A. 2C:43-7, 2C:44-3 and 2C:44-6(e), N.J.S.A. 2C:43-6(f) or whether the defendant was being sentenced pursuant to N.J.S.A. 2C:35-8, and the commitment or order of sentence which directs the defendant's confinement shall so specify.

(f) Sentence Pursuant to N.J.S.A. 2C:43-7.1, 2C:43-7.2, or 2C:44-5.1. A notice to impose sentence pursuant to N.J.S.A. 2C:43-7.1, N.J.S.A. 2C:43-7.2, or 2C:44-5.1 shall be filed with the court and served upon the defendant by the prosecutor within 14 days of the entry of the defendant's guilty plea or return of the verdict. Where the defendant is pleading guilty pursuant to a negotiated disposition, the prosecutor shall file and serve the notice at or prior to the plea. If the negotiated disposition includes the recommendation of an extended term, the prosecutor's oral notice and the recordation of the extended term exposure in the plea form completed by defendant and reviewed on the record shall serve as the State's notice. For good cause shown the court may extend the time for filing the notice. The sentence shall include a determination as to whether the defendant was convicted and sentenced pursuant to N.J.S.A. 2C:43-7.1, N.J.S.A. 2C:43-7.2, or 2C:44-5.1 and the judgment and commitment shall so specify.

(g) Reasons for Sentence. At the time sentence is imposed the judge shall state reasons for imposing such sentence including findings pursuant to the criteria for withholding or imposing imprisonment or fines under N.J.S.A. 2C:44-1 to 2C:44-3; the factual basis supporting a finding of particular aggravating or mitigating factors affecting sentence; and, if applicable, the reasons for ordering forfeiture of public office, position or employment, pursuant to N.J.S.A. 2C:51-2.

(h) Notification of Right to Appeal and to File Petitions for Post-Conviction Relief. After imposing sentence, whether following the defendant's plea of guilty or a finding of guilty after trial, the court shall advise the defendant of the right to appeal and, if the defendant is indigent, of the right to appeal as an indigent. The court shall also inform the defendant of the time limitations in which to file petitions for post-conviction relief.

(i) Sentence Imposed Pursuant to N.J.S.A. 2C:44-1(f)(2). In the event the court imposes sentence pursuant to N.J.S.A. 2C:44-1(f)(2), such sentence shall not become final until 10 days after the date sentence was pronounced.

(j) Statement of Estimated Real Time to Be Served. If defendant is sentenced to prison or jail, at the time sentence is imposed the judge shall state the approximate period of time defendant will actually serve in custody according to the then current State Parole Board "Parole Eligibility Tables." The statement should also consider the impact of jail credits, and should indicate that it is made for the benefit of the public, including those in attendance at the proceedings, and cannot be relied on by the defendant for purposes of proceedings before the Parole Board or any direct or collateral appeal.

Note: Source-R.R. 3:7-10(d). Paragraph (f) amended September 13, 1971, paragraph (c) deleted and paragraphs (d), (e) and (f) redesignated as (c), (d) and (e) July 14, 1972 to be effective September 5, 1972; paragraph (e) adopted and former paragraph (e) redesignated as (f) August 27, 1974 to be effective September 9, 1974; paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraphs (d) and (e) amended August 28, 1979 to be effective September 1, 1979; paragraph (d) amended December 26, 1979 to be effective January 1, 1980; paragraph (g) adopted July 26, 1984 to be effective September 10, 1984; paragraph (d) caption and text amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended November 2, 1987 to be effective January 1, 1988; paragraph (d) amended January 5, 1988 to be effective February 1, 1988; new paragraph (c) adopted and former paragraphs (c), (d), (e), (f), and (g) redesignated (d), (e), (f), (g), and (h) respectively June 29, 1990 to be effective September 4, 1990;

paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (i) adopted April 21, 1994 to be effective June 1, 1994; paragraphs (b), (e), (f) and (g) amended July 13, 1994 to be effective January 1, 1995; former paragraphs (f), (g), (h), and (i) redesignated as paragraphs (g), (h), (i), and (j) and new paragraph (f) adopted July 10, 1998 to be effective September 1, 1998; paragraph (j) amended July 5, 2000 to be effective September 5, 2000; paragraph (e) caption and text amended, and paragraph (f) amended June 15, 2007 to be effective September 1, 2007; paragraph (h) caption and text amended July 16, 2009 to be effective September 1, 2009; paragraph (g) amended July 21, 2011 to be effective September 1, 2011; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017.

Rule 3:21-4A. [Deleted]

Note: Adopted September 28, 1982 to be effective immediately; rule deleted in its entirety July 28, 2017 to be effective September 1, 2017.

Rule 3:21-5. Judgment

The judgment shall be signed by the judge and entered by the clerk. A judgment of conviction shall set forth the plea, the verdict or findings, the adjudication and sentence, a statement of the reasons for such sentence, and a statement of credits received pursuant to R. 3:21-8. If the defendant is found not guilty or for any other reason is entitled to be discharged judgment shall be entered accordingly. The Criminal Division Manager shall forward a copy of the judgment forthwith to all parties and their counsel.

Note: Source__R.R. 3:7-10(e); amended August 27, 1974 to be effective September 9, 1974; amended July 29, 1977 to be effective September 6, 1977; amended November 1, 1985 effective January 2, 1986; new paragraph (a) added, and former text amended, caption added, and designated as paragraph (b) July 12, 2002 to be effective September 3, 2002; paragraph (a) caption and text deleted and paragraph (b) caption and paragraph designation deleted July 28, 2017 to be effective September 1, 2017.

Rule 3:21-6. Conviction of a Corporation

If a corporation is convicted of an offense the court shall give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action.

Note: Source-R.R. 3:7-10(f).

Rule 3:21-7. Probation and Suspended Sentence

After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or the defendant may be placed on probation.

(a) Conditions. The order shall require the defendant to comply with standard conditions adopted by the court and filed by counsel with the criminal division manager as designee of the deputy clerk of the Superior Court (except as otherwise ordered), as well

as such special conditions, including a term of imprisonment pursuant to N.J.S.A. 2C:45-1(c), as the court imposes. As a condition of probation the court may impose a term of community-related service to be performed by the defendant under such terms and conditions as the court may determine. A copy of the order, together with the standard and special conditions, shall be furnished to the defendant, and read and explained to the defendant by the probation officer, whereupon the defendant and the probation officer shall sign a joint statement, to be filed with the criminal division manager as designee of the deputy clerk of the Superior Court, as to the officer's compliance with such reading and explanation requirement. If the defendant refuses to sign such statement, the defendant shall be resentenced.

(b) Detention. The court may, pursuant to N.J.S.A. 2C:45-3(a)(3), upon a showing of probable cause that the defendant has committed another offense, detain without bail pending determination of the charge, a defendant who was sentenced to probation or whose sentence was suspended.

(c) Revocation. At any time before termination of the period of suspension or probation, the court may revoke a suspension or probation pursuant to N.J.S.A. 2C:45-3.

Note: Source-R.R. 3:7-10(g). Amended July 16, 1979 to be effective September 10, 1979; amended August 28, 1979 to be effective September 1, 1979; paragraphs (a) and (b) amended July 13, 1994 to be effective January 1, 1995. (Explanatory note: The July 16, 1979 amendment to this rule included in this text since the adopting order has already been entered even though the effective date is later than that applicable to the subsequent change.)

Rule 3:21-8. Credit for Confinement Pending Sentence and Re-Sentence

(a) The defendant shall receive credit on the term of a custodial sentence for any time served in custody in jail or in a state hospital between arrest and the imposition of sentence.

(b) While committed to a residential treatment facility, the defendant shall receive credit on the term of a custodial sentence for each day during which the defendant satisfactorily complied with the terms and conditions of Drug Court "special probation" pursuant to N.J.S.A. 2C:35-14 or Drug Court probation pursuant to N.J.S.A. 2C:45-1. The court, in determining the number of credits for time spent in a residential treatment facility, shall consider the recommendations of the treatment provider.

Note: Source -- R.R. 3:7-10(h) (first sentence); amended July 13, 1994 to be effective September 1, 1994; caption amended and text designated as paragraph (a), paragraph (b) adopted July 28, 2017 to be effective September 1, 2017.

Rule 3:21-9. Arrest of Judgment

The court on a defendant's motion shall arrest judgment if the indictment or accusation does not charge an offense or if the charge is based on an invalid or unconstitutional statute or regulation promulgated pursuant to a statute or if the court was

without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 10 days after verdict of guilt or the entry of a plea of guilty or non vult, or within such further time as the court fixes during such 10-day period.

Note: Source-R.R. 3:7-12.

Rule 3:21-10. Reduction or Change of Sentence

(a) Time. Except as provided in paragraph (b) hereof, a motion to reduce or change a sentence shall be filed not later than 60 days after the date of the judgment of conviction. The court may reduce or change a sentence, either on motion or on its own initiative, by order entered within 75 days from the date of the judgment of conviction and not thereafter.

(b) Exceptions. A motion may be filed and an order may be entered at any time (1) changing a custodial sentence to permit entry of the defendant into a custodial or non-custodial treatment or rehabilitation program for drug or alcohol abuse, or (2) amending a custodial sentence to permit the release of a defendant because of illness or infirmity of the defendant, or (3) changing a sentence for good cause shown upon the joint application of the defendant and prosecuting attorney, or (4) changing a sentence as authorized by the Code of Criminal Justice, or (5) correcting a sentence not authorized by law including the Code of Criminal Justice, or (6) changing a custodial sentence to permit entry into the Intensive Supervision Program, or (7) changing or reducing a sentence when a prior conviction has been reversed on appeal or vacated by collateral attack.

(c) Procedure. A motion filed pursuant to paragraph (b) hereof shall be accompanied by supporting affidavits and such other documents and papers as set forth the basis for the relief sought. A hearing need not be conducted on a motion filed under paragraph (b) hereof unless the court, after review of the material submitted with the motion papers, concludes that a hearing is required in the interest of justice. All changes of sentence shall be made in open court upon notice to the defendant and the prosecutor. An appropriate order setting forth the revised sentence and specifying the change made and the reasons therefor shall be entered on the record. On any motion filed pursuant to this rule, upon a showing of good cause, the court may assign the Office of the Public Defender to represent the defendant.

(d) Consideration During Appeal. Notwithstanding R. 2:9-1(a), the trial court may reconsider a sentence pursuant to this Rule during the pendency of an appeal upon notice to the Appellate Division.

(e) Intensive Supervision. Motions for change of custodial sentence and entry into the Intensive Supervision Program, as provided for in paragraph (b) of this rule, shall be addressed entirely to the sound discretion of the three-judge panel assigned to hear them. Because of the nature of the program, there shall be no administrative or judicial review at the several levels of eligibility established under the program. No further appellate review

of the panel's substantive decision shall be afforded. The three-judge panel shall have the authority to resentence offenders, in accordance with applicable statutes, in the event they fail to perform satisfactorily following entry into the program.

Note: Source-R.R. 3:7-13(a)(b); paragraph (b) amended and redesignated as (c) and new paragraph (b) adopted July 17, 1975 to be effective September 8, 1975; paragraph (b) amended August 28, 1979 to be effective September 1, 1979; new paragraph (d) adopted July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraph (b) amended and paragraph (e) adopted July 22, 1983 to be effective September 12, 1983; paragraph (c) amended July 13, 1994 to be effective January 1, 1995; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; paragraphs (b) and (c) amended July 16, 2009 to be effective September 1, 2009.

Rule 3:21-11. Motion to Vacate Certain Convictions

(a) Motion for Relief. In accordance with the time frame in paragraph (b) of this rule, a person convicted of N.J.S.A. 2C:34-1, prostitution and related offenses; or N.J.S.A. 2C:34-1.1, loitering for the purpose of engaging in prostitution; or a similar local ordinance may file a motion with the Superior Court in the county where the conviction occurred, to vacate the conviction and contemporaneously expunge any reference to the person's arrest, conviction, and any proceeding for prostitution, when the person's participation in the offense was a result of having been a victim of human trafficking pursuant to N.J.S.A. 2C:13-8 or as defined in 22 U.S.C. 7102(14).

(b) Time. Following the entry of a judgment of conviction, a motion shall be made and heard within a reasonable time after the applicant has ceased to be a victim of human trafficking or has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the applicant, family members of the applicant, or other victims of human trafficking that may be jeopardized by the bringing of the motion, or for other reasons consistent with this rule.

(c) Notice. The notice of motion, together with a copy of all supporting documents, shall be served by certified or registered mail, return receipt requested, upon the Attorney General; the county prosecutor of the county where the court is located; the Superintendent of State Police; the chief of police or other executive head of the police department of the municipality where the offense was committed; the chief law enforcement officer of any other law enforcement agency of this State that participated in the arrest of the applicant; the superintendent or warden of any institution in which the applicant was confined; and, if a disposition was made in municipal court, upon the judge of that court. A noticed party may make an appearance or file a submission responding to the motion.

(d) Contents of Motion; Certification; Procedure.

(1) Contents of Motion. The motion shall set forth the following information: a notice of motion; the movant's certification setting forth the claim, along with a description of all of the evidence included; the movant's certification of victimization; packet of

evidence documenting the applicant's status as a victim of human trafficking at the time of the offense; the date, docket number, and content of the complaint, indictment or accusation upon which the conviction was based and the county where filed; the date and content of the sentence or judgment complained of and the name of the presiding judge; consent to vacate the conviction and expunge any reference to the applicant's arrest, conviction, and any proceeding for prostitution from the prosecutor where the offense occurred, if such consent has been obtained; form of order to vacate the conviction and expunge records; and proof of service upon the parties. Evidence documenting the applicant's status as a victim of human trafficking at the time of the offense may include, but not be limited to:

(A) certified records of federal or State court proceedings which demonstrate that the applicant was a victim of a trafficker charged with a human trafficking offense under N.J.S.A. 2C:13-8 or chapter 77 of Title 18 of the United States Code;

(B) certified records of approval notices or law enforcement certifications generated from a federal immigration proceeding available to victims of human trafficking;

(C) testimony or a sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy or a health care or other professional from whom the applicant has sought assistance in addressing the trauma associated with being a victim of human trafficking; or

(D) any other evidence that the court deems appropriate.

(2) Certification; Hearing. Any factual assertion that provides the predicate for a claim of relief must be made by an affidavit or certification pursuant to Rule 1:4-4 and based upon personal knowledge of the declarant. A hearing need not be conducted on the motion, unless the court, after review of the material submitted, concludes that a hearing is required in the interest of justice.

(e) Order. The court may vacate a conviction pursuant to this rule upon a finding by a preponderance of the evidence that the applicant was a victim of human trafficking pursuant to N.J.S.A. 2C:13-8 or as defined in 22 U.S.C. 7102(14) at the time of the offense, and that the violation was a result of the applicant having been a victim of human trafficking. If the court finds that the applicant was a victim of human trafficking it shall enter an order vacating the conviction and directing that all court records be revised accordingly, and requiring that any court, law enforcement, correctional agencies, and other parties noticed pursuant to this rule expunge all references to the applicant's arrest, conviction, and related proceedings for the violation of N.J.S.A. 2C:34-1, prostitution and related offenses; or N.J.S.A. 2C:34-1.1, loitering for the purpose of engaging in prostitution; or a similar local ordinance from all records in their custody that relate to the vacated conviction.

(f) Expungement. Nothing herein shall prohibit a person from seeking an expungement pursuant to N.J.S.A. 2C:52-1 to -32.

Note: Adopted July 27, 2015 to be effective September 1, 2015.