

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY  
RULES 3:28. PRETRIAL INTERVENTION PROGRAMS**

**Rule 3:28-1. Eligibility for Pretrial Intervention**

**(a) Age.** To be eligible to apply for admission into the pretrial intervention program, a person must be:

- (1) age 18 or older at the time of the commission of the offense for which an application is made, or
- (2) a juvenile at the time of the commission of the offense, who is treated as an adult under R. 5:22-1 or R. 5:22-2.

**(b) Residence.** Non-residents are eligible to apply for the pretrial intervention program but may be denied enrollment unless they can demonstrate that they can receive effective counseling or supervision.

**(c) Persons Ineligible to Apply for Pretrial Intervention.**

(1) **Prior Diversion.** A person who has previously been enrolled in a program of pretrial intervention; previously been placed into supervisory treatment in New Jersey under the conditional discharge statute pursuant to N.J.S.A. 24:21-27 or N.J.S.A. 2C:36A-1, or the conditional dismissal statute, N.J.S.A. 2C:43-13.1 et seq.; previously was granted a dismissal due to successful participation in the Veterans Diversion Program pursuant to N.J.S.A. 2C:43-23 et seq.; or previously was enrolled in a diversionary program under the laws of any other state or the United States for a felony or indictable offense, shall be ineligible to apply for admission into pretrial intervention.

(2) **Non-Criminal Matters.** A person who is charged with a disorderly persons offense, a petty disorderly persons offense, an ordinance or health code violation or a similar violation shall be ineligible to apply for pretrial intervention, except that a person who is charged with a disorderly persons offense or a petty disorderly persons offense involving domestic violence may apply for pretrial intervention.

**(d) Persons Ineligible for Pretrial Intervention Without Prosecutor Consent to Consideration of the Application.**

The following persons who are not ineligible for pretrial intervention under paragraph (c) shall be ineligible for pretrial intervention without prosecutor consent to consideration of the application:

(1) **Certain Crimes.** A person who is charged with a crime, or crimes, for which there is a presumption of incarceration or a mandatory minimum period of parole ineligibility.

(2) Prior Convictions. A person who has previously been convicted of an indictable offense in New Jersey, or its equivalent under the laws of another state or of the United States.

**(e) Cases Where There is a Presumption Against Admission in Pretrial Intervention.**

(1) Public Officer or Employee. Pursuant to N.J.S.A. 2C:43-12(b)(2)(a) there shall be a presumption against admission for a person who was a public officer or employee and who is charged with a crime that involved or touched the public office or employment.

(2) Crime or Offense Involving Domestic Violence. Pursuant to N.J.S.A. 2C:43-12(b)(2)(b), there shall be a presumption against admission into PTI for a defendant charged with any crime or offense involving domestic violence, as defined in N.J.S.A. 2C:25-19, (a) if the defendant committed the crime or offense while subject to a temporary or permanent restraining order issued pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or (b) if the crime or offense charged involved violence or the threat of violence, which means (i) the victim sustained serious or significant bodily injury as defined in N.J.S.A. 2C:11-1, (ii) the actor was armed with and used a deadly weapon or threatened by word or gesture to use a deadly weapon as defined in N.J.S.A. 2C:11-1, or (iii) the actor threatened to inflict serious or significant bodily injury as defined in N.J.S.A. 2C:11-1.

(3) Submission of Statement with the Application. To rebut the presumption against admission set forth in subparagraphs (1) and (2) of this paragraph, applicants shall include with their application for admission a statement of the extraordinary and compelling circumstances that justify consideration of the application notwithstanding the presumption against admission.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018; paragraphs (c) and (d) amended July 27, 2018 to be effective September 1, 2018.

**Rule 3:28-2. Timing of Application**

Applications for pretrial intervention shall be made at the earliest possible opportunity, including before indictment, but in any event no later than the Initial Case Disposition Conference, unless good cause is shown or consent by the prosecutor is obtained.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-3. Application Process**

**(a) Application.** Every applicant for pretrial intervention shall complete a form as prescribed by the Administrative Director of the Courts for filing with the Criminal Division.

#### **(b) Procedure for Persons Ineligible for Pretrial Intervention without Prosecutor Consent to Consideration of the Application.**

(1) An application that requires prosecutor consent pursuant to R. 3:28-1(d)(1) and (d)(2) shall include a statement of the extraordinary and compelling circumstances that justify consideration of the application notwithstanding the presumption of ineligibility based on the nature of the crime charged and any prior convictions.

(2) Upon filing of an application that requires prosecutor consent, the Criminal Division shall not consider the merits of the application and shall forward the application to the prosecutor's office for consideration. Within 14 days of receipt of the application, the prosecutor shall advise the defendant, the defendant's attorney and the Criminal Division, in writing, of the decision to either consent or refuse to consent to further consideration of the application. The writing shall include a copy of the application, the basis for the prosecutor's decision, and accompanying information, if any, in support of the decision. Only after receipt of the prosecutor's consent to further consideration of the application, the Criminal Division shall consider the application.

(3) In making a determination whether to consent to further consideration of the application, the prosecutor shall give due consideration to the victim's position, if any, and shall not be required to consider any facts, materials, or circumstances other than the information presented in the defendant's application. It shall not be an abuse of discretion for the prosecutor to consider only those additional facts and circumstances which shall include the victim's position if any, on whether the defendant should be admitted into the program, that the prosecutor deems relevant to a determination whether circumstances justify consideration of the application notwithstanding the presumption of ineligibility based on the nature of the crime charged and any prior convictions.

**(c) Defendants Charged with More than One Offense.** Defendants charged with more than one offense may be considered for enrollment.

**(d) Criminal Division and Prosecutor Review After the Filing of the Application.** The criminal division manager shall complete the evaluation and make a recommendation to the prosecutor (1) within twenty-five days of the filing of the application with the Criminal Division or (2) for cases that require prosecutor consent to further consideration of the application pursuant to R. 3:28-1(d), within twenty-five days after receipt of the prosecutor's consent. The prosecutor shall complete a review of the application and inform the court, the defendant and the defendant's attorney of the

decision on enrollment within 14 days of the receipt of the criminal division manager's recommendation. Where an application is made pre-indictment, the prosecutor may withhold action on the application until the matter has been presented to the grand jury. In such cases the prosecutor shall inform the criminal division manager, the defendant, and defendant's attorney of the decision on the application and enrollment within 14 days of the return of the indictment.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-4. Factors to Consider in Assessing Applications**

**(a) Statutory Criteria.** In evaluating a defendant's application for participation in a pretrial intervention program, consideration shall be given to the criteria set forth in N.J.S.A. 2C:43-12(e).

**(b) Additional Factors.** In addition thereto, the following factors shall also be considered together with other relevant circumstances:

(1) The nature of the offense should be considered in reviewing the application. If the crime was (i) part of organized criminal activity; or (ii) part of a continuing criminal business or enterprise; or (iii) deliberately committed with violence or threat of violence against another person; or (iv) a breach of the public trust where admission to a PTI program would deprecate the seriousness of defendant's crime, the defendant's application should generally be rejected.

(2) A defendant's juvenile record, if applicable.

**(c) Victim's Position.** The prosecutor and the court, in formulating their recommendations or decisions regarding an applicant's participation in a supervisory treatment program, shall give due consideration to the victim's position if any, on whether the defendant should be admitted.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-5. Admission into Pretrial Intervention**

**(a) Judicial Determination.** A Superior Court Judge shall act on all matters pertaining to pretrial intervention programs in the vicinage in accordance with N.J.S.A. 2C:43-12 and -13.

#### **(b) Enrollment in Pretrial Intervention.**

(1) In General. Except as set forth in paragraph (b)(2), enrollment in pretrial intervention programs shall not be conditioned upon either informal admission or

entry of a plea of guilty. Enrollment of defendants who maintain their innocence is to be permitted unless the defendant's attitude would render pretrial intervention ineffective.

(2) **Guilty Plea Required.** To be admitted into Pretrial Intervention, a guilty plea must be entered for a defendant who is charged with: (i) a first or second degree crime; (ii) any crime if the defendant had previously been convicted of a first or second degree crime; (iii) a third or fourth degree crime involving domestic violence, as defined in N.J.S.A. 2C:25-19; or (iv) any disorderly persons or petty disorderly persons offense involving domestic violence, as defined in N.J.S.A. 2C:25-19 if the defendant committed the offense while subject to a temporary or permanent restraining order issued pursuant to the provisions of the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq.

**(c) Postponement.** A Superior Court judge may, on the recommendation of the criminal division manager, and with the consent of the prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed thirty-six months.

**(d) Restitution; Community Service.** A restitution or community service requirement, or both, may be included as part of an individual's service plan when such a requirement promises to aid the rehabilitation of the offender. Any such requirement and its terms shall be judicially determined at the time of enrollment following recommendation by the criminal division manager and consent by the prosecutor. Evidence of the restitution condition is not admissible against defendant in any subsequent civil or criminal proceeding. Admission to the program shall not be denied solely on the basis of anticipated inability to meet a restitution requirement.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-6. Appeal of Decision by Criminal Division Manager or Prosecutor**

**(a) Time to File.** A defendant challenging the decision of the criminal division manager not to recommend enrollment, or of a prosecutor refusing to consent to consideration of the defendant's application where required pursuant to R. 3:28-1(d), or of a prosecutor's refusing to consent to the defendant's enrollment into the pretrial intervention program, shall file a motion with the Presiding Judge of the Criminal Division, or the judge to whom the case has been assigned, within ten days after receipt of the rejection and, if prepared, of the Criminal Division Manager's report. The motion shall be made returnable at such time as the judge determines will promote an expeditious disposition of the case.

#### **(b) Standards.**

(1) A defendant challenging a prosecutor's decision to refuse to consent to consideration of an application must establish that the prosecutor's decision was a patent and gross abuse of discretion. When considering an appeal, the court shall

make an individualized determination, on a case-by-case basis, of whether a prosecutor's decision to refuse to consent to consideration of an application for pretrial intervention was a patent and gross abuse of discretion.

(2) A defendant challenging the criminal division manager's recommendation against enrollment into the pretrial intervention program must establish that the decision was arbitrary and capricious.

(3) A defendant challenging the prosecutor's recommendation against enrollment into the pretrial intervention program must establish that the decision was a patent and gross abuse of discretion.

**(c) Appellate Review.** If the rejection is upheld by the judge, there shall be no pretrial review by an appellate court of a decision of the prosecutor to refuse to consent to consideration of the application, or of a decision of the criminal division manager, or of the prosecutor to refuse to enroll a defendant into the pretrial intervention program. An order enrolling a defendant into the pretrial intervention program over the prosecutor's objection shall be deemed final for purposes of appeal, as of right, and shall be automatically stayed for fifteen days following its entry and thereafter pending appellate review.

**(d) Appeal After Judgment of Conviction.** Denial of an application or enrollment pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-7. Conclusion of Period of Pretrial Intervention**

**(a) Acceptance.** Where a defendant charged with a penal or criminal offense has been accepted by the program, the judge may, on the recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed thirty-six months.

**(b) Disposition.** At the conclusion of the period set forth in paragraph (c) or earlier upon motion of the vicinage chief probation officer, the judge shall make one of the following dispositions:

(1) On recommendation of the vicinage chief probation officer and with the consent of the prosecutor and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the vicinage chief probation officer and with the consent of the prosecutor and the defendant, further postpone all proceedings

against such defendant on such charges for an additional period of time as long as the aggregate of postponement periods under the rule does not exceed thirty-six months; or

(3) On the written recommendation of the vicinage chief probation officer or the prosecutor or on the court's own motion order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the vicinage chief probation officer or the prosecutor, such person shall, before submitting such recommendation to the judge, provide the defendant and defendant's last known attorney of record with a copy of such recommendation, shall advise the defendant of the opportunity to be heard thereon, and the judge shall afford the defendant such a hearing. A defendant shall also be entitled to a hearing challenging a vicinage chief probation officer's or prosecutor's recommendation for termination from the program and that the prosecution of defendant proceed in the normal course. The decision of the court shall be appealable by the defendant or the prosecutor as in the case of any interlocutory order.

**(c) Conclusion of Term.** Where proceedings have been postponed against a defendant for an additional period as provided in paragraph (b)(2), at the conclusion of such period the judge may not again postpone proceedings but shall make a disposition in accordance with paragraph (b)(1) or (b)(3). The aggregate of postponement periods under this rule shall in no case exceed thirty-six months.

**(d) Records.** The Administrative Director of the Courts shall maintain a record in the Judiciary's computerized system of all applications, enrollments and the degree of completion thereof by a defendant in a program approved by the Supreme Court in accordance with R. 3:28-5(a). That system shall contain such information and material as directed by the Supreme Court.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-8. Confidentiality of Pretrial Intervention Process and Records**

**(a) Records and Reports Not Admissible.** During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investigative reports, reports made for a court or prosecuting attorney, or statements made by the defendant to program staff shall be admissible in evidence against such defendant.

**(b) Nondisclosure.** No statement or other disclosure regarding the charge or charges against the participant made or disclosed by a participant in pretrial intervention to a person designated to provide supervisory treatment shall be disclosed by such person at any time, to the prosecutor, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant, provided that the vicinage chief probation officer shall not be prevented from informing the prosecutor, or the court, on request or otherwise, whether the participant is satisfactorily responding to supervisory treatment.

**(c) Expungement.** No order to expunge or seal records of arrest after dismissal of a complaint, indictment or accusation shall bar the retention of material and information in the Judiciary's computerized system for the purposes of determining a defendant's prior applications to, enrollments in, and the degree of completion of a Pretrial Intervention Program or for statistical reports required of the Administrative Director of the Courts, by law or the Supreme Court.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-9. Written Reasons and Decisions**

**(a) Application.** The decisions and reasons made by the prosecutor and criminal division manager in recommending or denying a defendant's application for enrollment into the pretrial intervention program in all cases shall be reduced to writing and disclosed to the defendant and defendant's attorney. The decision of the judge to grant or deny the application shall be written or placed on the record pursuant to R. 1:7-4 and accompanied by an order.

**(b) Termination or Dismissal.** The decisions and reasons made by the prosecutor and vicinage chief probation officer in recommending termination from the pretrial intervention program or dismissal of charges in all cases shall be reduced to writing and disclosed to the defendant and defendant's last known attorney of record. The decision of the judge to order termination or dismissal of the charges shall be written or placed on the record pursuant to R. 1:7-4 and accompanied by an order.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.

### **Rule 3:28-10. Pretrial Intervention Program Director**

For purposes of R. 3:28-1 et seq. and N.J.S.A. 2C:43-12 the criminal division manager shall be considered the program director for purposes of making recommendations on applications for enrollment into pretrial intervention. For purposes of R. 3:28-1 et seq. and N.J.S.A. 2C:43-12 the vicinage chief probation officer shall be considered the program director for purposes of recommending: (1) dismissal of the complaint, indictment or accusation against the defendant, (2) further postponement of all proceedings for additional time, or (3) termination of the defendant from the program and having the prosecution of the defendant proceed in the ordinary course. The criminal division manager and vicinage chief probation officer shall have the authority to delegate their ability under R. 3:28-1 et seq. to make recommendations to another person or persons.

**Note:** Adopted September 15, 2017 to be effective July 1, 2018.