

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY**  
**RULE 3:5A INVESTIGATIVE DETENTION**

**Rule 3:5A-1. Authority to Issue**

Prior to the filing of a formal criminal charge against a person, an order authorizing the temporary detention of that person and compelling that person to submit to non-testimonial identification procedures for the purpose of obtaining evidence of that person's physical characteristics may be issued by a judge of the Superior Court pursuant to this Rule, on an application authorized in writing by the Attorney General or the Attorney General's designee or by the County Prosecutor or designated Assistant Prosecutor.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984; amended July 14, 1992, to be effective September 1, 1992; amended July 13, 1994 to be effective September 1, 1994.

**Rule 3:5A-2. Application**

The application and any subsequent pleadings shall be captioned in the Superior Court of New Jersey and entitled, "In the Matter of the Investigation of (description of crime)." The application shall contain affidavits forming a factual basis for the findings required by R. 3:5A-4. In addition, the application shall state:

- (a) The name or description of the individual sought to be detained for investigation.
- (b) The specific type of identifying physical characteristic sought.
- (c) The place and time at which the evidence sought is to be obtained.
- (d) The method by which the evidence sought is to be obtained.
- (e) The period of the detention, not to exceed five hours, during which the physical characteristic sought is to be obtained.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984.

**Rule 3:5A-3. Notice and Return**

Unless the judge finds the application to be of emergent nature, as set forth below, the judge shall not consider it unless written notice shall have been given personally to the person, at least 36 hours before the time the application is to be made, that on a specific date and at a specific time application for an order of temporary detention will be made to the named judge. The notice shall advise the individual that counsel may accompany him or her at the hearing on the application.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984; amended July 13, 1994 to be effective September 1, 1994.

### **Rule 3:5A-4. Grounds for Issuance**

An order for investigative detention shall be issued only if the judge concludes from the application that:

- (a) a crime has been committed and is under active investigation, and
- (b) there is a reasonable and well-grounded basis from which to believe that the person sought may have committed the crime, and
- (c) the results of the physical characteristics obtained during the detention will significantly advance the investigation and determine whether or not the individual probably committed the crime, and
- (d) the physical characteristics sought cannot otherwise practicably be obtained.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984.

### **Rule 3:5A-5. Contents of Order for Investigative Detention**

(a) The order shall command the named person to appear at a specified time and place for the taking of evidence of specified physical characteristics. It shall advise the person that on failure to do so, an arrest warrant will issue for the identification procedure. The order shall specify the length of the detention, the identification methods to be used, and, where necessary, the medical safeguards to be observed. The date and time of its signing shall be entered thereon.

(b) The terms of any order for investigative detention shall be the least onerous on the named person consistent with the investigative need.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984; paragraph (a) amended July 13, 1994 to be effective September 1, 1994.

### **Rule 3:5A-6. Emergent Application**

If, without notice to the person, an application is made to a judge, and the judge is satisfied from it that its underlying purpose would be frustrated were notice to be given, the judge may sign an order for investigative detention with provisions appropriate to the investigative need and certify therein a finding that the matter is emergent. That order, directed to the person, may authorize the police officers executing it to use reasonable force in effectuating the detention of the person and in effectuation of identification procedures set forth therein.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984; amended July 13, 1994 to be effective September 1, 1994.

### **Rule 3:5A-7. Service**

An order for investigative detention shall be served within five days of its signing; otherwise it shall be void.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984.

### **Rule 3:5A-8. Filing**

The judge shall impound the original application and order. Upon receipt of the certification of test results, the judge shall cause the application, order, and certification to be impounded under seal with the criminal division manager as designee of the deputy clerk of the Superior Court.

Upon obtaining test results of the physical characteristic specified, the applicant shall, within two days, file with the judge, and deliver to the person, a certification of the date, time and place of detention, the length of the detention, and the testing or procedures used to obtain the physical characteristic evidence. The results of those tests, as they bear on the identification of the person detained as the perpetrator of the crime under investigation, shall be included in the certification, unless the court rules for good cause that they shall not be.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984; amended July 13, 1994 to be effective January 1, 1995.

### **Rule 3:5A-9. Definition**

“Evidence of physical characteristics” shall include fingerprints, palm prints, footprints, physical measurements, handwriting and handprinting samples, blood samples, urine samples, saliva samples, fingernail scrapings, hair samples, photographs, voice exemplars, display of designated portions of the body, the taking of photographs and appearance in a lineup.

**Note:** Adopted July 26, 1984 to be effective September 10, 1984.