

CREDIBILITY – DEFENDANT’S BEFORE ARREST
(To Be Used Only When Defendant Testifies)¹

You have heard evidence that (name of defendant) gave no statements to the police before his/her arrest.² This evidence may only be used in determining the credibility or believability of the defendant’s testimony.³ Defendants have a right to remain silent before their arrest, and no inference of guilt can be drawn from the exercise of that right. You may not conclude that the defendant committed the crime[s] charged simply because he/she was silent before his/her arrest.⁴

Our law permits consideration of evidence of defendant’s silence before his/her arrest only for the purpose of affecting the credibility of his/her testimony and for no other purpose. You are not, however, obligated to change your opinion as to the credibility of defendant’s testimony simply because of this evidence. You may consider such evidence along with all the other factors we previously discussed in determining the credibility of defendant’s testimony.

¹ The State may not introduce this evidence in its case in chief; it may only adduce this impeachment evidence on cross-examination or rebuttal if defendant testifies. State v. Brown, 190 N.J. 144, 158-159 (2007).

² “[W]hen a defendant testifies, ‘pre-arrest silence may be admitted for impeachment purposes provided no governmental compulsion is involved.’” Brown, 190 N.J. at 158, quoting State v. Brown, 118 N.J. 595, 613 (1990).

³ State v. Elkwisni, 384 N.J. Super. 351, 377 (App. Div. 2006), affirmed 190 N.J. 169, 182 (2007).

⁴ State v. Elkwisni, 190 N.J. 169, 181 (2007), quoting State v. Muhammad, 182 N.J. 551, 573-574 (2005).