

WITNESS - TESTIFYING WHILE WEARING RESTRAINTS¹

During trial, (NAME OF WITNESS) was wearing restraints. You must not speculate about the reason for such restraints. That fact that (NAME OF WITNESS) testified while wearing such restraints should not enter into your discussions or deliberations in any manner as you decide whether the State has proven defendant's guilt of the charge(s) beyond a reasonable doubt.²

¹ This instruction must be given where a trial court requires an incarcerated witness to appear and testify at a trial while wearing restraints. State v. Artwell, 177 N.J. 526, 538 (2003). The general rule is neither a witness for the defendant nor a witness for the State should be forced to appear and to testify in restraints, absent compelling security concerns. State v. Dock, 205 N.J. 237, 253 (2011). Before ordering that an incarcerated witness testify in restraints, the trial court should have "a straightforward, candid colloquy among the court, counsel and security staff" outside the presence of the jury, in order to determine if the restraints are necessary. State v. Kuchera, 198 N.J. 483, 496 (2009).

The Court should consider: (1) the seriousness of the present charge (2) the person's character (3) the person's past record (4) past escapes by the person (5) attempted escapes by the person (6) evidence the person is planning an escape (7) threats of harm to others (8) threats to cause disturbance (9) evidence the person is bent upon self-destruction (10) any risk of mob violence (11) the risk of attempted revenge by victim's family (12) whether there are other offenders still at large or (13) any other relevant consideration. Artwell, *supra*, 177 N.J. at 538.

² Kuchera, *supra*, 198 N.J. at 501.