

Questions or Comments May Be
Directed to (609) 292-4638

October 12, 2001

Directive #15-01
[Modifies Directive #4-98;
Supplements Directive #5-99]

TO: Assignment Judges

FROM: Richard J. Williams

Subject: Criminal – Revised and New Plea Forms

This directive is being issued to promulgate the following new and revised plea forms. The vicinages should begin using these forms as soon as possible.

1. Supplemental Plea Form for No Early Release Act Cases (Revised Form)

This modifies the Supplemental Plea Form for No Early Release Act Cases that was previously promulgated by Directive #4-98, issued October 8, 1998.

The Supreme Court has approved the recommendation of the Criminal Practice Committee that the *Supplemental Plea Form for No Early Release Act Cases* be amended to address the recent Supreme Court decisions in State v. Johnson, 166 N.J. 523 (2001), State v. Rumbin, 166 N.J. 550 (2001) and State v. Thomas, 166 N.J. 560 (2001). The revised form advises defendants that by pleading guilty they are waiving their right to have a jury

determine whether a NERA predicate fact exists and refers specifically to the maximum period of parole ineligibility. Further, the revised form would eliminate redundant information that currently is required to be listed on the standard three-page plea form.

This form is intended to address cases where the offense occurred prior to June 29, 2001, the date of the revision to the No Early Release Act. See L. 2001, c. 129. The Criminal Practice Committee is developing a new form to address cases in which the date of the offense occurred subsequent to the NERA revision date.

2. Supplemental Plea Form for Graves Act Offenses (New Form)

The Supreme Court approved the recommendation of the Criminal Practice Committee that a new *Supplemental Plea Form for Graves Act Offenses* be promulgated in light of the Supreme Court decision in State v. Johnson, 166 N.J. 523 (2001).

In Johnson, the Court said that the “Criminal Code contains other provisions that, like NERA, increase mandatory minimum terms based on factual predicates found by the sentencing judge. Any questions concerning the validity of those statutes are not before us.” 166 N.J. at 544. Many members of the Criminal Practice Committee were of the view that Johnson applies to other statutes that establish mandatory ineligibility terms. Since Johnson discussed the “real time” consequences of an ineligibility term, as compared to the enhanced sentence maximum involved in Apprendi v. New Jersey, 159 N.J. 7 (1999), there is a strong possibility that the Johnson rationale would apply to the Graves Act. The Committee thus recommended adoption of this form as the more prudent course to follow. By doing so, there is no prejudice to the defendant and the State’s interests are protected should the Supreme Court or the Appellate Division later decide that the rationale of Johnson in fact does apply to Graves Act cases.

3. Additional Questions for Certain Drug and Weapons Offenses Committed on or After June 24, 1998 (Spanish Translation)

When this form was promulgated by Directive #5-99 (dated May 24, 1999), no Spanish translation was available. The form has since been translated; the Spanish version is attached (as is the earlier promulgated English version, for sake of completeness).

English and Spanish versions of the forms promulgated by this directive are

attached. As noted above, you should begin using these forms as soon as possible. Any questions or comments regarding this directive or the appended forms should be directed to Assistant Director Joseph J. Barraco at 609-292-4638.

R.J.W.

/ma
Attachments

c: Chief Justice Deborah T. Poritz
Criminal Presiding Judges
Trial Court Administrators
Criminal Division Managers

John P. McCarthy, Jr., Director
Joseph J. Barraco, Assistant Director
Vance Hagins, Esq.
Steven D. Bonville, Special Assistant

**Supplemental Plea Form for No Early Release Act Cases
(Revised Form)**

Supplemental Plea Form for *No Early Release Act (NERA)* Cases
(N.J.S.A. 2C: 43-7.2)

The following questions need to be answered only if you are pleading guilty to a first or second degree violent crime that occurred between June 9, 1997 and June 29, 2001.

A violent crime means any crime in which you caused death, serious bodily injury, or you used or threatened the immediate use of a deadly weapon. A violent crime also includes any aggravated sexual assault, or sexual assault in which you used, or threatened the immediate use of, physical force. Deadly weapon means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner in which it is used or intended to be used, is known to be capable of producing death or serious bodily injury. Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

1. Do you understand that because of your plea of guilty to

(LIST FIRST OR SECOND DEGREE VIOLENT CRIMES)

you will be required to serve 85% of the sentence imposed for that offense(s) before you will be eligible for parole on that offense(s)? [YES] [NO]

2. Do you understand that because you have pled guilty to these charges the court must impose a ____ year term of parole supervision and that term will begin as soon as you complete the sentence of incarceration? [YES] [NO]

First Degree Term of Parole Supervision - 5 years

Second Degree Term of Parole Supervision - 3 years

3. Do you understand that if you violate the conditions of your parole supervision that your parole may be revoked and you may be subject to return to prison to serve all or any portion of the remaining period of parole supervision, even if you have completed serving the term of imprisonment previously imposed? [YES] [NO]

4. Do you understand that by pleading guilty and admitting that the crime(s) are a violent crime you are waiving your right to have a jury determine, beyond a reasonable doubt, that the circumstance(s) that make the crime(s) a violent crime(s) are present? [YES] [NO]

DATE: _____ DEFENDANT: _____

DEFENSE ATTORNEY:

PROSECUTOR:

Supplemental Plea Form for *No Early Release Act (NERA)* Cases
(N.J.S.A. 2C: 43-7.2)

Formulario Suplemental de Declaración en Causas Sujetas a la
Ley Contra Puestas en Libertad Prematuras (NERA) (N.J.S.A. 2C: 43-7.2)

The following questions need to be answered only if you are pleading guilty to a first or second degree violent crime that occurred between June 9, 1997 and June 29, 2001.

Es necesario contestar a las siguientes preguntas solamente si usted se está declarando culpable de un delito violento de primer or segundo grado ocurrido entre el 9 de junio de 1997 y el 29 de junio de 2001.

A violent crime means any crime in which you caused death, serious bodily injury, or you used or threatened the immediate use of a deadly weapon. A violent crime also includes any aggravated sexual assault, or sexual assault in which you used, or threatened the immediate use of, physical force. Deadly weapon means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner in which it is used or intended to be used, is known to be capable of producing death or serious bodily injury. Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Un delito violento significa cualquier delito en que usted causó la muerte, lesiones corporales graves o si usó o amenazó usar inmediatamente un arma mortífera. Un delito violento también incluye cualquier agresión sexual con agravantes o una agresión sexual en la que usó fuerza física o amenazó usarla inmediatamente. Un arma mortífera significan cualquier arma de fuego u otra orma, aparato, instrumento, material o sustancia, sea animada o inanimada, capaz de producir la muerte o lesiones corporales graves por la manera en que se usa o en que se tiene la intención de usarla. Lesiones corporales graves significan lesiones corporales que crean un verdadero riesgo de muerte o que causan una desfiguración grave y permanente o el deterioro o la pérdida prolongada de la función de cualquier miembro u órgano del cuerpo.

1. Do you understand that because of your plea of guilty to
¿Entiende que por su declaración de culpabilidad

**(LIST FIRST OR SECOND DEGREE VIOLENT CRIMES/
INDIQUE LOS DELITOS VIOLENTOS DE PRIMER O SEGUNDO GRADO)**

You will be required to serve 85% of the sentence imposed for
that offense(s) before you will be eligible for parole on that offense(s)?

[YES/SÍ] [NO]

se requerirá que compla el 85% de la sentencia impuesta por ese
delito o esos delitos antes que esté en condiciones de recibir
libertad condicional por ese delito o esos delitos?

2. Do you understand that because you have plead guilty to these charges the court must impose a ____ year term of parole supervision and that term will begin as soon as you complete the sentence of incarceration?

[YES/SÍ] [NO]

¿Entiende que porque se declaró culpable de estos cargos, el juez tiene que imponer un período de supervisión de la libertad condicional de ____ años, y que dicho período comenzará en cuanto usted cumpla la sentencia de encarcelamiento?

First Degree Term of Parole Supervision - 5 years
Período de Supervisión de la Libertad Condicional por un Delito de Primer Grado - 5 años

Second Degree Term of Parole Supervision - 3 years
Período de Supervisión de la Libertad Condicional por un Delito de Segundo Grado - 3 años

3. Do you understand that if you violate the conditions of your parole supervision that your parole may be revoked and you may be subject to return to prison to serve all or any portion of the remaining period of parole supervision, even if you have completed serving the term of imprisonment previously imposed?

[YES/SÍ] [NO]

¿Entiende que si infringe las condiciones de la supervisión de su libertad condicional, se podrá revocar su libertad condicional y es posible que tenga que volver a la cárcel para cumplir todo el período de supervisión de su libertad condicional o cualquier porción del mismo, aún cuando usted haya cumplido el período de encarcelamiento que le hubieran impuesto anteriormente?

4. Do you understand that by pleading guilty and admitting that the crime(s) are a violent crime you are waiving your right to have a jury determine, beyond a reasonable doubt, that the circumstance(s) that make the crime(s) a violent crime(s) are present?

[YES/SÍ] [NO]

¿Entiende que al declararse culpable y admitir que el delito o delitos son violentos, usted renuncia a su derecho de que un jurado determine, más allá de una duda razonable, que estén presentes las circunstancias que hacen que el delito o delitos sean violentos?

DATE: _____
FECHA: _____

DEFENDANT: _____
ACUSADO: _____

DEFENSE ATTORNEY: _____
ABOGADO DEFENSOR: _____

PROSECUTOR:

FISCAL:

**Supplemental Plea Form for Graves Act Offenses
(New Form)**

Supplemental Plea Form for Graves Act Offenses (N.J.S.A. 2C: 43-6c)

You are pleading to a Graves Act offense. This means:

- A. You are pleading guilty to possession of a firearm with intent to use it against the person of another or to murder, aggravated manslaughter, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary or escape;

AND

- B. You are also admitting, by virtue of this plea, that while in the course of committing or attempting to commit one of the crimes, including the immediate flight therefrom, you used or were in possession of a firearm.

1. Do you understand that because of your plea of guilty to

you will be subject to a minimum period of time before you will be eligible for parole (a parole ineligibility term) under the Graves Act (as set forth in question 7 on the three-page plea form)?

[YES] [NO]

2. Do you understand that by pleading guilty and admitting that you used or were in possession of a firearm while in the course of committing or attempting to commit one of the crimes, you are waiving your right to have a jury determine, beyond a reasonable doubt, that you used or possessed a firearm during the course of committing or attempting to commit one of the crimes?

[YES] [NO]

3. Does any other mandatory sentencing provision apply to the Graves Act count that provides for a greater period of parole ineligibility (e.g., NERA, Three Strikes, Murder)?

[YES] [NO] [N/A]

If so, which one? _____

DATE: _____

DEFENDANT: _____

DEFENSE ATTORNEY: _____

PROSECUTOR: _____

Supplemental Plea Form for Graves Act Offenses (N.J.S.A. 2C: 43-6c)

**Formulario de Supplemental de Declaración para Delitos Bajo la Ley Graves
(N.J.S.A. 2C: 43-6c)**

You are pleading to a Graves Act offense. This means:

Usted se está declarando culpable de un delito bajo la Ley Graves. Eso significa que:

- A. You are pleading guilty to possession of a firearm with intent to use it against the person of another or to murder, aggravated manslaughter, manslaughter, aggravated assault, kidnapping, aggravated sexual assault, aggravated criminal sexual contact, robbery, burglary or escape;

Se declara culpable de la posesión de un arma de fuego con la intención de usarla contra otra persona o de homicidio, homicidio imprevisto con agravantes, homicidio imprevisto, agresión con agravantes, rapto, agresión sexual con agravantes, contacto sexual criminal con agravantes, robo, robo con allanamiento de morada o fuga;

AND/Y

- B. You are also admitting, by virtue of this plea, that while in the course of committing or attempting to commit one of the crimes, including the immediate flight therefrom, you used or were in possession of a firearm.

También admite, en virtud de esta declaración, que cuando cometió o trató de cometer uno de los delitos, incluyendo su fuga inmediata, usted usó un arma de fuego o tenía una en su posesión.

1. Do you understand that because of your plea of guilty to
¿Entiende que por su declaración de culpabilidad de

you will be subject to a minimum period of time before you will be eligible for parole (a parole ineligibility term) under the Graves Act (as set forth in question 7 on the three-page plea form)?

[YES/SÍ] [NO]

estará sujeto a un período mínimo antes de estar en condiciones de salir en libertad condicional (un período en que no está en condiciones de salir en libertad condicional) bajo la Ley Graves (según se expone en la pregunta 7 del formulario de declaración de tres páginas)?

2. Do you understand that by pleading guilty and admitting that you used or were in possession of a firearm while in the course of committing or attempting to commit one of the crimes, you are waiving your right to have a jury determine, beyond a reasonable doubt, that you used or possessed a firearm during the course of committing or attempting to commit one of the crimes?

[YES/SÍ] [NO]

¿Entiende que al declararse culpable y admitir que usó un arma de fuego o tenía una en su posesión cuando cometió o trató de cometer uno de los delitos, usted renuncia al derecho de que un jurado determine, más allá de una duda razonable, que usó o poseía un arma de fuego cuando cometió o trató de cometer uno de los delitos?

3. Does any other mandatory sentencing provision apply to the Graves Act count that provides for a greater period of parole ineligibility (e.g., NERA, Three Strikes, Murder)?

[YES/SÍ] [NO]

[N/A; NO ME INCUMBE]

¿Corresponde al cargo de la Ley Graves alguna otra disposición obligatoria de sentencia que estipule un período más largo en que no se pueda salir en libertad condicional (e.g., NERA, Tercera vez, Homicidio)?

If so, which one?

Si corresponde alguna, ¿cuál es?

DATE/FECHA: _____ DEFENDANT/ACUSADO: _____

DEFENSE ATTORNEY: _____

ABAGADO DEFENSOR: _____

PROSECUTOR/FISCAL: _____

**Additional Questions for Certain Drug and Weapons
Offenses Committed on or After June 24, 1998**

**ADDITIONAL QUESTIONS FOR CERTAIN DRUG AND WEAPONS
OFFENSES COMMITTED ON OR AFTER JUNE 24, 1998**

The following questions need to be answered if you are pleading guilty to certain drug offenses and also are pleading guilty to possession of a firearm or other weapon while committing, attempting to commit or conspiring to commit any of the following offenses. If a firearm was possessed, answer questions 1 a, b and c. If a firearm was not possessed, mark question 1a not applicable [NA] and answer questions 1b and c.

1. Do you understand that if you plead guilty to any of the following offenses: leader of a narcotics trafficking network (2C:35-3); operating a controlled dangerous substance production facility (2C:35-4); manufacturing a controlled dangerous substance (2C:35-5) distribution, possession or manufacture of gamma hydroxybutyrate (2C:35-5.2); distribution, possession or manufacture of flunitrazepam (2C:35-5.3); employing a juvenile in drug distribution (2C:35-6); distributing, dispensing or possessing with intent to distribute a controlled dangerous substance within 1,000 feet of school property (2C:35-7); distributing, dispensing or possessing a controlled dangerous substance within 500 feet of a public housing facility, park or building (2C:35-7.1); or, distribution, possession or manufacture of an imitation controlled dangerous substance (2C:35-11) **AND**
- a. you also plead guilty to possessing a firearm while committing, attempting to commit or conspiring to commit any of these offenses you will receive a consecutive sentence for possessing the weapon? [YES] [NO] [NA]

OR

- b. you also plead guilty to possessing a weapon, other than a firearm, for an unlawful purpose while committing, attempting to commit or conspiring to commit any of these offenses you will receive a consecutive sentence for possessing the weapon for an unlawful purpose? [YES] [NO] [NA]

OR

- c. you also plead guilty to possessing a weapon, other than a firearm, under circumstances not manifestly appropriate for lawful use of the weapon while committing, attempting to commit or conspiring to commit any of these offenses you will receive a consecutive sentence for possessing the weapon? [YES] [NO] [NA]

Date _____

Defendant _____

Defense Attorney _____

Prosecutor _____

**ADDITIONAL QUESTIONS FOR CERTAIN DRUG AND WEAPONS
OFFENSES COMMITTED ON OR AFTER JUNE 24, 1998**

**PREGUNTAS ADICIONALES PARA CIERTOS ACTOS CRIMINALES
RELACIONADOS CON DROGAS Y ARMAS QUE
SE COMETIERON EL 24 DE JUNIO DE 1998 O DESPUÉS DE ESA FECHA**

The following questions need to be answered if you are pleading guilty to certain drug offenses and also are pleading guilty to possession of a firearm or other weapon while committing, attempting to commit or conspiring to commit any of the following offenses. If a firearm was possessed, answer questions 1 a, b and c. If a firearm was not possessed, mark question 1a not applicable [NA] and answer questions 1b and c.

Es necesario contestar a las siguientes preguntas si Ud. se declara culpable de ciertos actos criminales relacionados con drogas y también se declara culpable de la posesión de un arma de fuego u otra arma mientras cometió, trató de cometer o conspiró para cometer cualquiera de los siguientes actos criminales. Si poseía un arma de fuego, conteste a las preguntas 1 a, b y c. Si no poseía un arma de fuego, indique que la pregunta 1a no le incumbe [NA] y conteste a las preguntas 1b y c.

1. Do you understand that if you plead guilty to any of the following offenses: leader of a narcotics trafficking network (2C:35-3); operating a controlled dangerous substance production facility (2C:35-4); manufacturing a controlled dangerous substance (2C:35-5) distribution, possession or manufacture of gamma hydroxybutyrate (2C:35-5.2); distribution, possession or manufacture of flunitrazepam (2C:35-5.3); employing a juvenile in drug distribution (2C:35-6); distributing, dispensing or possessing with intent to distribute a controlled dangerous substance within 1,000 feet of school property (2C:35-7); distributing, dispensing or possessing a controlled dangerous substance within 500 feet of a public housing facility, park or building (2C:35-7.1); or, distribution, possession or manufacture of an imitation controlled dangerous substance (2C:35-11) **AND**

Entiende que si Ud. se declara culpable de cualquiera de los siguientes actos criminales: líder de una red de tráfico de narcóticos (2C:35-3); operación de una instalación de producción de una sustancia peligrosa regulada (2C:35-4); fabricación de una sustancia peligrosa regulada (2C:35-5); distribución, posesión o fabricación de gamma hidroxibutirato (2C:35-5.2); distribución, posesión o fabricación de flunitracepam (2C:35-5.3); utilización de un menor en la distribución de drogas (2C:35-6); distribución, preparación o posesión de una sustancia peligrosa regulada con la intención de distribuirla dentro de 1.000 pies de distancia de la propiedad de una escuela o colegio (2C:35-7); distribución, preparación o posesión de una sustancia peligrosa controlada dentro de 500 pies de distancia de una instalación de viviendas subvencionadas, un parque o edificio público (2C:35-7.1); o distribución, posesión o fabricación de una imitación de una sustancia peligrosa regulada (2C:35-11) **Y**

- a. you also plead guilty to possessing a firearm while committing, attempting to commit or conspiring to commit any of these offenses you will receive a consecutive sentence for possessing the weapon?

[YES] [NO]
[NA/NO ME INCUMBE]

también se declara culpable de poseer un arma de fuego cuando cometió, trató de cometer o conspiró para cometer cualquiera de esos actos criminales, Ud. recibirá una sentencia consecutiva por poseer el arma?

OR/O

- b. you also plead guilty to possessing a weapon, other than a firearm, for an unlawful purpose while committing, attempting to commit or conspiring to commit any of these offenses you will receive a consecutive sentence for possessing the weapon for an unlawful purpose?

[YES] [NO]
[NA/NO ME INCUMBE]

también se declara culpable de poseer un arma que no sea de fuego para un propósito ilegal cuando cometió, trató de cometer o conspiró para cometer cualquiera de esos actos criminales, recibirá una sentencia consecutiva por poseer el arma para un propósito ilegal?

OR/O

- c. you also plead guilty to possessing a weapon, other than a firearm, under circumstances not manifestly appropriate for lawful use of the weapon while committing, attempting to commit or conspiring to commit any of these offenses you will receive a consecutive sentence for possessing the weapon?

[YES] [NO]
[NA/NO ME INCUMBE]

también se declara culpable de poseer un arma que no sea de fuego bajo circunstancias no claramente apropiadas para el uso legal del arma cuando cometió, trató de cometer o conspiró para cometer cualquiera de esos actos criminales, recibirá una sentencia consecutiva por poseer el arma?

Date/Fecha _____

Defendant/Acusado _____

Defense Attorney/ _____

Prosecutor/ _____

Abogado Defensor

Fiscal