SUPREME COURT OF NEW JERSEY

It is ORDERED that, in furtherance of implementation of Criminal Justice Reform pursuant to N.J. Const. (1947), Art. I, par. 11 (as amended effective January 1, 2017) and L. 2014, c. 31, the attached amendments to the Rules Governing the Courts of the State of New Jersey are adopted to be effective January 1, 2017.

For the Court,

Chief Justice

Dated: August 30, 2016

The Rules Amended and Adopted by this Order Are as Follows:

3:1-4
3:2-1
3:2-2
3:2-3
3:3-1
3:3-3
3:4-1
3:4-2
3:4-3
3:4-4
3:4A (new)
3:6-8
3:7-8
3:7-9
3:10-2
3:21-4
3:25-4 (new)
3:26-1
3:26-2
3:26-4
3:26-5
3:26-6
3:26-7
3:26-8
7:2-1
7:2-2
7:2-3
7:2-6 (deleted)
7:3-1
7:4-1
7:4-2
7:4-3
7:4-9 (new)
7:8-9
7:8-11 (new)
7:9-1

3:1-4. Orders; Form; Entry

(a) Time. Except for judgments to be prepared by the court and entered pursuant to R. 3:21-5 or pretrial release orders entered pursuant to R. 3:26-2, formal written orders shall be presented to the court in accordance with R. 4:42-1(e) except that only the original of the signed order shall be filed. The court may also issue and transmit to the Department of Corrections electronic Orders to Produce inmates, with those orders or writs containing an electronically affixed signature of a Superior Court judge. Such orders shall have the same authority as orders that contain a judge's original signature.

(b) ... No change

(c) ... No change

Adopted July 29, 1977 to be effective September 6, 1977. Paragraph (c) amended July 24, 1978 to be effective September 11, 1978; paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraph (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended August 30, 2016 to be effective January 1, 2017.

3:2-1. Contents of Complaint; Forwarding of Indictable Complaints to Prosecutor and Criminal Division Manager; Forwarding of Investigative Reports to Prosecutor

(a) ... No change

(b) Forwarding of Indictable Complaints to Prosecutor and Criminal Division Manager. Where [the complaint] a Complaint-Summons (CDR-1) or Complaint-Warrant (CDR-2) alleges an indictable offense, the complaint [, and all available investigative reports,] shall be forwarded through the Judiciary's computerized system used to generate complaints to the prosecutor and the criminal division manager's office immediately upon issuance [within 48 hours]. When the Judiciary's computerized system used to generate complaints is not available, complaints shall be forwarded pursuant to procedures prescribed by the Administrative Director of the Courts. [The complaint shall be forwarded by the municipal court to the criminal division manager's office within 48 hours.]

(c) Forwarding of Investigative Reports to Prosecutor. For a Complaint-Summons (CDR-1), all available investigative reports shall be forwarded by law enforcement to the prosecutor within 48 hours. For a Complaint-Warrant (CDR-2), all available investigative reports shall be forwarded by law enforcement to the prosecutor immediately upon issuance of the complaint.

Source-R.R. 3:2-1(a)(b); amended July 26, 1984 to be effective September 10, 1984; main caption amended, caption added, former text amended and redesignated paragraph 3:2-1(a), paragraph (b) adopted July 13, 1994 to be effective January 1, 1995; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraph (b) amended, and new paragraph (c) adopted August 30, 2016 to be effective January 1, 2017.

3:2-2. Summons

A summons shall be made on a Complaint-Summons (CDR-1) form, a Uniform Traffic Ticket, [or] a Special Form of Complaint and Summons, or such other form as may be approved by the Administrative Director of the Courts. The summons shall be directed to the person named in the complaint, requiring that person to appear before the court in which the complaint is made at a stated time and place, and shall indicate that there will be consequences for failure to appear at the scheduled first appearance [and shall inform the person that an arrest warrant will be issued for failure to appear]. If the individual fails to appear at that first appearance, a notice shall issue advising the individual of the rescheduled first appearance and that a failure to appear at that rescheduled first appearance will result in the issuance of a bench warrant. The summons shall be signed by the judicial or law enforcement officer issuing it. An electronic entry of the signature of the law enforcement officer shall be equivalent to and have the same force and effect as an original signature.

Note: Adopted July 13, 1994 to be effective January 1, 1995; amended July 27, 2006 to be effective September 1, 2006; amended August 30, 2016 to be effective January 1, 2017.

3:2-3. Arrest Warrant

(a) Issuance of an Arrest Warrant When Law Enforcement Applicant is Physically Before the Judicial Officer. An arrest warrant for an initial charge shall be made on a Complaint-Warrant (CDR-2) form. The warrant shall contain the defendant's name or if that is unknown, any name or description that identifies the defendant with reasonable certainty, and shall be directed to any officer authorized to execute it, ordering that the defendant be arrested and [brought before the court that issued the warrant] and remanded to the county jail pending a determination of conditions of pretrial release. [Except as provided in paragraph (b), the] The warrant shall be signed by a judicial officer, which for these purposes shall be defined as the judge, clerk, deputy clerk, authorized municipal court administrator, or authorized deputy municipal court administrator.

(b) Issuance of and Procedures for an Arrest Warrant When Law Enforcement Applicant is Not Physically Before the Judicial Officer. A [judge] judicial officer may issue an arrest warrant on sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the [judge] judicial officer by telephone, radio or other means of electronic communication.

The [judge] judicial officer shall administer the oath to the applicant. Subsequent to taking the oath, the applicant must identify himself or herself, and read verbatim the Complaint-Warrant (CDR-2) [(CDR2)] and any supplemental affidavit that establishes probable cause for the issuance of an arrest warrant. If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) [(CDR2)] and/or supplemental affidavit, the [judge] judicial officer need not make a contemporaneous written or electronic recordation of the facts in

support of probable cause. If the law enforcement officer provides additional sworn oral testimony in support of probable cause, the [judge] judicial officer shall contemporaneously record such sworn oral testimony by means of a [tape-] recording device [or stenographic machine], if [such are] available; otherwise, adequate [longhand] notes summarizing the contents of the law enforcement applicant's testimony shall be made by the [judge] judicial officer. This sworn testimony shall be deemed to be an affidavit, or a supplemental affidavit, for the purposes of issuance of an arrest warrant.

An arrest warrant may issue if the [judge] judicial officer is satisfied that probable cause exists for issuing the warrant. On approval, the [judge] judicial officer shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination and any other specific terms of the authorization. That memorialization shall be either by means of a [tape-]recording device, [stenographic-machine,] or by adequate [longhand] notes.

If the judicial officer has determined that a warrant shall issue and has the ability to promptly access the Judiciary's computer system, the judicial officer shall electronically issue the Complaint-Warrant (CDR-2) in the computer system.

If the judicial officer has determined that a warrant shall issue and does not have the ability to promptly access the Judiciary's computer system, the judicial officer shall direct the applicant, pursuant to procedures prescribed by the Administrative Director of the Courts, to enter into the Judiciary computer system, for inclusion on the electronic complaint, the date and time of the probable cause and warrant determinations. The judicial officer shall also direct the applicant to complete the phrase: "I, Officer _____, certify that I have received telephonic or other approved electronic authorization from _____ (judicial officer's

name), _____ (judicial officer's title), for the issuance of the Complaint-Warrant (CDR-2)."

The court shall verify, as soon as practicable, any warrant authorized under this subsection and activated by law enforcement. Remand to the county jail and a pretrial release decision are not contingent upon completion of this verification.

[Thereafter, the judge shall direct the applicant to print his or her name, the date and time of the warrant, followed by the phrase "By Officer _____, per telephonic authorization by _____" on the Complaint/Warrant (CDR-2) form. Within 48 hours the applicant shall deliver to the judge, either in person or via facsimile transmission, the signed Complaint-Warrant (CDR-2) and any supporting affidavit. The judge shall verify the accuracy of these documents by affixing his or her signature to the Complaint-Warrant (CDR-2).]

Procedures authorizing issuance of restraining orders pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") by electronic communication are governed by R. 3:26-1(e) [3:26-1(g)].

Note: Adopted July 13, 1994 to be effective January 1, 1995; original text of rule amended and designated as paragraph (a) and new paragraph (b) added July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 9, 2013 to be effective September 1, 2013; paragraphs (a) and (b) captions added and text amended August 30, 2016 to be effective January 1, 2017.

3:3-1. Issuance of an Arrest Warrant or Summons

(a) Issuance of [a] an Arrest Warrant. An arrest warrant may be issued on a complaint only if:

(1) a judge, clerk, deputy clerk, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the warrant; and

(2) a judicial officer [judge, clerk, deputy clerk, municipal court administrator or deputy municipal court administrator] finds that [subsection (c)] paragraphs (d), (e), or (f) of this rule allows a warrant rather than a summons to be issued.

(b) Issuance of a Summons. A summons may be issued on a complaint only if:

(1) a judicial officer [judge, clerk, deputy clerk, municipal court administrator or deputy municipal court administrator] finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(2) the law enforcement officer who made the complaint, issues the summons.

[(c) Determination of Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall be issued unless:

(1) the defendant is charged with murder, kidnapping, aggravated manslaughter, manslaughter, robbery, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, second degree aggravated assault, aggravated arson, arson, burglary, violations of

Chapter 35 of Title 2C that constitute first or second degree crimes, any crime involving the possession or use of a firearm, or conspiracies or attempts to commit such crimes;

(2) the defendant has been served with a summons and has failed to appear;

(3) there is reason to believe that the defendant is dangerous to self, other persons, or property;

(4) there is an outstanding warrant for the defendant;

(5) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court; or

(6) there is reason to believe that the defendant will not appear in response to a summons.]

(c) Offenses Where Issuance of a Summons is Presumed. Unless issuance of an arrest warrant is authorized pursuant to paragraph (d) of this rule, a summons rather than an arrest warrant shall be issued when a defendant is charged with an offense other than one set forth in paragraphs (e) or (f) of this rule.

(d) Grounds for Overcoming the Presumption of Issuance of a Complaint-Summons. Notwithstanding the presumption that a summons shall be issued when a defendant is charged with an offense other than one set forth in paragraphs (e) or (f) of this rule, when a law enforcement officer prepares a complaint-warrant rather than a complaint-summons in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, the judicial officer may issue an arrest warrant when the judicial officer finds pursuant to paragraph (a) of this rule that there is probable cause to believe that the defendant committed the offense, and has reason to believe, based on one or more of the following factors, that a complaint-warrant is needed to reasonably assure a defendant's appearance in court when required, to

protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

(1) the defendant has been served with a summons for any prior indictable offense and has failed to appear;

(2) there is reason to believe that the defendant is dangerous to self, or will pose a danger to the safety of any other person or the community if released on a summons;

(3) there are one or more outstanding warrants for the defendant;

(4) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;

(5) there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;

(6) there is reason to believe that the defendant will not appear in response to a summons; or

(7) there is reason to believe that the monitoring of pretrial release conditions by the pretrial services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.

When the application for an arrest warrant is based on reason to believe that the defendant will not appear in response to a summons, will pose a danger to the safety of any other person or the community, or will obstruct or attempt to obstruct the criminal justice process if released on a summons, the judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if

committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for an arrest warrant.

(e) Offenses Where Issuance of an Arrest Warrant Is Required. An arrest warrant shall be issued when a judicial officer finds pursuant to R. 3:3-1(a) that there is probable cause to believe that the defendant committed murder, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, robbery, carjacking, or escape, or attempted to commit any of the foregoing crimes, or where the defendant has been extradited from another state for the current charge.

(f) Offenses Where Issuance of an Arrest Warrant is Presumed. Unless issuance of a summons rather than an arrest warrant is authorized pursuant to paragraph (g) of this rule, an arrest warrant shall be issued when a judicial officer finds pursuant to paragraph (a) of this rule that there is probable cause to believe that the defendant committed a violation of Chapter 35 of Title 2C that constitutes a first or second degree crime, a crime involving the possession or use of a firearm, or the following first or second degree crimes subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), vehicular homicide (N.J.S. 2C:11-5), aggravated assault (N.J.S. 2C:12-1(b)), disarming a law enforcement officer (N.J.S. 2C:12-11), kidnapping (N.J.S. 2C:13-1), aggravated arson (N.J.S. 2C:17-(a)(1)), burglary (N.J.S. 2C:18-2), extortion (N.J.S. 2C:20-5), booby traps in manufacturing or distribution facilities (N.J.S. 2C:35-4.1(b)), strict liability for drug induced deaths (N.J.S. 2C:35-9), terrorism (N.J.S. 2C:38-2); producing or possessing

chemical weapons, biological agents or nuclear or radiological devices (N.J.S. 2C:38-3), racketeering (N.J.S. 2C:41-2), firearms trafficking (N.J.S. 2C:39-9(i)), causing or permitting a child to engage in a prohibited sexual act knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance (N.J.S. 2C:24-4(b)(3)) or finds that there is probable cause to believe that the defendant attempted to commit any of the foregoing crimes.

(g) Grounds for Overcoming the Presumption of Issuance of an Arrest Warrant. Notwithstanding the presumption that an arrest warrant shall be issued when a defendant is charged with an offense set forth in paragraph (f) of this rule: (1) a judicial officer may authorize issuance of a summons rather than an arrest warrant if the judicial officer finds that were the defendant to be released without imposing or monitoring any conditions authorized under N.J.S.A. 2A:162-17, there are reasonable assurances that the defendant will appear in court when required, the safety of any other person or the community will be protected, and the defendant will not obstruct or attempt to obstruct the criminal justice process. The judicial officer shall not make such finding without considering the results of a preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and without also considering whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional information provided by a law enforcement officer or the prosecutor relevant to the pretrial release decision; or (2) a law enforcement

officer may issue a summons in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16.

(h) [(d)] Finding of No Probable Cause. If a judicial officer finds that there is no probable cause to believe that an offense was committed or that the defendant committed it, the officer shall not issue a warrant or summons on the complaint. If the finding is made by an officer other than a judge, the finding shall be reviewed by a judge. If the judge finds no probable cause, the judge shall dismiss the complaint.

(i) [(e)] Additional Warrants or Summonses. More than one warrant or summons may issue on the same complaint.

(j) [(f)] Process Against Corporations. A summons rather than an arrest warrant shall issue if the defendant is a corporation. If a corporation fails to appear in response to a summons, the court shall proceed as if the corporation appeared and entered a plea of not guilty.

Note: Source-R.R. 3:2-2(a)(1)(2)(3) and (4); paragraph (a) amended, new paragraph (b) adopted and former paragraphs (b) and (c) redesignated as (c) and (d) respectively July 21, 1980 to be effective September 8, 1980; paragraph (b) amended and paragraph (e) adopted July 16, 1981 to be effective September 14, 1981; paragraph (b) amended July 22, 1983 to be effective September 12, 1983; caption and paragraph (a) amended and paragraph (f) adopted July 26, 1984 to be effective September 10, 1984; paragraph (b) amended January 5, 1988 to be effective February 1, 1988; captions and text amended to paragraphs (a), (b), (c), (e) and (f), paragraph (g) adopted July 13, 1994, text of paragraph (a) amended December 9, 1994, to be effective January 1, 1995; paragraphs (a), (c), (e), (f), and (g) deleted, paragraph (b) amended and redesignated as paragraph (c), paragraph (d) amended and redesignated as paragraph (e), new paragraphs (a), (b), (d), and (f) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) caption and text amended, paragraph (b) amended, former paragraph (c) deleted, new paragraphs (c), (d), (e), (f), and (g) adopted, and former paragraphs (d), (e) and (f) redesignated as (h), (i) and (j) August 30, 2016 to be effective January 1, 2017.

3:3-3. Execution or Service; Return

(a) ... No change

(b) Territorial Limits. The warrant may be executed and the summons served at any place within this State. An officer arresting a defendant in a county other than the one in which the warrant was issued shall take the defendant, without unnecessary delay, before the nearest available committing judge authorized to [admit to bail] set conditions of pretrial release in accordance with R. 3:26-2 [, who may admit to bail conditioned on the defendant's appearance before the court issuing the warrant]. Nothing in this rule shall affect the provisions of N.J.S. 2A:156-1 to 2A:156-4 (Uniform Act on Intrastate Fresh Pursuit).

(c) ...No change

(d) ...No change

(e) ...No change

Source-R.R. 3:2-2(c); paragraphs (b) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended August 30, 2016 to be effective January 1, 2017.

3:4-1. Procedure After Arrest

(a) Arrest without an Arrest Warrant.

(1) Preparation of Complaint. A law enforcement officer shall take a person who was arrested without a warrant to a police station where a complaint shall be prepared immediately. If it appears that issuance of a warrant is authorized by Rule 3:3-1[(c)] (d), (e) or (f) [or the prosecution of the person would be jeopardized by immediate release], the complaint may be prepared on a Complaint-Warrant (CDR-2) [(CDR2)] form. Otherwise, the complaint shall be prepared on a Complaint-Summons (CDR-1) [(CDR1)] form.

(2) Issuance of Process. If a Complaint-Summons (CDR-1) [(CDR1)] has been prepared, the law enforcement officer may serve the summons and release the defendant. If a Complaint-Warrant (CDR-2) [(CDR2)] has been prepared, without unnecessary delay, and no later than 12 hours after arrest, the matter shall be presented to a judge, or, in the absence of a judge, to a judicial officer who has the authority to [set bail for the offense charged] determine whether a warrant or summons will issue. The judicial officer shall determine whether to issue a warrant or summons as provided in Rule 3:3-1, and if a warrant is issued, shall [set bail immediately] order the defendant remanded to the county jail pending a determination of conditions of pretrial release or a determination regarding pretrial detention if a motion has been filed by the prosecutor.

(b) Arrest on [a] an Arrest Warrant. [If bail was not set when an arrest warrant was issued, the] The person who is arrested on that warrant shall [have bail set without unnecessary delay, and no later than 12 hours after arrest] be remanded to the county jail pending a determination of

conditions of pretrial release or a determination regarding pretrial detention if a motion has been filed by the prosecutor.

(c) ... No change

Source - R.R. 3:2-3(a), 8:3-3(a). Amended July 7, 1971 to be effective September 13, 1971; caption amended, former rule redesignated as paragraph (a) and paragraphs (b) and (c) adopted July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended, new paragraph (c) adopted and former paragraph (c) redesignated paragraph (d) and paragraph (d)(7) deleted November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (c) amended April 10, 1987 to be effective immediately; paragraph (b) amended January 5, 1988 to be effective February 1, 1988; captions added to paragraphs (a)(b) and (c), new paragraph (c) adopted, paragraph (d) introductory text deleted and paragraphs (d)(1)(2)(3)(4)(5) and (6) redesignated as paragraphs (b)(1)(a)(b)(c)(d) and (f) and paragraph (1)(e) amended and paragraphs (b)(2) and (3) adopted, July 13, 1994 to be effective January 1, 1995; paragraph (a) amended and redesignated as paragraph (b), paragraph (b) amended and redesignated as paragraph (a), paragraph (c) deleted, and new paragraph (c) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) caption amended, paragraphs (a)(1) and (a)(2) amended, and paragraph (b) caption and text amended August 30, 2016 to be effective January 1, 2017.

3:4-2. First Appearance After Filing Complaint

(a) Time of First Appearance. Following the filing of a complaint the defendant shall be brought before a judge for a first appearance as provided in this Rule. If the defendant remains in custody, the first appearance shall occur within [72 hours after arrest, excluding holidays] 48 hours of a defendant's commitment to the county jail, and shall be before a judge with authority to set [bail] conditions of release for the offenses charged. If a defendant is released on a complaint-summons, the first appearance shall be held no more than 60 days after the issuance of the complaint-summons or the defendant's arrest.

(b) First Appearance; Where Held. All first appearances for indictable offenses shall occur at a centralized location and before a judge designated by the Chief Justice [Assignment Judge]. If the defendant is unrepresented at the first appearance, the court is authorized to assign the Office of the Public Defender to represent the defendant for purposes of the first appearance.

(c) Procedure in Indictable Offenses. At the defendant's first appearance before a judge, if the defendant is charged with an indictable offense, the judge shall:

(1) give the defendant a copy of the complaint, discovery as provided in subsections (a) and (b) below, and inform the defendant of the charge;

(A) if the prosecutor is not seeking pretrial detention, the prosecutor shall provide the defendant with a copy of any available preliminary law enforcement incident report concerning the offense and any material used to establish probable cause;

(B) if the prosecutor is seeking pretrial detention, the prosecutor shall provide the defendant with all statements or reports in its possession relating to the pretrial detention application. All exculpatory evidence must be disclosed.

(2) ... No change

(3) ... No change

(4) ... No change

(5) ... No change

(6) ... No change

(7) ... No change

(8) ... No change

(9) [admit the defendant to bail] set conditions of pretrial release, when appropriate as provided in Rule 3:26; [and]

(10) schedule a pre-indictment disposition conference to occur no later than 45 days after the date of the first appearance[.]; and

(11) in those cases in which the prosecutor has filed a motion for an order of pretrial detention pursuant to R. 3:4A, set the date and time for the required hearing and inform the defendant of his or her right to seek a continuance of such hearing.

(d) ... No change

(1) ... No change

(2) ... No change

(3) inform the defendant of the right to retain counsel and, if indigent and entitled by law to the appointment of counsel, the right to be represented by a public defender or assigned counsel; [and]

(4) assign counsel, if the defendant is indigent and entitled by law to the appointment of counsel, and does not affirmatively, and with understanding, waive the right to counsel[.]; and

(5) set conditions of pretrial release as provided in Rule 3:26 if the defendant has been committed to the county jail.

(e) ... No change

(f) ... No change

(1) ... No change

(2) ... No change

(3) ... No change

(4) ... No change

(5) ... No change

Note: Source – R.R. 3:2-3(b), 8:4-2 (second sentence). Amended July 7, 1971 effective September 13, 1971; amended April 1, 1974 effective immediately; text of former Rule 3:4-2 amended and redesignated paragraphs (a) and (b) and text of former Rules 3:27-1 and -2 amended and incorporated into Rule 3:4-2, July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraphs (a) and (b) deleted, new paragraphs (a), (b), (c), and (d) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (e) adopted July 21, 2011 to be effective September 1, 2011; paragraph (a) amended, new paragraph (b) added, former paragraphs (b), (c), and (e) amended and redesignated as paragraphs (c), (d), and (f), and former paragraph (d) redesignated as paragraph (e) April 12, 2016 to be effective September 1, 2016; paragraphs (a) and (b) amended, subparagraph (c)(1) amended, new subparagraphs (c)(1)(A) and (c)(1)(B) adopted, subparagraphs (c)(9) and (c)(10) amended, new subparagraph (c)(11) adopted, subparagraphs (d)(3) and (d)(4) amended, and new subparagraph (d)(5) adopted August 30, 2016 to be effective January 1, 2017.

3:4-3. Hearing as to Probable Cause on Indictable Offenses

(a) ... No change

(b) After concluding the proceeding the court shall transmit, forthwith, to the county prosecutor all papers in the cause. Whether or not the court finds probable cause, it shall continue in effect any monetary bail previously posted in accordance with R. 3:26 or any other condition of pretrial release not involving restraints on liberty; and any monetary bail taken by the court shall be transmitted to the financial division manager's office. If the defendant is discharged for lack of probable cause and an indictment is not returned within 120 days, the bail shall thereafter be returned and conditions of pretrial release, if any, terminated.

Source-R.R. 3:2-3(c). Paragraph designations added and paragraphs (a) and (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended August 30, 2016 to be effective January 1, 2017.

3:4-4. Proceedings in Arrest Under Uniform Fresh Pursuit Law

If an arrest is made in this State by an officer of another state in accordance with the provisions of N.J.S. 2A:155-1 to N.J.S. 2A:155-7, inclusive (Uniform Law on Fresh Pursuit), the officer shall take the arrested person, without unnecessary delay, before the nearest available judge who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, the judge shall commit the person to await, for a reasonable time, the issuance of an extradition warrant by the Governor of this State, or admit the person to monetary bail for such purpose. If the court determines that the arrest was unlawful it shall discharge the person arrested.

Source-R.R. 3:2-3(d), 8:3-3(d); amended July 13, 1994 to be effective September 1, 1994; amended August 30, 2016 to be effective January 1, 2017.

3:4A. Pretrial Detention

(a) Timing of Motion. A prosecutor may file a motion at any time seeking the pretrial detention of a defendant for whom a complaint-warrant or complaint-warrant on indictment is issued for an initial charge involving an indictable offense, or a disorderly persons offense involving domestic violence, as provided in N.J.S.A. 2A:162-15 et seq.

(b) Hearing on Motion.

(1) A pretrial detention hearing shall be held before a Superior Court judge no later than the defendant's first appearance unless the defendant or the prosecutor seeks a continuance or the prosecutor files a motion at or after the defendant's first appearance. If the prosecutor files a motion at or subsequent to the defendant's first appearance the pretrial detention hearing shall be held within three working days of the date of the prosecutor's motion unless the defendant or prosecutor seek a continuance. Except for good cause, a continuance or motion of the defendant may not exceed five days, not including any intermediate Saturday, Sunday or holiday. Except for good cause, a continuance or motion of the prosecutor may not exceed three days, not including any intervening Saturday, Sunday or holiday. The Superior Court judge in making the pretrial detention decision may take into account information as set forth in N.J.S.A. 2A:162-20.

(2) The defendant shall have a right to be represented by counsel and, if indigent, to have counsel appointed if he or she cannot afford counsel. The defendant shall be provided discovery pursuant to Rule 3:4-2(c)(1)(B). The defendant shall be afforded the right to testify, to present witnesses, to cross-examine witnesses who appear at the hearing and to present information by proffer or otherwise. Testimony of the defendant given during the hearing shall not be

admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings related to the defendant's subsequent failure to appear, proceedings related to any subsequent offenses committed during the defendant's release, proceedings related to the defendant's subsequent violation of any conditions of release, any subsequent perjury proceedings, and for the purpose of impeachment in any subsequent proceedings. The defendant shall have the right to be present at the hearing. The rules governing admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing. The return of an indictment shall establish probable cause to believe that the defendant committed any offense alleged therein. Where there is no indictment at the point of the detention hearing, the prosecutor shall establish probable cause that the defendant committed the predicate offense.

(3) A hearing may be reopened at any time before trial if the court finds that information exists that was not known by the prosecutor or defendant at the time of the hearing and that information has a material bearing on the issue of whether there are conditions of release that will reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the defendant will not obstruct or attempt to obstruct the criminal justice process.

(4) Presumption of detention. When a motion for pretrial detention is filed pursuant to paragraph (a), there shall be a rebuttable presumption that the defendant shall be detained pending trial because no amount of monetary bail, non-monetary condition or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process, if the court finds

probable cause that the defendant: (i) committed murder pursuant to N.J.S.A. 2C:11-3; or (ii) committed any crime for which the defendant would be subject to an ordinary or extended term of life imprisonment.

(5) Presumption of release. Except when a presumption of detention is required pursuant to paragraph (b)(4), when a motion for pretrial detention is filed pursuant to paragraph (a), there shall be a rebuttable presumption that some amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process.

The standard of proof for the rebuttal of the presumption of pretrial release shall be by clear and convincing evidence. The court may consider as prima facie evidence sufficient to overcome the presumption of release a recommendation by the Pretrial Services Program established pursuant to N.J.S.A. 2A:162-25 that the defendant's release is not recommended (i.e., a determination that "release not recommended or if released, maximum conditions"). Although such recommendation by the Pretrial Services Program may constitute sufficient evidence upon which the court may order pretrial detention, nothing herein shall preclude the court from considering other relevant information presented by the prosecutor or the defendant in determining whether no amount of monetary bail, non-monetary bail conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct the criminal justice process.

(c) Pretrial Detention Order. If the court determines that pretrial detention is necessary it shall issue an order containing written findings of fact and a written statement of reasons for the detention. That order shall also direct that the defendant be afforded reasonable opportunity for private consultation with counsel.

(d) Temporary Release Order. The court may issue an order temporarily releasing the defendant, subject to conditions, to the extent that the court determines the release is necessary for the preparation of a defendant's defense or for another compelling reason.

(e) Interlocutory Order from Appellate Division. Nothing in this Rule shall be deemed to preclude the State's right to seek an interlocutory order from the Appellate Division within 48 hours.

Adopted August 30, 2016 to be effective January 1, 2017.

3:6-8. Finding and Return of Indictment; No Bill

(a) Return; Secrecy. An indictment may be found only upon the concurrence of 12 or more jurors and shall be returned in open court to the Assignment Judge or, in the Assignment Judge's absence, to any Superior Court judge assigned to the Law Division in the county. With the approval of the Assignment Judge, an indictment may be returned to such judge by only the foreperson or the deputy foreperson rather than with all other members of the grand jury. Such judge may direct that the indictment shall be kept secret until the defendant is in custody or has [given bail] been released pending trial and in that event it shall be sealed by the clerk, and no person shall disclose its finding except as necessary for the issuance and execution of a warrant or summons.

(b) No Bill. If the defendant has been held to answer a complaint and, after submission to the grand jury, no indictment has been found, the foreperson shall forthwith so report in writing to the court, who shall forthwith order the defendant's release unless the defendant's detention is required by other pending proceedings. Notice of the action of the grand jury shall also be mailed by the clerk of the court to the defendant's attorney, a defendant not in custody, and the defendant's sureties if monetary bail has been posted.

Source-R.R. 3:3-8(a) (b); paragraph (a) amended July 16, 1981 to be effective September 14, 1981; paragraph (a) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraphs (a) and (b) amended August 30, 2016 to be effective January 1, 2017.

3:7-8. Issuance of Warrant or Summons upon Indictment or Accusation

Upon the return of an indictment or the filing of an accusation a summons or warrant shall be issued in accordance with R. 3:3-1 by the criminal division manager as designee of the deputy clerk of the Superior Court in the manner provided by law for each defendant named in the indictment or accusation who [is not under bail] has not been previously charged in the matter. The criminal division manager as designee of the deputy clerk of the Superior Court, upon request, shall issue more than one warrant or summons for the same defendant. If the defendant fails to appear in response to a summons, a warrant shall issue.

If a summons is issued upon indictment to a defendant who has not been previously held to answer a complaint, the defendant shall undergo all post-arrest identification procedures that are required by law upon arrest, on the return date of the summons, or upon written request of the appropriate law enforcement agency.

Source-R.R. 3:4-9. Amended July 22, 1983 to be effective September 12, 1983; amended July 13, 1994 to be effective January 1, 1995; amended August 30, 2016 to be effective January 1, 2017.

3:7-9. Form of Warrant and Summons

The warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty, shall describe the offense charged in the indictment or accusation and shall command that the defendant be arrested and brought before [the court] a judge authorized to set conditions of pretrial release pursuant to R. 3:26-2. Conditions of pretrial release shall be fixed by the court and endorsed thereon, and in such case the sheriff or warden may take any monetary bail. The summons shall be in the same form as the warrant except that it shall be directed to the defendant and require the defendant to appear to plead before the court at a stated time and place. The summons shall also state that if the defendant fails to so appear, a warrant for defendant's arrest shall issue.

Source-R.R. 3:4-10(a) (b); amended July 13, 1994 to be effective January 1, 1995; amended August 30, 2016 to be effective January 1, 2017.

3:10-2. Time and Manner of Making Motion; Hearing on Motion

(a) ... No change

(b) ... No change

(c) ... No change

(d) ... No change

(e) ... No change

(f) Motions Subject to R. 3:25-4(i)(3). In cases where an eligible defendant has been ordered to be detained pending trial, all briefing, arguments, and evidentiary hearings required to complete the record on a pretrial motion shall be completed promptly but in no event later than 60 days after the filing of the notice of motion, unless the court finds that good cause exists to extend the time within which to complete the record, and the court sets forth on the record, whether orally or in writing, those facts that support its finding of good cause.

NOTE: Source-R.R. 3:5-5(b)(2) (second and fourth sentences); caption amended, Rule amended and redesignated as paragraph (c), Rules 3:10-3 3:10-4, 3:10-5, and 3:10-6 amended, redesignated and incorporated into R. 3:10-2 as paragraphs (d), (e), (a), and (b) respectively July 13, 1994 to be effective January 1, 1995; paragraph (a) amended April 12, 2016 to be effective May 20, 2016; paragraph (a) amended August 1, 2016 to be effective September 1, 2016; new paragraph (f) adopted August 30, 2016 to be effective January 1, 2017.

3:21-4. Sentence

(a) Imposition of Sentence; [Bail] Conditions of Release. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter [the bail] the conditions of release.

(b) ... No change

(c) ... No change

(d) ... No change

(e) ... No change

(f) ... No change

(g) ... No change

(h) ... No change

(i) ... No change

(j) ... No change

Source-R.R. 3:7-10(d). Paragraph (f) amended September 13, 1971, paragraph (c) deleted and paragraphs (d), (e) and (f) redesignated as (c), (d) and (e) July 14, 1972 to be effective September 5, 1972; paragraph (e) adopted and former paragraph (e) redesignated as (f) August 27, 1974 to be effective September 9, 1974; paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraphs (d) and (e) amended August 28, 1979 to be effective September 1, 1979; paragraph (d) amended December 26, 1979 to be effective January 1, 1980; paragraph (g) adopted July 26, 1984 to be effective September 10, 1984; paragraph (d) caption and text amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended November 2, 1987 to be effective January 1, 1988; paragraph (d) amended January 5, 1988 to be effective February 1, 1988; new paragraph (c) adopted and former paragraphs (c), (d), (e), (f), and (g) redesignated (d), (e), (f), (g), and (h) respectively June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (i) adopted April 21, 1994 to be effective June 1, 1994; paragraphs (b), (e), (f) and (g) amended July 13, 1994 to be effective January 1, 1995; former paragraphs (f), (g), (h), and (i) redesignated as

paragraphs (g), (h), (i), and (j) and new paragraph (f) adopted July 10, 1998 to be effective September 1, 1998; paragraph (j) amended July 5, 2000 to be effective September 5, 2000; paragraph (e) caption and text amended, and paragraph (f) amended June 15, 2007 to be effective September 1, 2007; paragraph (h) caption and text amended July 16, 2009 to be effective September 1, 2009; paragraph (g) amended July 21, 2011 to be effective September 1, 2011; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017.

3:25-4. Speedy Trial for Certain Defendants

(a) Eligible Defendant. For purposes of this rule, the term "defendant" or "eligible defendant" shall mean a person for whom a complaint-warrant or complaint-warrant on indictment was issued for an initial charge involving an indictable offense and who: (1) is detained pursuant to R. 3:4A, or (2) is detained in jail due to an inability to post monetary bail pursuant to R. 3:26. This rule only applies to an eligible defendant who is arrested on or after January 1, 2017, regardless of whether the crime or offense related to the arrest was allegedly committed before, on, or after January 1, 2017. For defendants who are detained only for a disorderly persons offense or a petty disorderly persons offense, the limits on pretrial incarceration are governed by R. 7:8-11.

(b) On Failure to Indict.

(1) Time Period. Except as provided in paragraph (d), prior to the return of an indictment, an eligible defendant shall not remain detained in jail for more than 90 days following the date of the defendant's commitment to the county jail pursuant to R. 3:4-1(a)(2) or (b) or R. 3:26-2(d)(1)(A) not counting excludable time as set forth in paragraph (i) of this rule.

(2) Motion by the Prosecutor to Extend Time for Failure to Indict. If the eligible defendant is not indicted within the time frame calculated pursuant to subparagraph (b)(1) of this rule, the eligible defendant shall be released from jail unless on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release from custody, so that no appropriate conditions for the defendant's release could reasonably address that risk, and also finds that the failure to indict the defendant in accordance

with the time requirement set forth in this rule was not due to unreasonable delay by the prosecutor. The prosecutor must file a notice of motion accompanied by a brief with an explanation of the reasons for the delay that justify the extension of time for return of the indictment. The motion to extend the time to return an indictment shall be filed with the court and served upon the defendant and defense counsel by the prosecutor no later than 15 calendar days prior to the expiration of the 90 day time frame, adjusted for excludable time, calculated pursuant to paragraph (b)(1) of this rule. Upon good cause shown this deadline may be relaxed.

(3) Objection by Defendant. Within 5 calendar days of the receipt of the prosecutor's motion to extend the time to return an indictment, the defendant may file an objection to the prosecutor's motion and request oral argument. If the court decides to hold oral argument the argument must be held within 5 calendar days of the defendant's request.

(4) Court Determination.

(A) The court shall consider and render a decision on the prosecutor's motion to extend the time to return an indictment and any objections filed by the defendant within 5 calendar days of the prosecutor's motion, defendant's objection, or oral argument, whichever is later. The court may, in its discretion, render a decision on the papers without the need for oral argument.

(B) Upon consideration of the motion, if the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to indict the eligible defendant in accordance with the time requirement calculated pursuant to paragraph (b)(1) of this rule was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time, not to exceed 45 days, in which the return of an indictment shall occur.

(C) If the court orders an eligible defendant detained pursuant to R. 3:4A and the maximum period of detention is reached or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this rule, the court shall establish conditions of pretrial release, pursuant to R. 3:26, and release the defendant.

(c) On Failure to Commence Trial.

(1) Time Period. Except as provided in paragraph (d), an eligible defendant who has been indicted shall not remain detained in jail for more than 180 days on that charge following the return or unsealing of the indictment, whichever is later, not counting excludable time as set forth in paragraph (i) of this rule, before commencement of the trial. For an eligible defendant whose most serious charge is a disorderly persons offense involving domestic violence, the time period shall begin with the defendant's initial detention. See R. 7:8-11.

(2) Motion by the Prosecutor. If the trial does not commence within the time frame calculated pursuant to paragraph (c)(1) of this rule, the eligible defendant shall be released from jail unless, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release from custody, so that no appropriate conditions for the defendant's release could reasonably address that risk, and also finds that the failure to commence trial in accordance with the time requirement set forth in this rule was not due to unreasonable delay by the prosecutor. The prosecutor must file a notice of motion accompanied by a brief explaining the reasons for the delay that justify the extension of time to commence trial. The motion to extend time to commence trial shall be filed with the court and served upon the defendant and defense counsel by the prosecutor no later than 15 calendar days prior to the

date of the expiration of the 180 day time frame, adjusted for excludable time, calculated pursuant to subparagraph (c)(1) of this rule. Upon good cause shown this deadline may be relaxed.

(3) Objection by Defendant. Within 5 calendar days of the receipt of the prosecutor's motion to extend the time to commence trial, the defendant may file an objection to the prosecutor's motion and request oral argument. If the court decides to hold oral argument the argument must be held within 5 calendar days of the defendant's request.

(4) Court Determination.

(A) The court shall consider and render a decision on the prosecutor's motion to extend the time to commence trial and any objection filed by the defendant within 5 calendar days of the prosecutor's motion, the defendant's objection, or oral argument, whichever is later. The court may, in its discretion, render a decision on the papers without the need for oral argument.

(B) Upon consideration of the motion, if the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result, and also finds that the failure to commence trial in accordance with the time requirement calculated pursuant to paragraph (c)(1) of this rule was not due to unreasonable delay by the prosecutor, the court may allocate an additional period of time of no more than 60 days in which the defendant's trial shall commence. If exceptional circumstances are shown, the court may allocate an additional reasonable period of time to commence trial. If the court allocates any additional time, the court should specify its reasons for granting the extension and set forth a specific date for the trial.

(C) If the court orders an eligible defendant detained pursuant to R. 3:4A and the maximum period of detention is reached, or if the court currently does not find a substantial and unjustifiable risk or finds unreasonable delay by the prosecutor as described in this rule, the court shall establish conditions of pretrial release, pursuant to R. 3:26, and release the defendant.

(d) Period to Readiness of Prosecutor for Trial.

(1) An eligible defendant shall be released from jail upon conditions set by the court, after a release hearing if, excluding any delays attributable to the defendant, two years after the court's issuance of the pretrial detention order for the eligible defendant or after the detention of the eligible defendant in jail due to an inability to post monetary bail as a condition of release, the prosecutor is not ready to proceed to voir dire or to opening argument, or to proceed to the hearing of any motions that had been reserved for the time of trial. In the case of an eligible defendant whose most serious charge is a fourth-degree offense, the maximum time period for the defendant's incarceration shall be 18 months. In the case of an eligible defendant whose most serious charge is a disorderly persons offense involving domestic violence, the maximum time period for the defendant's incarceration shall be six months. See R. 7:8-11.

(2) A delay shall be considered attributable to the defendant if the delay constitutes excluded time pursuant to:

(A) subparagraph (1) of paragraph (i) of this rule, but only if the defendant maintains that he or she is not competent to stand trial or is incapacitated;

(B) subparagraph (2) of paragraph (i) of this rule;

(C) subparagraph (3) of paragraph (i) of this rule, but only if the defendant filed the motion unless the motion was filed in response to unreasonable actions of the prosecutor;

(D) subparagraph (4) of paragraph (i) of this rule, but only if the request for the continuance was made by the defendant unless the request was made in response to unreasonable actions by the prosecutor;

(E) subparagraph (5) of paragraph (i) of this rule, but only if the defendant left the jurisdiction after receiving notice of a charge or charges in this jurisdiction;

(F) subparagraph (9) of paragraph (i) of this rule;

(G) subparagraph (11) of paragraph (i) of this rule; or

(H) subparagraph (12) of paragraph (i) of this rule, but only if the delay resulted from unreasonable acts or omissions of the defendant.

(3) An eligible defendant shall not be released from jail pursuant to subparagraph (1) of this paragraph if, on or before the expiration of the applicable period of detention, the prosecutor has represented that the State is ready to proceed to voir dire or to opening arguments, or to proceed to the hearing of any motions that had been reserved for trial. The prosecutor's statement of readiness shall be made on the record in open court or in writing.

(e) Commencement of Trial. For the purposes of this rule, a trial is considered to have commenced when the court determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial.

(f) Subsequent and Superseding Indictments. For purposes of calculating the time period pursuant to paragraph (c)(1) of this rule, the return of a superseding indictment against the defendant shall extend the time for the trial to commence. The court shall schedule the trial to

commence as soon as reasonably practicable taking into consideration the nature and extent of differences between the superseded and superseding indictments, including the degree to which the superseding indictment is based on information that was available at the time of the original indictment or that could have been obtained through reasonably diligent efforts at the time of the original indictment. If an indictment is dismissed without prejudice upon motion of the defendant for any reason, and a subsequent indictment is returned, the time for trial shall begin running from the date of the return of the subsequent indictment.

(g) New Trial. A trial ordered after a mistrial or upon a motion for a new trial, pursuant to R. 3:20-1, shall commence within 120 days of the entry of the order of the court. A trial ordered upon the reversal of a judgment by any appellate court shall commence within 120 days of the service of that court's trial mandate.

(h) Charge or Indictment in Another Matter. If the defendant is charged or indicted in another matter that results in the defendant's pretrial detention, the time calculations set forth in this rule shall run independently for each matter.

(i) Excludable Time Criteria. The following periods shall be excluded in computing the time in which a case shall be indicted or tried:

(1) The time resulting from an examination and hearing on competency and the period during which the defendant is incompetent to stand trial or incapacitated. Excluded time shall begin tolling once the judge signs an order for the examination of the defendant for competency

pursuant to N.J.S. 2C:4-5, or once the defense serves the court with a report from its own expert stating that the defendant is not competent to proceed;

(2) The time from the filing to the disposition of a defendant's application for supervisory treatment pursuant to N.J.S. 2C:36A-1 or N.J.S. 2C:43-12 et seq., special probation pursuant to N.J.S. 2C:35-14, drug or alcohol treatment as a condition of probation pursuant to N.J.S. 2C:45-1, or other pretrial treatment or supervisory program;

(3) The time resulting from the filing of a motion by either the prosecution or defendant subject to the following:

(A) If briefing, argument, and any evidentiary hearings required to complete the record are not complete within 60 days of the filing of the notice of motion, or within any longer period of time authorized pursuant to R. 3:10-2(f), any additional time shall not be excluded.

(B) Unless the Court reserves its decision until the time of trial, if the Court does not decide the motion within 30 days after the record is complete, any additional time during which the motion is under advisement by the Court shall not be excluded unless the court finds there are extraordinary circumstances affecting the court's ability to decide the motion, in which case no more than an additional 30 days shall be excluded.

(C) If the Court reserves its decision on a motion until the time of trial, the time from the reservation to disposition of that motion shall not be excluded. When the court reserves a motion for the time of trial, the court will be obligated to proceed directly to voir dire or to opening statements after the disposition of the motion.

(4) The time resulting from a continuance granted at the defendant's request or at the request of both the defendant and the prosecutor; such request must specify the amount of time for which the continuance is sought;

(5) The time resulting from the detention of the defendant in another jurisdiction, provided the prosecutor has been diligent and has made reasonable efforts to obtain the defendant's presence;

(6) The time resulting from exceptional circumstances including, but not limited to, a natural disaster, the unavoidable unavailability of the defendant, material witness or other evidence, when there is a reasonable expectation that the defendant, witness or evidence will become available in the near future;

(7) On motion of the prosecutor, the delay resulting when the court finds that the case is complex due to the number of defendants or the nature of the prosecution subject to the following:

(A) the prosecutor shall include in the motion the specific factual basis justifying the delay and the length of the delay sought: the defendant may file an objection within five calendar days of receipt of the prosecutor's motion: and the court may decide the motion without oral argument;

(B) the court shall grant the motion only if (i) the prosecutor establishes that due to the complexity of the case it is unreasonable to expect adequate preparation for pretrial proceedings or the trial itself within the time periods set forth in this Rule and (ii) the court finds that the interests of justice served by granting the delay outweigh the best interests of the public and the defendant in a speedy trial;

(C) the court ordinarily should grant the motion only when the case involves more than two defendants, novel questions of fact or law, numerous witnesses who may be difficult to locate or produce, or voluminous or complicated evidence;

(D) if the court grants the motion, the court shall specify the period of delay and shall set forth on the record, either orally or in writing, its findings as required under subparagraph (7)(B)(ii); and

(E) the court may grant the motion only with the approval of the criminal presiding judge.

(8) The time resulting from a severance of codefendants when that severance permits only one trial to commence within the time period for trial set forth in this Rule, subject to the following:

(A) except as provided in subparagraph (8)(B), the subsequent trial shall commence within 60 days of the conclusion of the previous trial;

(B) the court may extend the date for the commencement of the subsequent trial upon the request of the defendant, the defendant's consent to a request by the prosecutor, or a finding by the court upon motion of the prosecutor that there is good cause for the extension; and

(C) if the subsequent trial does not commence within 60 days or, if applicable, within the extended period, any additional time shall not be excluded.

(9) The time resulting from a defendant's failure to appear for a court proceeding;

(10) The time resulting from a disqualification or recusal of a judge, provided that the amount of excluded time under this subparagraph shall not exceed 30 days;

(11) The time resulting from a failure by the defendant to provide timely and complete discovery;

(12) The time for other periods of delay not specifically enumerated if the court finds good cause for the delay, provided that this provision shall be narrowly construed; and

(13) Any other time otherwise required by statute.

The failure by the prosecutor to provide timely and complete discovery shall not be considered excludable time unless the discovery only became available after the time established for discovery.

(j) Excludable Time Calculations. The court shall keep track of each and every instance of excludable time calculated pursuant to this rule, including the number of days excluded as determined by the judge, and ensure that all excludable time is accurately reflected in an appropriate judiciary case management system. The court shall provide notice to the defendant and prosecutor of the impending release date for the defendant at least 20 days prior to that release date. Counsel shall also keep track of excludable time and the pending release dates for an eligible defendant.

Adopted August 30, 2016 to be effective January 1, 2017.

3:26-1. Right to Pretrial Release [Bail] Before Conviction

(a) Persons Entitled; Standards for Fixing.

(1) Persons Charged on a Complaint-Warrant. Except when the prosecutor files a motion for pretrial detention pursuant to N.J.S.A. 2A:162-18 and 19 and R. 3:4A, all [All] persons for whom a complaint-warrant or a complaint-warrant on indictment is issued for an initial charge involving an indictable offense, disorderly persons offense, or petty disorderly persons offense, [except those charged with crimes punishable by death when the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed,] shall be [bailable] released before conviction on [such terms as,]the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. In addition to these non-monetary conditions, monetary conditions may be set for a defendant but only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court when required. The court shall consider all the circumstances, the Pretrial Services Program's risk assessment and recommendations and any information that may have been provided by a prosecutor or the defendant on conditions of release before making any pretrial release decision. If the court enters a release order containing conditions contrary to those recommended by the Pretrial Services Program obtained using a risk assessment instrument then the court shall set forth its reasons for not accepting those recommendations. The court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail.

[The factors to be considered in setting bail are: (1) the seriousness of the crime charged against defendant, the apparent likelihood of conviction, and the extent of the punishment prescribed by the Legislature; (2) defendant's criminal record, if any, and previous record on bail, if any; (3) defendant's reputation, and mental condition; (4) the length of defendant's residence in the community; (5) defendant's family ties and relationships; (6) defendant's employment status, record of employment, and financial condition; (7) the identity of responsible members of the community who would vouch for defendant's reliability; (8) any other factors indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appear, and, particularly, the general policy against unnecessary sureties and detention. In its discretion the court may order the release of a person on that person's own recognizance. The court may also impose terms or conditions appropriate to release including conditions necessary to protect persons in the community.] When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

(2) Persons Charged on a Complaint-Summons. A defendant who is charged on a complaint-summons shall be released from custody.

(b) Restrictions on Contact. If the court imposes conditions of [bail] pretrial release that include restrictions on contact between the defendant and defendant's minor child, (1) a copy of the order imposing the restrictions shall be transmitted to the Family Part, and (2) such restrictions shall not affect contact authorized by an order of the Family Part in a child abuse/neglect case entered after any restriction on contact was imposed as part of a bail order.

(c) Crimes with Bail Restrictions Defined in N.J.S.A. 2A:162-12. If a defendant is charged with a crime with bail restrictions as defined in N.J.S.A. 2A:162-12, and the court has set a monetary bail or a combination of a monetary bail and non-monetary conditions of pretrial release, no later than the time of posting monetary bail or proffering the surety or bail bond, the defendant shall provide to the prosecutor, on the Bail Source Inquiry Questionnaire promulgated by the Attorney General, relevant information about the obligor, indemnifier or person posting cash bail, the security offered, and the source of any money or property used to post the cash bail or secure the surety or bail bond.

[(d) On Failure to Indict. If a person committed for a crime punishable by death is not indicted within 3 months after commitment, a judge of the Superior Court, for good cause shown, may admit the person to bail.

(e) On Failure to Move Indictment. If an indictment or accusation is not moved for trial within 6 months after arraignment, a judge of the Superior Court, for cause shown, may discharge the defendant upon the defendant's own recognizance.]

[(f)] (d) Extradition Proceedings. Where a person has been arrested in any extradition proceeding, the court may set conditions of pretrial release [that person may be admitted to bail] except where that person is charged with a crime punishable by death.

[(g)] (e) Issuance of Restraining Orders By Electronic Communication.

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R. 5:7A(b).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a [tape-]recording device [or stenographic machine] if [such are] available; otherwise, adequate [long hand] notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order. Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a [tape-]recording device, [stenographic machine,] or by adequate [longhand] notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law"). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order. A copy of the restraining order shall be served upon the defendant by any officer authorized by

law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission or by other means of electronic communication, the signed restraining order along with a certification of service upon the defendant. The certification of service shall include the date and time that service upon the defendant was made or attempted to be made in a form approved by the Administrative Director of the Courts. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the location of the offense. Within 48 hours the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission or by other means of electronic communication, a certification describing the location of the offense.

Note: Source-R.R. 3:9-1(a)(b)(c)(d); paragraph (a) amended September 28, 1982 to be effective immediately; paragraphs (a), (b), (c) and (d) amended July 13, 1994 to be effective January 1, 1995; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; new paragraph (b) adopted, and former paragraphs (b), (c), and (d) redesignated as paragraphs (c), (d), and (e) June 15, 2007 to be effective September 1, 2007; new paragraph (c) adopted and former paragraphs (c), (d), and (e) redesignated as paragraphs (d), (e), and (f) July 9, 2008 to be effective September 1, 2008; paragraph (a) amended and new paragraph (g) adopted July 9, 2013 to be effective September 1, 2013; caption amended, text of paragraph (a) redesignated as paragraph (a)(1) with caption added, new paragraph (a)(2) adopted, paragraphs (b) and (c) amended, former paragraphs (d) and (e) deleted; former paragraph (f) amended and redesignated as paragraph (d), former paragraph (g) amended and redesignated as paragraph (e) August 30, 2016 to be effective January 1, 2017.

3:26-2. Authority to Set Conditions of Pretrial Release [Bail]

(a) Authority to Set Conditions of Pretrial Release [Initial Bail]. A Superior Court judge may set [bail] conditions of pretrial release for a person charged with any offense. [Bail] Conditions of pretrial release for any offense except homicide [murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact,] or a person arrested in any extradition proceeding [or a person arrested for a fourth degree contempt offense under N.J.S.A. 2C:29-9(b) for violating a domestic violence restraining order] may be set by any other judge[, or in the absence of a judge, by a municipal court administrator or deputy court administrator] provided that judge is setting conditions of pretrial release as part of a first appearance pursuant to Rule 3:4-2(b).

(b) [Initial Bail Set.] Conditions of Release. [Initial bail] Conditions of pretrial release shall be set pursuant to R. [3:4-1 (a) or (b)] 3:4-2 (c) or (d) on indictable or non-indictable offenses.

(1) The court shall order the pretrial release of a defendant on personal recognizance or on the execution of an unsecured appearance bond when, after considering all the circumstances, the Pretrial Services Program's risk assessment and recommendations on conditions of release prepared pursuant to section 11 of P.L.2014, c. 31 (c.2A:162-25), and any information that may be provided by a prosecutor or the defendant, the court finds that the release would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. When the court orders pretrial release pursuant to this subparagraph, the court shall, in the document authorizing the release, notify the defendant that the defendant

must appear in court when required and that a failure to appear may result in the issuance of a warrant for the defendant's arrest.

(2) If the court does not find, after consideration, that the release described in subparagraph (1) of this paragraph will reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that defendant will not obstruct or attempt to obstruct the criminal justice process, the court may order the pretrial release of the defendant subject to the following:

(A) the defendant shall appear in court as required;

(B) the defendant shall not commit any offense during the period of release;

(C) the defendant shall avoid all contact with an alleged victim of the crime; and

(D) the defendant shall avoid all contact with all witnesses who may testify concerning the offense that are named in the document authorizing the defendant's release or in a subsequent court order.

The court may impose other non-monetary conditions of release as set forth in subparagraph (3).

(3) The non-monetary condition or conditions of a pretrial release ordered by the court pursuant to this paragraph shall be the least restrictive condition, or combination of conditions, that the court determines will reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process, which may include that the defendant:

(A) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able to reasonably assure the court that the defendant will appear in court when required, will not pose a

danger to the safety of any other person or the community, and will not obstruct or attempt to obstruct the criminal justice process;

(B) will maintain employment, or, if unemployed, actively seek employment;

(C) maintain or commence an educational program;

(D) abide by specified restrictions on personal associations, place of abode or travel;

(E) report on a regular basis to a designated law enforcement agency, or other agency, or Pretrial Services Program;

(F) comply with a specified curfew;

(G) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(H) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;

(I) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(J) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(K) be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The court may order the defendant to pay all or a portion of the costs of the electronic monitoring, but the court may waive the payment for a defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs; or

(L) satisfy any other condition that is necessary to reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process.

If the court enters a release order that is contrary to the release recommendations, including release conditions, of the Pretrial Services Program obtained by using a risk assessment instrument, then the court shall set forth in the document authorizing the release its reasons for not accepting the release recommendations.

[(c) Review of Initial Set. Any person unable to post bail shall have his or her bail reviewed by a Superior Court judge no later than the next day which is neither a Saturday, Sunday nor a legal holiday.

Except in those indictable cases in which a Superior Court judge has set bail, a municipal court judge has the authority to make bail revisions up to and including the time of the defendant's first appearance before the court. A municipal court judge has the authority to make bail revisions on any non-indictable offense at any time during the course of the proceedings.]

[(d) Bail Reductions. A first application for bail reduction shall be heard by the court no later than seven days after it is made.]

(c) Modification of Release Conditions.

(1) Monetary Bail Reductions. If a defendant is unable to post monetary bail, the defendant shall have that monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner.

(2) Review of Conditions of Release. Except as provided in paragraphs (d) or (e) a Superior Court Judge may review the conditions of pretrial release set pursuant to Rule 3:26-1 on its own

motion, or upon motion by the prosecutor or the defendant alleging that there has been a material change in circumstance that justifies a change in conditions. Any review of conditions pursuant to this rule shall be decided within 30 days of the filing of the motion. Upon a finding that there has been a material change in circumstance, the judge may set new conditions of release but may not order the defendant detained except as provided in Rule 3:4A.

(d) Violations of Conditions of Release.

(1) Violation of Condition of Release When Defendant Released from Jail. Upon the motion of the prosecutor, when a defendant for whom a complaint-warrant was issued is released from custody, the court, upon a finding, by a preponderance of the evidence, that the defendant while on release violated a restraining order or condition of release, or upon a finding of probable cause to believe that the defendant has committed a new crime while on release, may revoke the defendant's release and order that the defendant be detained pending trial where the court, after considering all relevant circumstances including but not limited to the nature and seriousness of the violation or criminal act committed, finds clear and convincing evidence that no monetary bail, non-monetary conditions of release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the defendant will not obstruct or attempt to obstruct the criminal justice process.

(2) Hearing on Violations of Conditions of Release. The defendant shall have a right to be represented by counsel and, if indigent, to have counsel appointed if he or she cannot afford counsel. The defendant shall be provided all available discovery. The defendant shall be afforded the right to testify, to present witnesses, to cross-examine witnesses who appear at the

hearing and to present information by proffer or otherwise. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings related to the defendant's subsequent failure to appear, proceedings related to any subsequent offenses committed during the defendant's release, proceedings related to the defendant's subsequent violation of any conditions of release, any subsequent perjury proceedings, and for the purpose of impeachment in any subsequent proceedings. The defendant shall have the right to be present at the hearing. The rules governing admissibility to evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing.

(e) Person Released on a Complaint-Summons Who is Thereafter Arrested on a Warrant for a Failure to Appear. If a defendant charged on a complaint-summons is subsequently arrested on a warrant for a failure to appear in court when required, that defendant shall be eligible for release on personal recognizance or release on monetary bail by sufficient sureties at the discretion of the court. If monetary bail was not set when an arrest warrant for the defendant was issued, the court shall set monetary bail without unnecessary delay, but in no case later than 12 hours after arrest.

Note: Source-R.R. 3:9-3(a) (b) (c); amended July 24, 1978 to be effective September 11, 1978; amended May 21, 1979 to be effective June 1, 1979; amended August 28, 1979 to be effective September 1, 1979; amended July 26, 1984 to be effective September 10, 1984; caption amended, former text amended and redesignated paragraph (a) and new paragraphs (b), (c) and (d) adopted July 13, 1994 to be effective January 1, 1995; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; paragraph (d) amended July 9, 2013 to be effective September 1, 2013; paragraph (a) amended July 27, 2015 to be effective September 1, 2015; caption amended, paragraphs (a) and (b) caption and text amended, former paragraphs (c) and (d) deleted, and new paragraphs (c), (d), and (e) adopted August 30, 2016 to be effective January 1, 2017.

Rule 3:26-4. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture Thereof

(a) Deposit of Monetary Bail. A person admitted to monetary bail or a combination of monetary bail and non-monetary conditions of pretrial release shall, together with that person's sureties, sign and execute a recognizance before the person authorized to take monetary bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until final determination of the matter, unless otherwise ordered by the court. One or more sureties may be required. Cash may be accepted and in proper cases no security need be required. A corporate surety shall be one approved by the Commissioner of Insurance and shall execute the recognizance under its corporate seal, cause the same to be duly acknowledged and shall annex thereto proof of authority of the officers or agents executing the same and of corporate authority and qualification. [Bail] Monetary bail given in the Superior Court shall be deposited with the Finance Division Manager in the county in which the offense was committed, provided that upon order of the court monetary bail shall be transferred from the county of deposit to the county in which defendant is to be tried. Real estate offered as monetary bail for indictable and non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the Municipal Court clerk. In any county, with the approval of the Assignment Judge, a program may be instituted for the deposit in court of cash in the amount of 10 percent of the amount of monetary bail fixed.

(b) Limitation on Individual Surety. Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance or undertaking for monetary bail if there remains undischarged any previous recognizance or monetary bail undertaken by that surety.

(c) Real Estate in Other Counties. Real estate owned by a surety located in a county other than the one in which the monetary bail is taken may be accepted, in which case the clerk of the court in which the monetary bail is taken shall forthwith transmit a copy of the recognizance certified by that clerk to the clerk of the county in which the real estate is situated, who shall record it in the same manner as if the recognizance had been taken in that clerk's county.

(d) ... No change

(e) ... No change

(f) ... No change

(g) Ten Percent Cash Bail. Except in first or second degree cases and certain crimes or offenses involving domestic violence as set forth in N.J.S.A. 2A:162-12 and unless the order setting monetary bail specifies to the contrary for good cause shown, whenever monetary bail is set pursuant to Rule 3:26-1, monetary bail may be satisfied by the deposit in court of cash in the amount of ten-percent of the amount of monetary bail fixed and defendant's execution of a recognizance for the remaining ninety percent. No surety shall be required unless the court fixing monetary bail specifically so orders. When cash equal to ten-percent of the monetary bail fixed is deposited pursuant to this Rule, if the cash is owned by someone other than the defendant, the

owner shall charge no fee for the deposit other than lawful interest and shall submit an affidavit or certification with the deposit so stating and also listing the names of any other persons for whom the owner has deposited monetary bail. The person making the deposit authorized by this subsection shall file an affidavit or certification concerning the lawful ownership thereof, and on discharge such cash may be returned to the owner named in the affidavit or certification.

Source-R.R. 3:9-5(a)(b)(c)(d)(e)(f)(g). Paragraph (a) amended June 29, 1973 to be effective September 10, 1973; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (g) adopted November 5, 1986 to be effective January 1, 1987; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (f) and (g) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a), (b) and (c) amended July 13, 1994 to be effective September 1, 1994; paragraph (g) amended February 27, 1995 to be effective immediately; paragraphs (a), (d), (e), (f) and (g) amended June 15, 2007 to be effective September 1, 2007; paragraph (g) amended July 9, 2013 to be effective September 1, 2013; paragraph (a) caption and text amended, paragraphs (b), (c) and (g) amended August 30, 2016 to be effective January 1, 2017.

3:26-5. Justification of Sureties

Every surety, except an approved corporate surety, shall justify by affidavit and be required to describe therein the property by which the surety proposes to justify and the encumbrances thereon, the number and amount of other recognizances and undertakings for monetary bail entered into by the surety and remaining undischarged, if any, and all the surety's other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

Source-R.R. 3:9-6; amended July 13, 1994 to be effective September 1, 1994; amended August 30, 2016 to be effective January 1, 2017.

3:26-6. Forfeiture

(a) Declaration; Notice. Upon breach of a condition of a recognizance, the court on its own motion shall order forfeiture of the monetary bail, and the finance division manager shall forthwith send notice of the forfeiture, by ordinary mail, to county counsel, the defendant, and any surety or insurer, bail agent or agency whose names appear on the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding monetary bail absent a written objection seeking to set aside the forfeiture, which must be filed within 75 days of the date of the notice. The notice shall also advise the insurer that if it fails to satisfy a judgment entered pursuant to paragraph (c), and until satisfaction is made, it shall be removed from the Bail Registry and its bail agents and agencies, guarantors, and other persons or entities authorized to administer or manage its bail bond business in this State will have no further authority to act for it, and their names, as acting for the insurer, will be removed from the Bail Registry. In addition the bail agent or agency, guarantor or other person or entity authorized by the insurer to administer or manage its bail bond business in this State who acted in such capacity with respect to the forfeited bond will be precluded, by removal from the Bail Registry, from so acting for any other insurer until the judgment has been satisfied. The court shall not enter judgment until the merits of any objection are determined either on the papers filed or, if the court so orders for good cause, at a hearing. In the absence of objection, judgment shall be entered as provided in paragraph (c), but the court may thereafter remit it, in whole or part, in the interest of justice.

(b) ... No change

(c) ... No change

Source-R.R. 3:9-7 (a)(b)(c) (first sentence) (d); paragraphs (a) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a), (b) and (c) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) amended August 30, 2016 to be effective January 1, 2017.

3:26-7. Exoneration

When the condition of the recognizance has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any monetary bail. A surety may be exonerated by a deposit of cash in the amount of the recognizance or by a timely surrender of the defendant into custody.

Source-R.R. 3:9-8; amended August 30, 2016 to be effective January 1, 2017.

3:26-8. Bail Sufficiency; Source Hearing

(a) Time and Notice. Where a defendant has posted monetary bail the [The] State may request either orally or in writing, at any time prior to the commencement of trial, a hearing pursuant to N.J.S.A. 2A:162-13. The request shall be made on notice to the defendant's counsel, or on notice to the defendant if he or she is unrepresented at the time the request is made.

(b) ... No change

(c) Time of Hearing. The court shall conduct a hearing required or authorized pursuant to N.J.S.A. 2A:162-13 within three (3) business days after monetary bail is posted or proffered if defendant is incarcerated, or within a reasonable period of time after granting the request if the defendant has been released on bail.

(d) Release of Defendant; Failure to Appear. If the defendant has not yet been released when the State requests a hearing for a person charged with a crime enumerated in N.J.S.A. 2A:162-12 or when the court grants a request for a hearing for any other offense, the defendant shall remain in custody until further order of the court. If the defendant has already been released after posting monetary bail, the conditions of the defendant's pretrial release [bail] status shall be maintained until the completion of the hearing and the defendant will be notified when to appear in court for the hearing. Should the defendant fail to appear for the hearing the monetary bail shall be forfeited and a warrant shall issue for the arrest of the defendant.

(e) ... No change

(f) Order. At the conclusion of the hearing, the court shall make specific findings of fact and issue an order complying with N.J.S.A. 2A:162-13(b) regarding the person posting or proffering cash bail or serving as obligor on any bond, the sufficiency and value of the security for monetary bail posted or proffered by the defendant, the source of funds used to post cash bail or secure a bail bond and identifying the approved source(s) of monetary bail. The defendant shall not be released from custody unless he or she complies with the conditions of the court's order. If the defendant has already been released, he or she shall be returned to custody, immediately, and not be released until the conditions of the court order regarding the bail are satisfied.

(g) Nothing herein shall prevent the court from otherwise setting monetary bail, or altering monetary bail on motion therefor, in accordance with the rules of court.

Adopted July 9, 2008 to be effective September 1, 2008; paragraphs (a), (c), (d), (f), and (g) amended August 30, 2016 to be effective January 1, 2017.

7:2-1. Contents of Complaint, [Arrest Warrant] Complaint-Warrant (CDR-2) and Summons

(a) Complaint: General. ... no change

(b) Acceptance of Complaint. ... no change

(c) Summons: General. ... no change

(d) [Arrest Warrant] Complaint-Warrant (CDR-2): General. The arrest warrant for an initial charge shall be made on a Complaint-Warrant form (CDR-2) or other form prescribed by the Administrative Director of the Courts and shall be signed by [the judge or, when authorized by the judge, by the municipal court administrator or deputy court administrator] a judicial officer after a determination of probable cause that an offense was committed and that the defendant committee it. A judicial officer, for purposes of the Part VII rules, is defined as a judge, authorized municipal court administrator, or authorized deputy court administrator. An electronic signature by the judicial officer [judge, authorized municipal court administrator, or deputy court administrator] shall be equivalent to and have the same force and effect as an original signature. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it. [and] A Complaint-Warrant (CDR-2) shall order that the defendant be arrested and remanded to the county jail pending a determination of conditions of pretrial release. [brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.]

(e) [Arrest Warrant by Electronic Communication] Issuance of a Compaint-Warrant (CDR-2) When Law Enforcement Applicant is Not Physically Before a Judicial Officer. A judicial officer judge may issue a Complaint-Warrant (CDR-2) [an arrest warrant] upon sworn oral testimony of a law enforcement applicant who is not physically present. Such sworn oral testimony may be communicated by the applicant to the judicial officer [judge] by telephone, radio, or other means of electronic communication.

The judicial officer [judge] shall administer the oath to the applicant. [Subsequent to] After taking the oath, the applicant must identify himself or herself and read verbatim the Complaint-Warrant (CDR-2) and any supplemental affidavit that establishes probable cause for the issuance of a Complaint-Warrant (CDR-2) [an arrest warrant]. If the facts necessary to establish probable cause are contained entirely on the Complaint-Warrant (CDR-2) and/or supplemental affidavit, the judicial officer [judge] need not make a contemporaneous written or electronic recordation of the facts in support of probable cause. If the law enforcement applicant provides additional sworn oral testimony in support of probable cause, the judicial officer [judge] shall contemporaneously record such sworn oral testimony by means of a recording [tape-recording] device [or stenographic machine,] if [such are] available; otherwise, adequate [longhand] notes summarizing the contents of the law enforcement applicant's testimony shall be made by the judicial officer [judge]. This sworn testimony shall be deemed to be an affidavit or a supplemental affidavit for the purposes of issuance of an arrest warrant.

[An arrest warrant] A Complaint-Warrant (CDR-2) may issue if the judicial officer finds [judge is satisfied] that probable cause exists and that there is also justification for the issuance of a Complaint-Warrant (CDR-2) pursuant to the factors identified in R. 7:2-2(b) [for issuing the

warrant]. If the judicial officer does not find justification for a warrant under R. 7:2-2(b), the judicial officer shall issue a summons.

If the judicial officer has determined that a warrant shall issue and has the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial officer shall electronically issue the Complaint-Warrant (CDR-2) in that computer system. If the judicial officer has determined that a warrant shall issue and does not have the ability to promptly access the Judiciary's computerized system used to generate complaints, the judicial officer shall direct the applicant to complete the required certification and activate the complaint pursuant to procedures prescribed by the Administrative Director of the Courts. The judicial officer shall then direct the law enforcement officer to remand the defendant to the county jail pending a determination of conditions of pretrial release.

Upon approval of a Complaint-Warrant (CDR-2), the judicial officer [judge] shall memorialize the date, time, defendant's name, complaint number, the basis for the probable cause determination, and any other specific terms of the authorization. That memorialization shall be either by means of a recording [tape-recording] device [, stenographic machine,] or by adequate [longhand] notes. [Thereafter, the judge shall direct the applicant to print his or her name, the date and time of the warrant, followed by the phrase "By Officer _____, per telephonic authorization by_____" on the Complaint-Warrant (CDR-2) form. Within 48 hours, the applicant shall deliver to the judge either in person or via facsimile transmission the signed Complaint-Warrant (CDR-2) and supporting affidavit. The judge shall verify the accuracy of these documents by affixing his or her signature to the Complaint-Warrant (CDR-2).]

The judicial officer for that court shall verify, as soon as practicable, any warrant authorized under this subsection and activated by law enforcement. Remand to the county jail and a pretrial release decision are not contingent upon completion of this verification.

Procedures authorizing issuance of restraining orders pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law") by electronic communications are governed by R. 7:4-1(d) [7:4-1(c)].

(f) Traffic Offenses ... no change

(g) Special Form of Complaint and Summons. ... no change

(h) Use of Special Form of Complaint and Summons in Penalty Enforcement Proceedings. ... no change

Note: Source – Paragraph (a): R. (1969) 7:2, 7:3-1, 3:2-1; paragraph (b): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-2; paragraph (c): R. (1969) 7:2, 7:3-1, 7:6-1, 3:2-3; paragraph (d): R. (1969) 7:6-1; paragraph (e): R. (1969) 4:70-3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) caption added, former paragraph (a) amended and redesignated as paragraph (a)(1), former paragraph (b) amended and redesignated as paragraph (a)(2), former paragraph (c) redesignated as paragraph (a)(3), former paragraph (d) redesignated as paragraph (b), former paragraph (e) caption and text amended and redesignated as paragraph (c), and former paragraph (f) redesignated as paragraph (d) July 12, 2002 to be effective September 3, 2002; caption for paragraph (a) deleted, former paragraphs (a)(1) and (a)(2) amended and redesignated as paragraphs (a) and (b), former paragraph (a)(3) redesignated as paragraph (c), new paragraph (d) adopted, former paragraph (b) amended and redesignated as paragraph (e), former paragraph (c) deleted, former paragraph (d) amended and redesignated as paragraph (f), and new paragraph (g) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) amended, new paragraph (b) adopted, former paragraphs (b), (c), (d), and (e) amended and redesignated as paragraphs (c), (d), (e), and (f), former paragraphs (f) and (g) redesignated as paragraphs (g) and (h) July 16, 2009 to be effective September 1, 2009; paragraph (e) caption and text amended July 9, 2013 to be effective September 1, 2013; caption amended, paragraph (c) amended, and paragraphs (d) and (e) caption and text amended August 30, 2016 to be effective January 1, 2017.

7:2-2. Issuance of [Arrest] Complaint-Warrant (CDR-2) or Summons

(a) Authorization for Process

(1) Citizen Complaint. A Complaint-Warrant (CDR-2) [An arrest warrant] or a summons [on a complaint] charging any offense made by a private citizen may be issued only by a judge or, if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed within the statutory time limitation. The [arrest] complaint-warrant (CDR-2) or summons may be issued only if it appears to the judicial officer from the complaint, affidavit, certification or testimony that there is probable cause to believe that an offense was committed, the defendant committed it, and [an arrest warrant] a Complaint-Warrant (CDR-2) or summons can be issued. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant and shall be confirmed by the judicial officer's signature issuing the [arrest warrant] Complaint-Warrant (CDR-2) or summons. If, however, the municipal court administrator or deputy court administrator finds that no probable cause exists to issue a[n arrest warrant] Complaint-Warrant (CDR-2) or summons, or that the applicable statutory time limitation to issue the [arrest warrant] Complaint-Warrant (CDR-2) or summons has expired, that finding shall be reviewed by the judge. A judge finding no probable cause to believe that an offense occurred or that the statutory time limitation to issue [an arrest warrant] a Complaint-Warrant (CDR-2) or summons has expired shall dismiss the complaint.

(2) Complaint by Law Enforcement Officer or Other Statutorily Authorized Person. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer or by any person authorized to do so by statute without a finding by a

judicial officer of probable cause for issuance. A law enforcement officer may personally serve the summons on the defendant without making a custodial arrest.

(3) Complaint by Code Enforcement Officer. A summons on a complaint made by a Code Enforcement Officer charging any offense within the scope of the Code Enforcement Officer's authority and territorial jurisdiction may be issued without a finding by a judicial officer of probable cause for issuance. A Code Enforcement Officer may personally serve the summons on the defendant. Otherwise, service shall be in accordance with these rules. For purposes of this rule, a "Code Enforcement Officer" is a public employee who is responsible for enforcing the provisions of any state, county or municipal law, ordinance or regulation which the public employee is empowered to enforce.

[(b) Determination Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:

(1) the defendant has failed to respond to a summons; or

(2) there is reason to believe that the defendant is dangerous to himself or herself, to others, or to property; or

(3) there is one or more outstanding arrest warrants for the defendant; or

(4) the address of the defendant is not known, and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or

(5) the defendant cannot be satisfactorily identified; or

(6) there is reason to believe that the defendant will not appear in response to a summons.]

(b) Issuance of a Complaint-Warrant (CDR-2) Warrant or Summons

(1) Issuance of a summons. A summons may be issued on a complaint only if:

(i) a judge, authorized municipal court administrator or authorized deputy municipal court administrator (judicial officer) finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the summons; or

(ii) the law enforcement officer or code enforcement officer who made the complaint, issues the summons.

(2) Issuance of a Warrant. A Complaint-Warrant (CDR-2) may be issued only if:

(i) a judicial officer finds from the complaint or an accompanying affidavit or deposition, that there is probable cause to believe that an offense was committed and that the defendant committed it and notes that finding on the Complaint-Warrant (CDR-2); and

(ii) a judicial officer finds that subsection (e), (f), or (g) of this rule allows a Complaint-Warrant (CDR-2) rather than a summons to be issued.

(c) Indictable Offenses. Complaints involving indictable offenses are governed by the Part III Rules, which address mandatory and presumed warrants for certain indictable offenses in Rule 3:3-1(e), (f).

(d) Offenses Where Issuance of a Summons is Presumed. A summons rather than a Complaint-Warrant (CDR-2) shall be issued unless issuance of a Complaint-Warrant (CDR-2) is authorized pursuant to subsection (e) of this rule.

(e) Grounds for Overcoming the Presumption of Issuance of Complaint-Summons. Regarding a defendant charged on matters in which a summons is presumed, when a law enforcement officer requests, in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16, the issuance of a Complaint-Warrant (CDR-2) rather than issues a complaint-summons, the judicial officer may issue a Complaint-Warrant (CDR-2) when the judicial officer finds that there is probable cause to believe that the defendant committed the offense, and the judicial officer has reason to believe, based on one or more of the following factors, that a Complaint-Warrant (CDR-2) is needed to reasonably assure a defendant's appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:

(1) the defendant has been served with a summons for any prior indictable offense and has failed to appear;

(2) there is reason to believe that the defendant is dangerous to self or will pose a danger to the safety of any other person or the community if released on a summons;

(3) there is one or more outstanding warrants for the defendant;

(4) the defendant's identity or address is not known and a warrant is necessary to subject the defendant to the jurisdiction of the court;

(5) there is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;

(6) there is reason to believe that the defendant will not appear in response to a summons;

(7) there is reason to believe that the monitoring of pretrial release conditions by the pretrial services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.

The judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for a Complaint-Warrant (CDR-2).

(f) Charges Against Corporations, Partnerships, Unincorporated Associations. A summons rather than a Complaint-Warrant (CDR-2) shall issue if the defendant is a corporation, partnership, or unincorporated association.

[(c)](g) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, [an arrest] a bench warrant may issue pursuant to law and Rule 7:8-9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the [corporation] entity had appeared and entered a plea of not guilty.

[(d)](h) Additional [Arrest] Complaint-Warrant (CDR-2)s or Summonses. More than one [arrest warrant] Complaint-Warrant (CDR-2) or summons may issue on the same complaint.

[(e)](i) Identification Procedures. If a summons has been issued or [an arrest warrant] a Complaint-Warrant (CDR-2) executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1-15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue [an arrest warrant] a Complaint-Warrant (CDR-2).

Note: Source - R. (1969) 7:2, 7:3-1, 3:3-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraph (a)(1) amended, new paragraph (b)(5) added, and former paragraph (b)(5) redesignated as paragraph (b)(6) July 12, 2002 to be effective September 3, 2002; paragraph (a)(1) amended, and paragraph (a)(2) caption and text amended July 28, 2004 to be effective September 1, 2004; paragraph (a)(1) amended and new paragraph (a)(3) adopted July 16, 2009 to be effective September 1, 2009; caption amended, paragraph (a)(1) amended, former paragraph (b) deleted, new paragraphs (b), (c), (d), (e), (f) adopted, former paragraph (c) amended and redesignated as paragraph (g), former paragraph (d) caption and text amended and redesignated as paragraph (h), and former paragraph (e) amended and redesignated as paragraph (i) August 30, 2016 to be effective January 1, 2017.

7:2-3. [Arrest] Warrants; Execution and Service: Return

(a) By Whom Executed; Territorial Limits. A [an arrest] warrant shall be executed by any officer authorized by law. The [arrest] warrant may be executed at any place within this State. This applies to all warrants issued by the municipal court, including Complaint-Warrants (CDR-2) and bench warrants that may be issued after the initial filing of the complaint. A bench warrant is any warrant, other than a Complaint-Warrant (CDR-2), that is issued by the court that orders a law enforcement officer to take the defendant into custody. [A law enforcement officer arresting a defendant outside the territorial jurisdiction of the court that issued the warrant shall take the defendant, without unnecessary delay, before the nearest committing judge authorized to admit to bail in accordance with R. 7:4-2(a) and any other applicable rule of court.]

(b) How Executed. The [arrest] warrant shall be executed by the arrest of the defendant. The law enforcement officer need not possess the warrant at the time of the arrest, but upon request, the officer shall show the warrant or a copy of an Automated Traffic System/Automated Complaint System (ATS/ACS) electronic record evidencing its issuance to the defendant as soon as possible. If the law enforcement officer does not have the actual warrant to show or does not have access to an ATS/ACS printer to produce a copy of the electronic record at the time of the arrest, the officer shall inform the defendant of the offense charged and that [an arrest] a warrant has been issued. Pursuant to R. 7:2-1(d), defendants arrested on an initial charge on a Complaint-Warrant (CDR-2) shall be remanded to the county jail pending a determination regarding conditions of pretrial release.

(c) Return. The law enforcement officer executing [an arrest] a warrant shall make prompt return of the [arrest] warrant to the court that issued the warrant. [If the arrested defendant is not admitted to bail, the] The arresting officer shall promptly notify the court issuing the [arrest] warrant by [telephone or other electronic means of communication] electronic communication through the appropriate Judiciary computer system of the date and time of the arrest. [and] If the defendant is incarcerated, the law enforcement officer shall promptly notify the court of the place of the defendant's incarceration.

Note: Source -- Paragraph (a): R. (1969) 7:2; 7:3-1, 3:3-3(a), (b), (c), (e); paragraphs (b)(1), (2), (3): R. (1969) 7:3-1: paragraph (b)(4): R. (1969) 7:2, 7:3-1, 3:3-3(e). Adopted October 6, 1997 to be effective February 1, 1998; caption amended, caption of former paragraph (a) deleted, caption and text of former paragraph (b) deleted and relocated to new Rule 7:2-4, former paragraphs (a)(1), (a)(2), and (a)(3) redesignated as paragraphs (a), (b), and (c) July 28, 2004 to be effective September 1, 2004; caption amended, paragraphs (a), (b), (c) amended August 30, 2016 to be effective January 1, 2017.

7:2-6. [Fax Transmission of Complaint-Warrants] [Deleted]

[During off-business hours, a law enforcement officer may submit a Complaint-Warrant (CDR-2) and any supporting documentation by facsimile (fax) transmission to the municipal court judge or to the authorized court administrator or deputy court administrator (judicial officer) to obtain a signature if probable cause is found, as follows:

(a) A law enforcement officer seeking the issuance of a Complaint-Warrant shall prepare a CDR-2 and contact a judicial officer.

(b) The law enforcement officer shall fax the CDR-2 to the judicial officer for a determination of probable cause. The fax machine must be capable of printing on each transmitted document the time and date of the fax transmission.

(c) If the judicial officer makes any corrections to the transmitted fax document, the law enforcement officer shall make those corrections on the original document. The officer shall then retransmit the corrected document to the judicial officer for signature.

(d) On the next business day, the judicial officer shall conform the original CDR-2 and shall attach the signed fax copy to the original. If the judicial officer who signed the fax copy is the municipal court judge, the original CDR-2 may be signed by the judge or be attested in the judge's name and signed by the municipal court administrator.]

Note: Adopted July 28, 2004 to be effective September 1, 2004; rule deleted August 30, 2016 to be effective January 1, 2017.

7:3-1. Procedure After Arrest

(a) First Appearance; Time; Defendants Not in Custody. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance. [If the defendant remains in custody, the first appearance shall be conducted within 72 hours after arrest by a judge with authority to set bail for the offenses charged in the complaint. If defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest.]

(b) First Appearance; Time; Defendants Committed to Jail. All defendants who are in custody shall have the first appearance conducted within 48 hours of their commitment to jail. For defendants incarcerated on an initial charge on a Complaint-Warrant (CDR-2), the first appearance shall be conducted at a centralized location and by a judge designated by the Chief Justice, as provided in Rule 3:26. For all other incarcerated defendants who require a first appearance, the first appearance shall be conducted by a judge authorized to set bail or other conditions of release.

[(b)] (c) Custodial Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making a custodial arrest without a [warrant] Complaint-Warrant (CDR-2) shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1 or Special Form of Complaint and Summons), unless the law enforcement officer determines that one or more of the factors in R. 7:2-2(b) applies. Upon

such determination, the law enforcement officer [shall] may prepare a [c]Complaint-[w]Warrant (CDR-2) rather than a complaint summons.

(2) Probable Cause; Issuance of Process. [; Bail]. If a [complaint-warrant form] Complaint-Warrant (CDR-2) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, to a municipal court administrator or deputy court administrator who has been granted authority to [set bail for the offense charged.] determine whether a Complaint-Warrant (CDR-2) or summons will issue. The judicial officer shall determine whether there is probable cause to believe that an offense was committed and that the defendant [has] committed it [an offense]. If probable cause is found, a summons or [warrant] Complaint-Warrant (CDR-2) may issue. [, but if] If the judicial officer determines that the defendant will appear in response to a summons, a summons shall be issued consistent with the standard prescribed by R. 7:2-2[(b)]. If [a warrant] the judicial officer determines that a warrant should issue consistent with the standards prescribed by R. 7:2-2 after the Complaint-Warrant (CDR-2) is issued, [bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest] the defendant shall be remanded to the county jail pending a determination of conditions of pretrial release. The finding of probable cause shall be noted on the face of the summons or [warrant] Complaint-Warrant (CDR-2). If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR-1 or Special Form of Complaint and Summons) has been prepared, or if a judicial officer has determined that a summons shall issue,

the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2-2(e).

[(c)] (d) Non-Custodial Arrest. A law enforcement officer charging any offense may personally serve a complaint-summons (Special Form of Complaint and Summons) at the scene of the arrest without taking the defendant into custody.

(e) Arrest Following Bench Warrant. If a defendant is arrested on a bench warrant on an initial summons and monetary bail was not set at warrant issuance, a bail determination or release on personal recognizance must occur without unnecessary delay and no later than 12 hours after arrest. If the defendant is unable to post bail, the court shall review that bail promptly. The defendant may file an application with the court seeking a bail reduction; such bail reduction motion shall be heard in an expedited manner.

Note: Source -- R. (1969) 7:2, 7:3-1, 3:4-1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b)(1) and (b)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (b) caption amended, paragraphs (b)(1) and (b)(2) amended, and new paragraph (c) adopted July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended, new paragraph (b) adopted, former paragraph (b) amended and redesignated as paragraph (c) , and text amended, former paragraph (c) redesignated as paragraph (d), and new paragraph (e) adopted August 30, 2016 to be effective January 1, 2017.

7:4-1. Right to [Bail Before Conviction] Pretrial Release

(a) Defendants Charged on Complaint-Warrant (CDR-2). Except as otherwise provided by R. 3:4A (pertaining to preventative detention), defendants charged on an initial Complaint-Warrant (CDR-2) shall be released before conviction on the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, pursuant to R. 3:26-1(a)(1). In accordance with Part III, monetary bail may be set for a defendant arrested on an initial Complaint-Warrant (CDR-2) only when it is determined that no other conditions of release will reasonably assure the eligible defendant's appearance in court when required. For defendants arrested on an initial Complaint-Warrant (CDR-2), the court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail; the court shall consider the Pretrial Services Program's risk assessment and recommendations on conditions of release before making a release decision.

[(a) Persons Entitled; Criteria.] (b) Defendants Issued a Bench Warrant. Every defendant brought before the court on a bench warrant for failure to appear or other violation, both defendants initially charged on a Complaint-Warrant (CDR-2) and those initially charged on a summons, shall have a right to bail before conviction on such terms as, in the judgment of the court, will insure the defendant's presence when required, having regard for the defendant's background, residence, employment and family status and, particularly, the general policy against unnecessary sureties and detention. In its discretion, the court may order defendant's release on defendant's own recognizance and may impose terms or conditions appropriate to

such release. Defendants issued a bench warrant who were charged on an initial Complaint-Warrant (CDR-2) may also be subject to reconsideration of conditions of release pursuant to Rule 7:4-9.

[(b)](c) Domestic Violence; Conditions of Release. When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

[(c)](d) Issuance of Restraining Orders by Electronic Communication.

(1) Temporary Domestic Violence Restraining Orders. Procedures authorizing the issuance of temporary domestic violence restraining orders by electronic communication are governed by R. 5:7A(b).

(2) N.J.S.A. 2C:35-5.7 and N.J.S.A. 2C:14-12 Restraining Orders. A judge may as a condition of release issue a restraining order pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") or N.J.S.A. 2C:14-12 ("Nicole's Law") upon sworn oral testimony of a law enforcement officer or prosecuting attorney who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, radio, or other means of electronic communication. The judge shall contemporaneously record such sworn oral testimony by means of a tape-recording device or stenographic machine if such are available; otherwise the judge shall make adequate longhand notes summarizing what is said. Subsequent to taking the oath, the law enforcement officer or prosecuting attorney must identify himself or herself, specify the purpose of the request, and disclose the basis of the application. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a restraining order.

Upon issuance of the restraining order, the judge shall memorialize the specific terms of the order. That memorialization shall be either by means of a tape-recording device, stenographic machine, or by adequate longhand notes. Thereafter, the judge shall direct the law enforcement officer or prosecuting attorney to memorialize the specific terms authorized by the judge on a form, or other appropriate paper, designated as the restraining order. This order shall be deemed a restraining order for the purpose of N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") and N.J.S.A. 2C:14-12 ("Nicole's Law"). The judge shall direct the law enforcement officer or prosecuting attorney to print the judge's name on the restraining order. A copy of the restraining order shall be served on the defendant by any officer authorized by law. Within 48 hours, the law enforcement officer or prosecuting attorney shall deliver to the judge, either in person, by facsimile transmission, or by other means of electronic communication, the signed restraining order along with a certification of service on the defendant. The certification of service shall be in a form approved by the Administrative Director of the Courts and shall include the date and time that service on the defendant was made or attempted to be made. The judge shall verify the accuracy of these documents by affixing his or her signature to the restraining order.

(3) Certification of Offense Location for Drug Offender Restraining Orders. When a restraining order is issued by electronic communication pursuant to N.J.S.A. 2C:35-5.7 ("Drug Offender Restraining Order Act of 1999") where the law enforcement officer or prosecuting attorney is not physically present at the same location as the court, the law enforcement officer or prosecuting attorney must provide an oral statement describing the location of the offense. Within 48 hours thereafter the law enforcement officer or prosecuting attorney shall deliver to

the judge, either in person, by facsimile transmission, or by other means of electronic communication, a certification describing the location of the offense.

Note: Source-R. (1969) 7:5-1, 3:26-1(a). Adopted October 6, 1997 to be effective February 1, 1998; text designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2013 to be effective September 1, 2013; caption amended, new paragraph (a) adopted, former paragraph (a) redesignated as paragraph (b) and caption and text amended, and former paragraphs (b) and (c) redesignated as paragraphs (c) and (d) August 30, 2016 to be effective January 1, 2017.

7:4-2. Authority to Set Bail or Conditions of Pretrial Release

(a) Authority to Set Initial Conditions of Pretrial Release on Complaint-Warrants (CDR-2). Initial conditions of pretrial release on an initial charge on a Complaint-Warrant (CDR-2) may be set by a judge designated by the Chief Justice, pursuant to R. 3:26 as part of a first appearance at a centralized location, pursuant to R: 3:4-2.

[(a)] (b) Authority to [Admit to Initial] Set Bail for Bench Warrants. Setting bail [Conditions of pre-trial release, including bail,] for bench warrants may be [set] done by a judge sitting regularly in or as acting or temporary judge of the jurisdiction in which the offense was committed, or by a vicinage Presiding Judge of the Municipal Courts, or as authorized by any other rule of court. [A judge who has fixed the amount of bail may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.] In the absence of the judge, and to the extent consistent with N.J.S.A. 2B:12-21[,] and R. 1:41-3(f) [a defendant, arrested and charged with a non-indictable offense that may be tried by the judge, may be admitted to bail by the duly authorized municipal court administrator or deputy court administrator], a duly authorized municipal court administrator or deputy court administrator may set bail on defendants issued a bench warrant. [In the absence of the judge, the municipal court administrator, and deputy court administrator, the defendant may be admitted to bail by any person authorized by law to admit to bail.] The authority of the municipal court administrator, deputy court administrator or other authorized persons shall, however, be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or the municipal court judge.

(c) Authority to Take a Recognizance. Any judge who has set bail and/or conditions of pretrial release may designate the taking of the recognizance by the municipal court administrator or any other person authorized by law to take recognizances, other than the law enforcement arresting officer.

[(b)] (d) [Bail] Revisions of Bail or Conditions of Pretrial Release. A municipal court judge may modify bail or any other condition of pretrial release on any non-indictable offense at any time during the course of the municipal court proceedings, consistent with R. 7:4-9, except as provided by law.

Note: Source-Paragraph (a): R. (1969) 7:5-3; paragraph (b): R. (1969) 7:5-1, 3:26-2(c). Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a) and (b) amended July 10, 1998, to be effective September 1, 1998; caption amended, new paragraph (a) adopted, former paragraph (a) redesignated as paragraph (b) and caption and text amended, new paragraph (c) adopted, and former paragraph (b) redesignated as paragraph (d) and caption and text amended August 30, 2016 to be effective January 1, 2017.

7:4-3. Form and Place of Deposit; Location of Real Estate; Record of Recognizances, Discharge and Forfeiture

(a) Deposit of Bail; Execution of Recognizance. A defendant admitted to bail, shall, together with the sureties, if any, sign and execute a recognizance before the person authorized to take monetary bail or, if the defendant is in custody, the person in charge of the place of confinement. The recognizance shall contain the terms set forth in R. 1:13-3(b) and shall be conditioned upon the defendant's appearance at all stages of the proceedings until the final determination of the matter, unless otherwise ordered by the court. The total recognizance may be satisfied by more than one surety, if necessary. Cash may be accepted, and in proper cases, within the court's discretion, the posting of security may be waived. A corporate surety shall be one approved by the Commissioner of Insurance. A corporate surety shall execute the recognizance under its duly acknowledged corporate seal, and shall attach to its bond written proof of the corporate authority and qualifications of the officers or agents executing the recognizance. Real estate offered as security for bail for non-indictable offenses shall be approved by and deposited with the clerk of the county in which the offense occurred and not with the municipal court administrator.

A defendant charged on an initial complaint-warrant (CDR-2) and released on non-monetary conditions shall be released pursuant to the release Order prepared by the Judge and need not complete a recognizance form.

(b) Limitation on Individual Surety. Unless the court for good cause otherwise permits, no surety, other than an approved corporate surety, shall enter into a recognizance if there remains any previous undischarged recognizance or bail that was undertaken by that surety.

(c) Real Estate in Other Counties. Real estate owned by a surety located in a county other than the one in which the bail is taken may be accepted, in which case the municipal court

administrator of the court in which the bail is taken shall certify and transmit a copy of the recognizance to the clerk of the county in which the real estate is situated, and it shall be there recorded in the same manner as if taken in that county.

(d) Record of Recognizance. In municipal court proceedings, the record of the recognizance shall be entered by the municipal court administrator or designee in the manner required by the Administrative Director of the Courts to be maintained for that purpose.

(e) Record of Discharge; Forfeiture. When any recognizance shall be discharged by court order on proof of compliance with the conditions thereof or by reason of the judgment in any matter, the municipal court administrator or deputy court administrator shall enter the word "discharged" and the date of discharge at the end of the record of such recognizance. When any recognizance is forfeited, the municipal court administrator or deputy court administrator shall enter the word "forfeited" and the date of forfeiture at the end of the record of such recognizance and shall give notice of such forfeiture by ordinary mail to the municipal attorney, the defendant and any surety or insurer, bail agent or agency whose names appear in the bail recognizance. Notice to any insurer, bail agent or agency shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. When real estate of the surety located in a county other than the one in which the bail was taken is affected, the municipal court administrator or deputy court administrator in which such recognizance is given shall immediately send notice of the discharge or forfeiture and the date thereof to the clerk of the county where such real estate is situated, who shall make the appropriate entry at the end of the record of such recognizance.

(f) Cash Deposit. When a person other than the defendant deposits cash in lieu of bond, the person making the deposit shall file an affidavit or certification explaining the lawful ownership thereof, and on discharge, such cash shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

(g) Ten Percent Cash Bail. Unless otherwise specified in the order setting the bail, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the amount of bail fixed together with defendant's executed recognizance for the remaining ninety percent. No surety shall be required, unless specifically ordered by the court. If a ten percent bail is made by cash owned by one other than the defendant, the owner shall charge no fee for the cash deposited, other than lawful interest, and shall submit an affidavit or certification with the deposit detailing the rate of interest, confirming that no other fee is being charged, and listing the names of any other persons for whom the owner has deposited bail. A person making the ten percent deposit who is not the owner, shall file an affidavit or certification identifying the lawful owner of the cash, and, on discharge, the cash deposit shall be returned to the owner named in the affidavit or certification, unless otherwise ordered by the court.

Note: Source - R. (1969) 7:5-1, 3:26-4. Adopted October 6, 1997 to be effective February 1, 1998; subsection (e) amended December 8, 1998 to be effective January 15, 1999; caption amended, and paragraphs (e), (f), and (g) amended July 28, 2004 to be effective September 1, 2004; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017.

7:4-9. Changes in Conditions of Release for Defendants Charged on an Initial Complaint-Warrant (CDR-2)

(a) Monetary Bail Reductions. If a defendant is unable to post monetary bail, the defendant shall have the monetary bail reviewed promptly and may file an application with the court seeking a monetary bail reduction which shall be heard in an expedited manner by a court with jurisdiction over the matter.

(b) Review of Conditions of Release. For defendants charged on an initial Complaint-Warrant (CDR-2) and released pretrial, a judge with jurisdiction over the matter may review the conditions of release on his or her own motion, or upon motion by the prosecutor or the defendant, alleging that there has been a material change in circumstance that necessitates a change in conditions. Upon a finding that there has been a material change in circumstance that necessitates a change in conditions, the judge may set new conditions of release.

(c) Violations of Conditions of Release. A judge may impose new conditions of release, including monetary bail, when a defendant charged and released on an initial Complaint-Warrant (CDR-2) violates a restraining order or condition of release. These conditions should be the least restrictive condition or combination of conditions that the court determines will reasonably assure the eligible defendant's appearance in court when required, protect the safety of any other person or the community, or reasonably assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

(d) Motions for Pretrial Detention. All prosecutor motions for pretrial detention must be made in Superior Court, in accordance with Rule 3:4A.

Note: Adopted August 30, 2016 to be effective January 1, 2017.

7:8-9. Procedures on Failure to Appear

(a) Warrant or Notice.

(1) Non-Parking Motor Vehicle Cases. If a defendant in any non-parking case before the court fails to appear or answer a complaint, the court may either issue a bench warrant for the defendant's arrest in accordance with R. 7:2-2(c) or issue and mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. If a failure to appear notice is mailed to the defendant and the defendant fails to comply with its provisions, a bench warrant may be issued in accordance with R. 7:2-2(c).

(2) Parking Cases. [In all parking cases an arrest warrant shall only be issued if a defendant has failed to respond to two or more pending parking tickets within the jurisdiction.] If a defendant in any parking case before the court fails to appear or answer a complaint, the court shall mail a failure to appear notice to the defendant on a form approved by the Administrative Director of the Courts. Where a defendant has not appeared or otherwise responded to failure to appear notices associated with two or more pending parking tickets within the court's jurisdiction, the court may issue a bench warrant in accordance with R. 7:2-2(c). Such a [A] bench warrant shall not issue when the pending tickets have been issued on the same day or otherwise within the same 24-hour period.

(b) Driving Privileges; Report to Motor Vehicle Commission.

(1) Non-Parking Motor Vehicle Cases. If the court has not issued [an arrest] a bench warrant upon the failure of the defendant to comply with the court's failure to appear notice, the court shall report the failure to appear or answer to the Chief Administrator of the Motor Vehicle

Commission on a form approved by the Administrative Director of the Courts within 30 days of the defendant's failure to appear or answer. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule. If the court elects, however, to issue [an arrest] a bench warrant, it may simultaneously report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. If the court does not simultaneously notify the Motor Vehicle Commission and the warrant has not been executed within 30 days, the court shall report the failure to appear or answer to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. Upon the notification to the Motor Vehicle Commission, the court shall then mark the case as closed on its records subject to being reopened pursuant to subparagraph (e) of this rule.

(2) All Other Cases. In all other cases, whether or not [an arrest] a bench warrant is issued, the court may order the suspension of the defendant's driving privileges or of defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

(c) Unexecuted [Arrest] Bench Warrant. If a bench [an arrest] warrant is not executed, it shall remain open and active until the court either recalls, withdraws or discharges it. If bail has been posted after the issuance of the [arrest] bench warrant and the defendant fails to appear or answer, the court may declare a forfeiture of the bail, report a motor vehicle bail forfeiture to the Motor Vehicle Commission and mark the case as closed on its records subject to being reopened

pursuant to subparagraph (e) of this rule. The court may set aside any bail forfeiture in the interest of justice.

(d) Parking Cases; Unserved Notice. In parking cases, no [arrest] bench warrant may be issued if the initial failure to appear notice is returned to the court by the Postal Service marked to indicate that the defendant cannot be located. The court then may order a suspension of the registration of the motor vehicle or of the defendant's driving privileges or defendant's nonresident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of. The court shall forward the order to suspend to the Motor Vehicle Commission on a form approved by the Administrative Director of the Courts. The court shall then mark the case as closed on its records, subject to being reopened pursuant to subparagraph (e) of this rule.

(e) Reopening. A case marked closed shall be reopened upon the request of the defendant, the prosecuting attorney or on the court's own motion.

(f) Dismissal of Parking Tickets. In any parking case, if the municipal court fails, within three years of the date of the violation, to either issue a bench warrant for the defendant's arrest or to order a suspension of the registration of the vehicle or the defendant's driving privileges or the defendant's non-resident reciprocity privileges or prohibit the person from receiving or obtaining driving privileges, the matter shall be dismissed and shall not be reopened.

Note: Source – Paragraphs (a), (b), (c), (d), (e): R. (1969) 7:6-3; paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (a) text deleted, and new paragraphs (a)(1) and (a)(2) adopted July 28, 2004 to be effective September 1, 2004; paragraph (b) caption amended, paragraphs (b)(1), (c), (d) and (f) amended July 16, 2009 to be effective September 1, 2009; paragraphs (a)(1), (a) (2), (b)(1), (b)(2) amended, paragraph (c) caption and text amended, and paragraphs (d) and (f) amended August 30, 2016 to be effective January 1, 2017.

7:8-11. Limitations on Pretrial Incarceration

(a) Defendants Subject to Limitations on Pretrial Incarceration. This rule applies to a defendant for whom a Complaint-Warrant (CDR-2) has been issued and who: (1) has been charged with any offense involving domestic violence and is detained pursuant to R. 3:4A, or (2) is detained in jail due to an inability to post monetary bail on the initial offense charged on a Complaint-Warrant (CDR-2). This rule only applies to a defendant who is arrested on or after January 1, 2017, regardless of when the offense giving rise to the arrest was allegedly committed.

(b) Limitation on Pretrial Incarceration. A defendant as described in subsection (a) above may not be incarcerated for a time period longer than the maximum period of incarceration for which the defendant could be sentenced for the initial offense charged on the Complaint-Warrant (CDR-2).

(c) Time Period of Pretrial Incarceration. This time period of incarceration starts on the day the defendant was initially taken into custody.

(d) Release. If a defendant is detained pursuant to subsection (a) of this rule and the maximum period of incarceration is reached pursuant to subsection (b) of this rule, the court shall establish conditions of pretrial release pursuant to R. 3:26 and release the defendant. For matters in which the defendant was issued a Complaint-Warrant (CDR-2), was charged with any offense involving domestic violence, and was detained pursuant to R. 3:4A, a judge of the Superior Court shall conduct a release hearing and make the release decision. In matters in which the defendant has been issued a Complaint-Warrant (CDR-2) and detained in jail due to an inability

to post monetary bail on the initial offense charged, a judge with authority to modify the conditions of release shall make the release decision.

Note: Adopted August 30, 2016 to be effective January 1, 2017.

7:9-1. Sentence

(a) Imposition of Sentence; Bail; Conditions of Release. If the defendant has been convicted of or pleaded guilty to a non-indictable offense, sentence shall be imposed immediately, unless the court postpones sentencing in order to obtain a presentence report or for other good cause. Pending sentence, the court may commit the defendant, or establish, continue, or modify monetary bail, or continue or modify conditions of release as appropriate. [or continue or modify the bail.] Before imposing sentence the court shall afford the defendant and defense counsel an opportunity to make a statement on defendant's behalf and to present any information in mitigation of punishment. Where a sentence has been opened and vacated, the defendant shall be resentenced immediately, except where a new trial is granted.

(b) Statement of Reasons – Criminal Code Cases. In disorderly and petty disorderly cases and indictable fourth degree cases within the jurisdiction of the municipal court, at the time sentence is imposed the court shall state its reasons for imposing the sentence, including its findings respecting the criteria prescribed by N.J.S.A. 2C:44-1 to 2C:44-3 for withholding or imposing imprisonment, fines or restitution and pursuant to N.J.S.A. 2C:51-2 for ordering or denying forfeiture of public office, position, or employment. The court shall also state its factual basis for its finding of particular aggravating or mitigating factors affecting sentence.

(c) Statement of Reasons – Non-Criminal Code Cases. In non-criminal code cases involving a consequence of magnitude, at the time the sentence is imposed the court shall state its reasons for imposing sentence, including the findings for withholding or imposing imprisonment, driver's license suspension, fines, or restitution.

(d) Probation. The court, at the time of sentencing, shall inform a defendant sentenced to probation of the penalties that may be imposed upon revocation of probation for failure to adhere to the conditions of probation.

(e) Probation and Suspended Sentence. After conviction, unless otherwise provided by law, the court may suspend the imposition of a sentence or place the defendant on probation. The order shall require the defendant to comply with standard conditions of probation adopted by the court and filed with the municipal court administrator, as well as such special conditions, including a term of imprisonment pursuant to N.J.S.A. 2C:45-1(c), as the court imposes. As a condition of probation the court may also impose a term of community-related service to be performed by the defendant under such terms and conditions as the court may determine. A copy of the order, together with the standard and special conditions, shall be furnished to the defendant and read and explained to the defendant by the probation officer. The defendant and the probation officer shall sign a joint statement, to be filed with the municipal court administrator, as to the officer's compliance with the reading and explanation requirements of this rule. If the defendant refuses to sign the statement, the defendant shall be resentenced. At any time before termination of the period of suspension or probation, the court may revoke a suspension or probation pursuant to N.J.S.A. 2C:45-3.

Note: Source-Paragraph (a): R. (1969) 7:4-6(a); paragraph (b): R. (1969) 7:4-6(c); paragraph (c): R. (1969) 3:21-4(c); paragraph (d): R. (1969) 7:4-6(e) and R. (1969) 3:21-7. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) caption and text amended, new paragraph (c) adopted, former paragraphs (c) and (d) redesignated as paragraphs (d) and (e) July 21, 2011 to be effective September 1, 2011; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017.