NOTICE TO THE BAR

SEPTEMBER 6, 2017 JUDICIAL CONFERENCE ON PROPOSED AMENDMENT TO EVIDENCE RULE 1001 (DEFINITIONS); AND PROPOSED NEW COURT RULES 3:28:1 THROUGH 3:28-10 (PRETRIAL INTERVENTION)

Pursuant to N.J.S.A. 2A:84A-34 and N.J.S.A. 2C:43-15, the Judiciary is convening a Judicial Conference on Wednesday, September 6, 2017, to discuss proposed amendments to the Rules of Evidence, as recommended by the Committee on the Rules of Evidence, and to Part III of the Rules of Court related to Pretrial Intervention (PTI), as recommended by the Criminal Practice Committee. The specific proposals that will be considered at this session will be:

(1) Amendments to New Jersey Rule of Evidence 1001 (Definitions); and
(2) Proposed new Court Rules 3:28-1 through 3:28-10 (Pretrial Intervention Program).

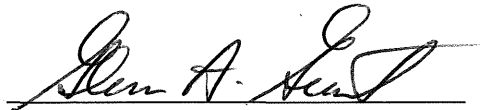
The proposed amended and new rules, along with summaries thereof, are appended to this Notice.

Note that the amendments to N.J.R.E. 603 (Oath or Affirmation), N.J.R.E. 604, (Interpreters), and N.J.R.E. 803(a)(1)(B) (Prior Statements of Witnesses), also proposed by the Evidence Rules Committee, which amendments would create a non-religious uniform affirmation, are not being presented at the Judicial Conference. The Supreme Court considered but did not act on those proposed amendments.

The September 6, 2017 Judicial Conference session will be held at the New Jersey Law Center, One Constitution Square, off Ryders Lane in New Brunswick and will begin at 5:00 p.m. Anyone who wishes to speak at this session should notify the Acting Administrative Director of the Courts by Tuesday, August 29, 2017, at the address set forth below. The request to speak must identify the individual who seeks to speak and whether the speaker will be representing an organization. Please note that the limit on each speaker's presentation is five minutes. The address to mail such request is:

Hon. Glenn A. Grant, Acting Administrative Director
Attention: Judicial Conference 2017
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Requests to speak at the Judicial Conference also may be made by e-mail to the following address: Comments.mailbox@judiciary.state.nj.us.



Glenn A. Grant, J.A.D.
Acting Administrative Director
of the Courts

Dated: August 16, 2017

Proposed Revised Rule of Evidence 1001

Summary of Proposed Amendments to N.J.R.E. 1001

The proposed amendment to N.J.R.E. 1001 clarifies that the "original" of an electronic document is a printout or other output readable by sight. The text of the current rule would allow an existing duplicate to be scanned into a computer, thereby becoming an original. Additionally, the current text gave rise to the perception that the only "original" of an electronically created document is the hard disk itself. The proposed rule includes amendments to subsection (c) "original," and subsection (d) "duplicate." Proposed subsection (c) broadens the definition of the term "original" to include a printout or "other output readable by sight" of electronically created documents. Proposed subsection (d) clarifies that a "duplicate" is a counterpart other than an "original." Thus, a single document could not constitute both an original and a duplicate.

1001. DEFINITIONS

For purposes of this article the following definitions are applicable:

(a) ... No change

(b) ... No change

(c) Original. An "original" of a writing is the writing itself or any counterpart intended by the person or persons executing or issuing it to have the same effect. An "original" of a photograph includes the negative or any print therefrom. [If data are stored by means of a computer or similar device] With respect to electronically created documents, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(d) Duplicate. A "duplicate" is a counterpart, other than an original, produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and reductions, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.

Proposed New Court Rules 3:28-1 through 3:28-10

Summary of Proposed PTI Rules

Attached are proposed new court rules governing the Pretrial Intervention (PTI) Program. The proposed rules are designed to realign the PTI program to its original purpose to divert from prosecution first time offenders who would benefit from its rehabilitative components. Part of the proposal involves shifting the initial approval and screening process to the prosecutor to make a preliminary decision in certain cases where a defendant is unlikely to be admitted into the PTI program. The proposal will create two categories of PTI applicants, those who must obtain prosecutor consent to the application, and those who need not. The proposal also precludes applications from those defendants who have traditionally been excluded from the program based upon their prior criminal history. The proposed rules include amendments to N.J.S.A. 2C:43-12, effective August 10, 2015, addressing the requirement to enter a guilty plea for admission into the PTI program and the presumptions against admission for certain offenses. The current postponement period and timeframe to review and dispose of a PTI matter at the conclusion of postponement remain intact. As with current practice, the proposed court rules set forth the avenues for a defendant to appeal from an unfavorable ruling.

Relevant provisions from R. 3:28 and the PTI Guidelines have been incorporated into the rule proposals. The proposal, thus, recommends deletion of current R. 3:28, as well as, the PTI Guidelines and Official Comments. The full text of the PTI Guidelines and Official Comments have not been included. Upon the adoption of R. 3:28-1 through R. 3:28-10, the Guidelines and Official Comments will be deleted.

RULE 3:28. PRETRIAL INTERVENTION PROGRAMS

[3:28. Pretrial Intervention Programs]

[(a) Each Assignment Judge shall designate a judge or judges to act on all matters pertaining to pretrial intervention programs in the vicinage in accordance with N.J.S.A. 2C:43-12 and -13.

(b) Where a defendant charged with a penal or criminal offense has been accepted by the program, the designated judge may, on the recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed thirty-six months.

(c) At the conclusion of the period set forth in paragraph (b) or earlier upon motion of the criminal division manager, the designated judge shall make one of the following dispositions:

(1) On recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "matter adjusted-complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, further postpone all proceedings against such defendant on such charges for an additional period of time as long as the aggregate of postponement periods under the rule does not exceed thirty-six months; or

(3) On the written recommendation of the criminal division manager or the prosecutor or on the court's own motion order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the criminal division manager or the prosecutor, such person shall, before submitting such recommendation to the designated judge, provide the defendant or defendant's attorney with a copy of such recommendation, shall

advise the defendant of the opportunity to be heard thereon, and the designated judge shall afford the defendant such a hearing.

(4) During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investigative reports, reports made for a court or prosecuting attorney, or statements made by the defendant to program staff shall be admissible in evidence against such defendant.

(5) No statement or other disclosure regarding the charge or charges against the participant made or disclosed by a participant in pretrial intervention to a person designated to provide supervisory treatment shall be disclosed by such person at any time, to the prosecutor, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant, provided that the criminal division manager shall not be prevented from informing the prosecutor, or the court, on request or otherwise, whether the participant is satisfactorily responding to supervisory treatment.

(d) Where proceedings have been postponed against a defendant for an additional period as provided in paragraph (c) (2), at the conclusion of such period the designated judge may not again postpone proceedings but shall make a disposition in accordance with paragraph (c) (1) or (3). The aggregate of postponement periods under this rule shall in no case exceed thirty-six months.

(e) The Administrative Director of the Courts shall establish and maintain a Pretrial Intervention Registry for the purpose of determining applications, enrollments and the degree of completion thereof by a defendant in a program approved by the Supreme Court in accordance with paragraph (a). The Pretrial Intervention Registry shall contain such information and material as directed by the Supreme Court. No order to expunge or seal records of arrest after dismissal of a complaint, indictment or accusation under paragraph (c) or (d) shall bar the

retention of material and information in the Pretrial Intervention Registry for the purposes of determining a defendant's prior applications to, enrollments in and the degree of completion of a Pretrial Intervention Program or for statistical reports required of the Administrative Director of the Courts, by law or the Supreme Court.

(f) When the criminal division manager and prosecutor reject an application for participation in the pretrial intervention program, there shall be no pretrial review by an appellate court if the rejection is upheld by the designated judge or the Assignment Judge. An order enrolling a defendant into the pretrial intervention program over the prosecutor's objection shall be deemed final for purposes of appeal, as of right, and shall be automatically stayed for fifteen days following its entry and thereafter pending appellate review.

(g) Denial of acceptance pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty.

(h) Application for pretrial intervention shall be made at the earliest possible opportunity, including before indictment, but in any event no later than twenty-eight days after indictment. The criminal division manager shall complete the evaluation and make a recommendation within twenty-five days of the filing of the application. The prosecutor shall complete a review of the application and inform the court and defendant within fourteen days of the receipt of the criminal division manager's recommendation.

An appeal by the defendant shall be made on motion to the Presiding Judge of the Criminal Division or to the judge to whom the case has been assigned within ten days after the rejection and shall be made returnable at the next status conference or at such time as the judge determines will promote an expeditious disposition of the case.

Where application is made pre-indictment, the prosecutor may withhold action on the application until the matter has been presented to the grand jury.]

Note: Adopted October 7, 1970, effective immediately. Paragraphs (a)(b)(c)(d) amended June 29, 1973, to be effective September 10, 1973; caption and paragraphs (a)(b)(c)(d) amended April 1, 1974 effective immediately; paragraph (e) adopted January 10, 1979 to be effective January 15, 1979; paragraphs (a)(b)(c)(d) amended August 28, 1979 to be effective September 1, 1979; paragraphs (f) and (g) adopted October 25, 1982 to be effective December 1, 1982; paragraphs (a) (b) (c) (d) and (f) amended and paragraph (h) added July 13, 1994, to be effective January 1, 1995; paragraph (f) amended June 28, 1996 to be effective September 1, 1996; paragraph (f) amended July 12, 2002 to be effective September 3, 2002; paragraph (c)(4) amended June 15, 2007 to be effective September 1, 2007[.]; deleted with portions of the text reallocated to R. 3:28-2, R. 3:28-3, R. 3:28-5, R. 3:28-6, R. 3:28-7, R. 3:28-8 and R. 3:28-10 to be effective .

3:28-1. Eligibility for Pretrial Intervention [new]

(a) Age. To be eligible to apply for admission into the pretrial intervention program, a person must be:

(1) age 18 or older at the time of the commission of the offense for which an application is made, or

(2) a juvenile at the time of the commission of the offense, who is treated as an adult under R. 5:22-1 or R. 5:22-2.

(b) Residence. Non-residents are eligible to apply for the pretrial intervention program but may be denied enrollment unless they can demonstrate that they can receive effective counseling or supervision.

(c) Persons Ineligible to Apply for Pretrial Intervention.

(1) Prior Diversion. A person who has previously been enrolled in a program of pretrial intervention; previously been placed into supervisory treatment in New Jersey under the conditional discharge statute pursuant to N.J.S.A. 24:21-27 or N.J.S.A. 2C:36A-1, or the conditional dismissal statute, N.J.S.A. 2C:43-13.1, et. seq.; or enrolled in a diversionary program under the laws of any other state or the United States for a felony or indictable offense, shall be ineligible to apply for admission into pretrial intervention.

(2) Non Criminal Matters. A person who is charged with a disorderly persons offense, a petty disorderly persons offense, an ordinance or health code violation or a similar violation shall be ineligible to apply for pretrial intervention.

(3) Prior Convictions. A person who previously has been convicted of (i) any first or second degree offense or its equivalent under the laws of another state or the United States, or (ii) any other indictable offense or its equivalent under the laws of another state or the United

States for which the person was sentenced to a state prison, institution or other state facility shall be ineligible to apply for admission into pretrial intervention.

(d) Persons Ineligible for Pretrial Intervention Without Prosecutor Consent to Consideration of the Application.

The following persons who are not ineligible for pretrial intervention under paragraph (c) shall be ineligible for pretrial intervention without prosecutor consent to consideration of the application:

(1) Certain Crimes. A person who has not previously been convicted of an indictable offense in New Jersey, and who has not previously been convicted of an indictable or felony offense under the laws of another state or the United States, but who is charged with a crime, or crimes, for which there is a presumption of incarceration or a mandatory minimum period of parole ineligibility.

(2) Prior Convictions. A person who has previously been convicted of a third or fourth degree indictable offense in New Jersey, or its equivalent under the laws of another state or of the United States, and who was not sentenced to a term of imprisonment for that prior offense,

(e) Cases Where There is a Presumption Against Admission in Pretrial Intervention.

(1) Public Officer or Employee. There shall be a presumption against admission for a person who was a public officer or employee and who is charged with a crime that involved or touched the public office or employment.

(2) Crime or Offense Involving Domestic Violence. Pursuant to N.J.S.A. 2C:43-12b(2), there shall be a presumption against admission into PTI for a defendant charged with any crime or offense involving domestic violence, as defined in N.J.S.A. 2C:25-19, (a) if the defendant committed the crime or offense while subject to a temporary or permanent restraining

order issued pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., or (b) if the crime or offense charged involved violence or the threat of violence, which means (i) the victim sustained serious or significant bodily injury as defined in N.J.S.A. 2C:11-1, (ii) the actor was armed with and used a deadly weapon or threatened by word or gesture to use a deadly weapon as defined in N.J.S.A. 2C:11-1, or (iii) the actor threatened to inflict serious or significant bodily injury as defined in N.J.S.A. 2C:11-1.

(3) Submission of Statement with the Application. To rebut the presumption against admission set forth in subparagraphs (1) and (2) of this paragraph, applicants shall include with their application for admission a statement of the extraordinary and compelling circumstances that justify consideration of the application notwithstanding the presumption against admission.

Adopted _____ to be effective _____.

3:28-2. Timing of Application [new]

Applications for pretrial intervention shall be made at the earliest possible opportunity, including before indictment, but in any event no later than the Initial Case Disposition Conference, unless good cause is shown or consent by the prosecutor is obtained.

Adopted _____ to be effective _____.

3:28-3. Application Process [new]

(a) Application. Every applicant for pretrial intervention shall complete a form as prescribed by the Administrative Director of the Courts for filing with the Criminal Division.

(b) Procedure for Persons Ineligible for Pretrial Intervention without Prosecutor Consent to Consideration of the Application.

(1) An application that requires prosecutor consent pursuant to R. 3:28-1(d)(1) & (2) shall include a statement of the extraordinary and compelling circumstances that justify consideration of the application notwithstanding the presumption of ineligibility based on the nature of the crime charged and any prior convictions.

(2) Upon filing of an application that requires prosecutor consent, the Criminal Division shall not consider the merits of the application and shall forward the application to the prosecutor's office for consideration. Within 14 days of receipt of the application, the prosecutor shall advise the defendant, the defendant's attorney and the Criminal Division, in writing, of the decision to either consent or refuse to consent to further consideration of the application. The writing shall include a copy of the application, the basis for the prosecutor's decision, and accompanying information, if any, in support of the decision. Only after receipt of the prosecutor's consent to further consideration of the application, the Criminal Division shall consider the application.

(3) In making a determination whether to consent to further consideration of the application, the prosecutor shall give due consideration to the victim's position, if any, and shall not be required to consider any facts, materials, or circumstances other than the information presented in the defendant's application. It shall not be an abuse of discretion for the prosecutor to consider only those additional facts and circumstances which shall include the victim's position if any, on whether the defendant should be admitted into the program, that the

prosecutor deems relevant to a determination whether circumstances justify consideration of the application notwithstanding the presumption of ineligibility based on the nature of the crime charged and any prior convictions.

(c) Defendants Charged with More than One Offense. Defendants charged with more than one offense may be considered for enrollment.

(d) Criminal Division and Prosecutor Review After the Filing of the Application. The criminal division manager shall complete the evaluation and make a recommendation to the prosecutor (1) within twenty-five days of the filing of the application with the Criminal Division or (2) for cases that require prosecutor consent to further consideration of the application pursuant to R. 3:28-1(d), within twenty-five days after receipt of the prosecutor's consent. The prosecutor shall complete a review of the application and inform the court, the defendant and the defendant's attorney of the decision on enrollment within 14 days of the receipt of the criminal division manager's recommendation. Where an application is made pre-indictment, the prosecutor may withhold action on the application until the matter has been presented to the grand jury. In such cases the prosecutor shall inform the criminal division manager, the defendant, and defendant's attorney of the decision on the application and enrollment within 14 days of the return of the indictment.

Adopted to be effective .

3:28-4. Factors to Consider in Assessing Applications [new]

(a) In evaluating a defendant's application for participation in a pretrial intervention program, consideration shall be given to the criteria set forth in N.J.S.A. 2C:43-12(e).

(b) In addition thereto, the following factors shall also be considered together with other relevant circumstances:

(1) The nature of the offense should be considered in reviewing the application. If the crime was (i) part of organized criminal activity; or (ii) part of a continuing criminal business or enterprise; or (iii) deliberately committed with violence or threat of violence against another person; or (iv) a breach of the public trust where admission to a PTI program would deprecate the seriousness of defendant's crime, the defendant's application should generally be rejected.

(2) A defendant's juvenile record, if applicable.

(c) The prosecutor and the court, in formulating their recommendations or decisions regarding an applicant's participation in a supervisory treatment program, shall give due consideration to the victim's position if any, on whether the defendant should be admitted.

Adopted _____ to be effective _____.

3:28-5. Admission into Pretrial Intervention [new]

(a) A Superior Court Judge shall act on all matters pertaining to pretrial intervention programs in the vicinage in accordance with N.J.S.A. 2C:43-12 and -13.

(b) Enrollment in Pretrial Intervention.

(1) In General. Except as set forth in paragraph (b)(2), enrollment in pretrial intervention programs shall not be conditioned upon either informal admission or entry of a plea of guilty. Enrollment of defendants who maintain their innocence is to be permitted unless the defendant's attitude would render pretrial intervention ineffective.

(2) Guilty Plea Required. To be admitted into Pretrial Intervention, a guilty plea must be entered for a defendant who is charged with: (1) a first or second degree crime; (2) any crime if the defendant had previously been convicted of a first or second degree crime; (3) a third or fourth degree crime involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19); or (4) any disorderly persons or petty disorderly persons offense involving domestic violence, as defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) if the defendant committed the offense while subject to a temporary or permanent restraining order issued pursuant to the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.).

(c) A Superior Court judge may, on the recommendation of the criminal division manager, and with the consent of the prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed thirty-six months.

(d) A restitution or community service requirement, or both, may be included as part of an individual's service plan when such a requirement promises to aid the rehabilitation of the offender. Any such requirement and its terms shall be judicially determined at the time of enrollment following recommendation by the criminal division manager and consent by the

prosecutor. Evidence of the restitution condition is not admissible against defendant in any subsequent civil or criminal proceeding. Admission to the program shall not be denied solely on the basis of anticipated inability to meet a restitution requirement.

Adopted _____ to be effective _____.

3:28-6. Appeal of Decision by Criminal Division Manager or Prosecutor [new]

(a) Time to File. A defendant challenging the decision of the criminal division manager not to recommend enrollment, or of a prosecutor refusing to consent to consideration of the defendant's application where required pursuant to R. 3:28-1(d), or of a prosecutor's refusing to consent to the defendant's enrollment into the pretrial intervention program, shall file a motion with the Presiding Judge of the Criminal Division, or the judge to whom the case has been assigned, within ten days after receipt of the rejection and, if prepared, of the Criminal Division Manager's report. The motion shall be made returnable at such time as the judge determines will promote an expeditious disposition of the case.

(b) Standards.

(1) A defendant challenging a prosecutor's decision to refuse to consent to consideration of an application must establish that the prosecutor's decision was a gross and patent abuse of discretion. When considering an appeal, the court shall make an individualized determination, on a case-by-case basis, of whether a prosecutor's decision to refuse to consent to consideration of an application for pretrial intervention was a gross and patent abuse of discretion.

(2) A defendant challenging the criminal division manager's recommendation against enrollment into the pretrial intervention program must establish that the decision was arbitrary and capricious.

(3) A defendant challenging the prosecutor's recommendation against enrollment into the pretrial intervention program must establish that the decision was a patent and gross abuse of discretion.

(c) If the rejection is upheld by the judge, there shall be no pretrial review by an appellate court of a decision of the prosecutor to refuse to consent to consideration of the

application, or of a decision of the criminal division manager, or of the prosecutor to refuse to enroll a defendant into the pretrial intervention program. An order enrolling a defendant into the pretrial intervention program over the prosecutor's objection shall be deemed final for purposes of appeal, as of right, and shall be automatically stayed for fifteen days following its entry and thereafter pending appellate review.

(d) Denial of an application or enrollment pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty.

Adopted _____ to be effective _____.

3:28-7. Conclusion of Period of Pretrial Intervention; Pretrial Intervention Registry [new]

(a) Where a defendant charged with a penal or criminal offense has been accepted by the program, the judge may, on the recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed thirty-six months.

(b) At the conclusion of the period set forth in paragraph (c) or earlier upon motion of the vicinage chief probation officer, the judge shall make one of the following dispositions:

(1) On recommendation of the vicinage chief probation officer and with the consent of the prosecutor and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the vicinage chief probation officer and with the consent of the prosecutor and the defendant, further postpone all proceedings against such defendant on such charges for an additional period of time as long as the aggregate of postponement periods under the rule does not exceed thirty-six months; or

(3) On the written recommendation of the vicinage chief probation officer or the prosecutor or on the court's own motion order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the vicinage chief probation officer or the prosecutor, such person shall, before submitting such recommendation to the judge, provide the defendant and defendant's last known attorney of record with a copy of such recommendation, shall advise the defendant of the opportunity to be heard thereon, and the judge shall afford the defendant such a hearing. A defendant shall also be entitled to a hearing challenging a vicinage chief probation officer's or prosecutor's recommendation for termination from the program and that the prosecution of defendant proceed in the normal course. The

decision of the court shall be appealable by the defendant or the prosecutor as in the case of any interlocutory order.

(c) Where proceedings have been postponed against a defendant for an additional period as provided in paragraph (b)(2), at the conclusion of such period the judge may not again postpone proceedings but shall make a disposition in accordance with paragraph (b)(1) or (3). The aggregate of postponement periods under this rule shall in no case exceed thirty-six months.

(d) The Administrative Director of the Courts shall maintain a record in Promis Gavel of all applications, enrollments and the degree of completion thereof by a defendant in a program approved by the Supreme Court in accordance with R. 3:28-5(a). Promis Gavel shall contain such information and material as directed by the Supreme Court.

Adopted _____ to be effective _____.

3:28-8. Confidentiality of Pretrial Intervention Process and Records [new]

(a) During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investigative reports, reports made for a court or prosecuting attorney, or statements made by the defendant to program staff shall be admissible in evidence against such defendant.

(b) No statement or other disclosure regarding the charge or charges against the participant made or disclosed by a participant in pretrial intervention to a person designated to provide supervisory treatment shall be disclosed by such person at any time, to the prosecutor, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant, provided that the vicinage chief probation officer shall not be prevented from informing the prosecutor, or the court, on request or otherwise, whether the participant is satisfactorily responding to supervisory treatment.

(c) No order to expunge or seal records of arrest after dismissal of a complaint, indictment or accusation shall bar the retention of material and information in Promis Gavel for the purposes of determining a defendant's prior applications to, enrollments in, and the degree of completion of a Pretrial Intervention Program or for statistical reports required of the Administrative Director of the Courts, by law or the Supreme Court.

Adopted _____ to be effective _____.

3:28-9. Written Reasons and Decisions [new]

(a) The decisions and reasons made by the prosecutor and criminal division manager in recommending or denying a defendant's application for enrollment into the pretrial intervention program in all cases shall be reduced to writing and disclosed to the defendant and defendant's attorney. The decision of the judge to grant or deny the application shall be written or placed on the record pursuant to R. 1:7-4 and accompanied by an order.

(b) The decisions and reasons made by the prosecutor and vicinage chief probation officer in recommending termination from the pretrial intervention program or dismissal of charges in all cases shall be reduced to writing and disclosed to the defendant and defendant's last known attorney of record. The decision of the judge to order termination or dismissal of the charges shall be written or placed on the record pursuant to R. 1:7-4 and accompanied by an order.

Adopted _____ to be effective _____.

3:28-10. Pretrial Intervention Program Director [new]

For purposes of R. 3:28-1 et seq. and N.J.S.A. 2C:43-12 the criminal division manager shall be considered the program director for purposes of making recommendations on applications for enrollment into pretrial intervention. For purposes of R. 3:28-1 et seq. and N.J.S.A. 2C:43-12 the vicinage chief probation officer shall be considered the program director for purposes of recommending: (1) dismissal of the complaint, indictment or accusation against the defendant, (2) further postponement of all proceedings for additional time, or (3) termination of the defendant from the program and having the prosecution of the defendant proceed in the ordinary course. The criminal division manager and vicinage chief probation officer shall have the authority to delegate their ability under R. 3:28-1 et seq. to make recommendations to another person or persons.

Adopted _____ to be effective _____.

GUIDELINES FOR THE OPERATION OF PRETRIAL INTERVENTION PROGRAMS (Pursuant to Rule 3:28)

The Guidelines including the Official Comments are proposed for deletion upon the adoption of the proposed new Court Rules on Pretrial Intervention.

Guidelines 2, 3, 6 and 8 and Comments to Guidelines 2, 3, 5 and 6 amended July 13, 1994 to be effective January 1, 1995; Guidelines 3(g) and (h) and Comments to Guidelines 3(g) and (h) amended June 28, 1996 to be effective September 1, 1996; Guideline 3(a) amended July 19, 2012 to be effective September 4, 2012; Comment to Guideline 6 amended August 1, 2016 to be effective September 1, 2016; caption amended, Guideline 3(d) Comment amended, Guideline 3(i) text and Comment amended, Guideline 3(l) text and Comment adopted, Guideline 4 text designated as paragraph (a) and paragraph caption added and new paragraph (b) caption and text adopted, and Comment to Guideline 4 amended July 28, 2017 to be effective September 1, 2017; Guidelines and Official Comments deleted with portions of the text reallocated to R. 3:28-1 through R. 3:38-10 to be effective .