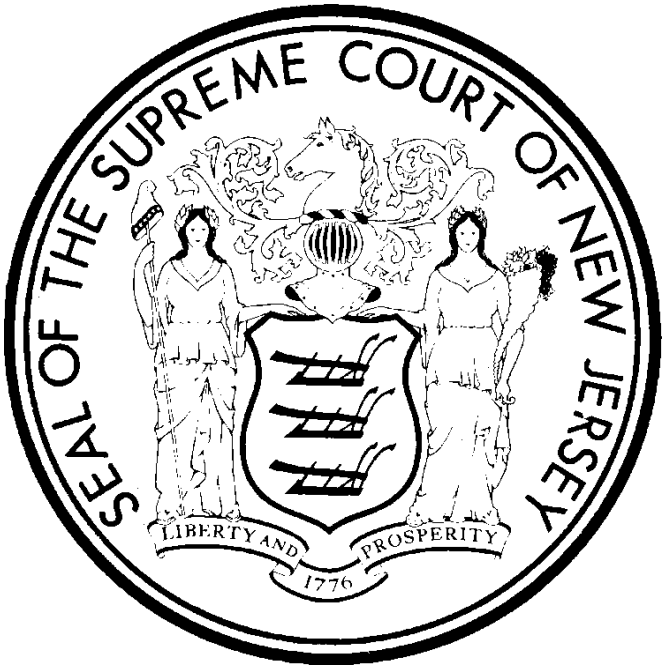
REPORT OF THE SUPREME COURT COMMITTEE ON CRIMINAL PRACTICE



2023-2025 RULES CYCLE

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I. Introduction

The Criminal Practice Committee recommends amendments to primarily the Part III Rules Governing Criminal Practice, and additionally to the Part I Rules of General Application. The Report also contains issues considered by the Committee during the term in which the Committee concluded no rule change was appropriate. Finally, the Committee reports on issues it is continuing to examine in 2025.

Where rule changes are proposed, deleted text is bracketed **[as such]**, and added text is underlined **as such**. No change to a paragraph of the rule is indicated by "**. . . no change**."

II. New Rule and Rule Amendments Recommended for Adoption

A. Referrals in State v. Watson, 254 N.J. 558 (2023)

The Criminal Practice Committee is proposing amendments and a new rule in response to the Supreme Court's referrals in State v. Watson, 254 N.J. 558 (2023). There were two separate referrals included the Court's decision: (1) to consider amendments to the court rules, including Rules 3:11 and 3:13-3(b)(I)(J) regarding first-time in-court identifications, and (2) to establish procedures in the court rules for the admission of video narration testimony.

1. First-Time In-Court Identifications

In considering the Court's referral regarding the admission of first-time in-court identifications, the Committee examined the circumstances in Watson. An individual robbed a bank and surveillance cameras captured the entire incident. Id. at 570. Nine months later, defendant Quintin Watson's ex-girlfriend "Joan" read a newspaper article with an accompanying photo of a man wanted in connection with a different bank robbery and recognized him as Quintin Watson. After she spoke with police, Watson was eventually charged in several robberies, including the one at issue in this case. Id. at 570-571. Twenty months after the robbery, a detective showed the bank teller six photos, one at a time, and asked the teller if he could identify the person who robbed the bank. Id. at 571. The teller picked a photo of someone other than Watson. The next month, the Prosecutor's Office showed Joan a single photo taken from

surveillance and she said she was 100 percent sure it depicted Watson. Id. At trial, twenty-two months after the robbery, the prosecutor, without advance notice, asked the teller to identify the robber in court. Id. at 572. The teller identified Watson and said he was "maybe like . . . 80 percent" sure. Id. at 572. During cross-examination, the teller indicated that the prosecutor informed him "what was going to happen," and informed him that the individual who was accused of committing this robbery was in court seated at the defense table. Id. Joan also testified at trial and after being shown still photos from the bank surveillance she testified she was 100 percent positive that each depicted Watson. Id. at 572.

A police sergeant testified that he watched surveillance footage from the bank and a nearby convenience store, and, over defense's objection, he narrated both videos. Id. The prosecutor asked a series of questions while the video was played for the jury, including general inquiries and specific ones. Id. There were several open-ended narrative responses. Id. As part of its final instructions to the jury, the court read from the model jury charge on in-court and out-of-court identifications. Id. Watson was found guilty of a single charge of robbery. Id.

The Court drew on the Supreme Judicial Court of Massachusetts decision in Commonwealth v. Crayton, 21 N.E.3d 157 (Mass. 2014), and held that "to avoid unduly suggestive identifications of defendants in court that may trigger serious due process concerns under the State Constitution . . . first-time in-court identifications can be conducted only when there is 'good reason' for them." Id. at. 587 (quoting Crayton,

21 N.E.3d at 170). The Court stated that "the better practice. . . is for the State to conduct appropriate identification procedures before trial," and "if it does not, there may well be no good reason to allow an in-court identification for the first time." Id. "If a witness fails to make a positive identification at an earlier procedure, the State must show that the proposed, upcoming in-court identification would be more reliable and would 'pose[s] little risk of misidentification despite its suggestiveness.'" Id. (quoting Commonwealth v. Collins, 21 N.E.3d 528, 536-37 (Mass. 2014)). "To ensure fair and orderly proceedings," the Court created the following practices going forward for proposed first-time in-court identifications:

> First, as with suggestive out-of-court identifications, defendants are entitled to advance notice and an opportunity to challenge in-court identification evidence before trial. With that in mind, the State must file a motion *in limine* if it intends to conduct a first-time in-court identification procedure. Although defendants are typically required to file motions to suppress, that approach does not make sense when only the prosecution knows whether it will ask a witness to make an identification in court. See Crayton, 21 N.E.3d at 170. At the hearing, the parties and the court should explore whether good reason exists to conduct a first-time in-court identification.
>
> When a witness has identified the defendant at a pretrial identification procedure, and the State has provided notice consistent with Rules 3:11 and 3:13-3(b)(1)(J), no additional notice is required to conduct an in-court identification, and no hearing is necessarily called for.
>
> Second, just as law enforcement officers are required to make a record of an out-of-court identification under Rule 3:11, prosecutors must disclose in writing anything discussed with a witness during trial preparation that relates to an upcoming in-court identification. For example, if a prosecutor or law enforcement officer tells a witness that the defendant will be in court, or describes where the defendant will be seated, that information must be revealed to the defense. Similarly, if witnesses during trial preparation are shown photos they had previously viewed at prior out-of-court identifications, that must be

> disclosed as well. Cf. Henderson, 208 N.J. at 255-56 (discussing the effect of multiple viewings of a suspect).
>
> Third, if a hearing is needed to determine admissibility, it should be conducted and resolved before the start of trial.
>
> [Watson, 254 N.J. at 588.]

Consistent with these principles, the Committee is proposing a new rule, R. 3:11-2, entitled "First-Time In-Court Identifications." The current rule, R. 3:11 "Out of Court Identifications," should have its enumeration amended to R. 3:11-1.

The Committee discussed the exact timing of the hearing—i.e., whether it should occur prior to the signing of the pretrial memorandum, prior to jury selection, or some other time. Because new evidence can emerge or issues related to this type of evidence can become relevant at any stage prior to the commencement of the trial, the Committee unanimously agreed that the hearing timing should be flexible. Nevertheless, at minimum, the hearing should occur "before the commencement of trial." The Committee also discussed whether the rule should include the "good reasons" language from the Watson opinion. While some members initially supported including this language, the Committee ultimately unanimously decided against including the language to instead focus on procedure. Litigants can and should avail themselves of the guidance in the Watson opinion for a full understanding of the substantive requirements for the hearing and to be aware of further developments in the case law.

The proposed new rule, R. 3:11-2, follows. The Committee is also recommending changing the enumeration of R. 3:11 to R. 3:11-1. However, since there are further substantive changes to Rule 3:11 as part of the Committee's recommendation from the Supreme Court's referral in State v. Washington, the proposed R. 3:11-1 appears further below under that section, on pages 18-19.

R. 3:11-2. First-Time In-Court Identifications

The State may not conduct an in-court identification of a defendant by a witness who has not identified the defendant at a prior out-of-court identification procedure unless, on the State's motion, the court determines at a hearing conducted pursuant to N.J. Evid. R. 104 before the commencement of trial that the identification is admissible. Prior to the hearing, the State shall disclose in writing all communications with the first-time in-court identification witness before or during trial preparation that relate to the proposed first-time in-court identification and, if applicable, produce all records relating to any prior attempted out-of-court identification procedure pursuant to R. 3:11-1 and R. 3:13-3(b)(1)(J).

Note: Adopted _____ to be effective _____.

2. Video Narration Testimony

In considering the Court's referral to consider amending the court rules to include steps for the prosecutor's admission of video narration testimony, the Committee further examined the circumstances in Watson. Regarding that issue, the Court held that "no single rule is a perfect fit for narration evidence by a witness who did not observe events depicted in a video in real time," and that to resolve this issue, the Court would "borrow from key aspects of Rules 701, 602, and 403." Id. at 599. The Committee focused particularly on the principles articulated below:

> First, neither the rules of evidence nor the case law contemplates continuous commentary during a video by an investigator whose knowledge is based only on viewing the recording. To avoid running commentary, counsel must ask focused questions designed to elicit specific, helpful responses. "What do you see?" as an introductory question misses the mark.
>
> Second, investigators can describe what appears on a recording but may not offer opinions about the content. In other words, they can present objective, factual comments, but not subjective interpretations. See Boyd v. Commonwealth, 439 S.W.3d 126, 131 (Ky. 2014); United States v. Begay, 42 F.3d 486, 503 (9th Cir. 1994); see also N.J.R.E. 403….
>
> Third, investigators may not offer their views on factual issues that are reasonably disputed. See id. 472 N.J. Super. at 467-68. Those issues are for the jury to decide. See Higgs, 253 N.J. at 366-67 (cautioning against testimony by a law enforcement officer that "usurp[ed] the jury's assessment of" disputed facts). So a witness cannot testify that a video shows a certain act when the opposing party reasonably contends that it does not. We include a reasonableness requirement to prevent a party from disputing all facts in a recording in a manner that does not reflect good faith.
>
> Fourth, although lay witnesses generally may offer opinion testimony under Rule 701 based on inferences, investigators should not comment on what is depicted in a video based on inferences or deductions, including any drawn

> from other evidence. That type of comment is appropriate only for closing argument. We therefore do not adopt factor four -- "Inferences and Deductions" -- in the Appellate Division's opinion. See Watson, 472 N.J. Super. at 468.
>
> [Watson, 254 N.J. at 603-04.]

The Committee also focused on the language on the steps that should be followed when video narration testimony is sought to be admitted:

> To avoid missteps before the jury, prosecutors must provide a written summary of proposed narration testimony to defense counsel, and vice versa, before trial. Counsel should then confer among themselves to try to narrow areas of disagreement. For items that remain in dispute, the proponent of the evidence should file a motion *in limine* to introduce the narration testimony. See Watson, 472 N.J. Super. at 473. The trial court, in its discretion, may conduct a Rule 104 hearing to resolve any outstanding issues.
>
> [Watson, 254 N.J. at 605.]

Consistent with these principles, the Committee is proposing an amendment to R. 3:9-1(e) and the creation of a new paragraph (g) under R. 3:9-1.

The Committee discussed the timing of the notice and the hearing and unanimously agreed that notice should be given early, but the parties should have flexibility as to when to address the motions to admit such evidence. The Committee recommends that notice shall be given no later than the Pretrial Conference, unless an extension, to no later than thirty (30) days prior to commencement of trial, is permitted by the court for good cause shown. Early notice with a written summation of the anticipated testimony gives the parties sufficient time to confer and possibly agree on the scope of such testimony. If there is no agreement, the proposed rule provides that the motion shall be heard "before the commencement of trial."

The final two sentences of proposed new paragraph (g) reflect the Committee's intention that the new proposed paragraph (g) not be interpreted to change the application of any relevant discovery requirements under Rule 3:13-3 or any relevant rule of evidence.

The proposed rule amendments follow.

R. 3:9-1 Pretrial Procedure

(a) Post-Indictment Procedure … no change.

(b) Arraignment; In Open Court … no change.

(1) … no change.

(2) … no change.

(3) … no change.

(c) Meet and Confer Requirement; Plea Offer … no change.

(d) Disposition Conferences … no change.

(e) Pretrial Hearings. Hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, sound recordings, and motions to suppress shall be held prior to the Pretrial Conference, unless upon request of the movant at the time the motion is filed, the court orders that the motion be reserved for the time of trial. Upon a showing of good cause, hearings as to admissibility of other evidence may also be held pretrial. Hearings relating to the admissibility of narration testimony by a witness who did not observe events depicted in a video in real time shall be conducted in accordance with paragraph (g).

(f) Pretrial Conference … no change.

(g) Hearings relating to narration testimony. Whenever a party intends to introduce narration testimony by a witness who did not observe events depicted in a video in real time, the party shall give notice of the intent to introduce such testimony no later

than the Pretrial Conference, unless an extension, to no later than thirty (30) days prior to commencement of trial, is permitted by the court for good cause shown. The notice shall include a written summary of the proposed narration. The prosecutor and the defense attorney shall confer and attempt to reach agreement relating to the scope of the narration testimony. If no such agreement can be reached, the proponent of such testimony shall file a motion identifying the proffered narration testimony. The dates for briefing, if any, and the date for the hearing on the motion shall be set by the court. The motion shall be decided before commencement of trial. Nothing in this paragraph shall be interpreted to alter any discovery requirements relating to any recording that may be subject to narration, which remains subject to R. 3:13-3. Nothing in this paragraph shall be interpreted to alter the application of any relevant rule of evidence.

Note: Source-R.R. 3:5-1. Paragraph (b) deleted and new paragraph (b) adopted July 7, 1971 to be effective September 13, 1971; paragraph (b); amended July 29, 1977 to be effective September 6, 1977; paragraph (a); amended and paragraph (b) deleted July 21, 1980 to be effective September 8, 1980; paragraph (a); amended July 14, 1992 to be effective September 1, 1992; first three sentences of former paragraph (a); amended and redesignated paragraph (c), last sentence of former paragraph (a); amended and moved to new paragraph (e), new paragraphs (a), (b), (d) and (e) adopted July 13, 1994 to be effective January 1, 1995; paragraph (e); amended July 12, 2002 to be effective September 3, 2002; paragraph (c); amended July 16, 2009 to be effective September 1, 2009; caption, paragraph (a), paragraph (b) caption and text, and paragraph (c); amended December 4, 2012 to be effective January 1, 2013; caption; amended, paragraph (a) caption and text; amended, former paragraph (b); amended and redesignated as paragraph (c), former paragraph (c) caption and text; amended and redesignated as paragraph (b), paragraph (d); amended, new paragraph (e) added, and former paragraph (e); amended and redesignated as paragraph (f) April 12, 2016 to be effective May 20, 2016; paragraphs (b) and (c); amended, former paragraph (d); amended and redesignated as paragraph (e), former paragraph (e) caption and text; amended and redesignated as paragraph (d), and paragraph (f); amended August 1, 2016 to be effective September 1, 2016; amended August 21, 2017 to be effective

August 21, 2017; paragraph (a); amended July 30, 2021 to be effective September 1, 2021; paragraph (e); amended ____ to be effective ____; new paragraph (g) created ___ to be effective ____.

B. Referral in State v. Washington, 256 N.J. 136 (2024)

The Criminal Practice Committee is proposing amendments to R. 3:11 and R. 3:13-3 in response to the Supreme Court's referral in State v. Washington, 256 N.J. 136, 144 (2024). The Court requested that R. 3:11 be amended to reflect that when the State conducts an identification procedure during trial preparation with a witness who did not previously make an identification, the procedure should be electronically recorded and provided to defense counsel.

The Committee examined the circumstances in Washington. Defendant Brandon Washington was forcefully removed from a Veterans of Foreign Wars (VFW) lodge after an altercation with the bar manager and a security guard. State v. Washington, 256 N.J. 136, 144 (2024). Seconds later, the front door swung open, and someone from the doorway fired three or four shots inside. Id. An employee and a security guard were struck, and the shooter ran away. Id. Police arrived within minutes. Id. The security guard showed police a photo he had on his cell phone of Washington and another person that he received from another employee. Id. Washington was subsequently charged with attempted murder. Id.

During the initial investigation, several witnesses selected the defendant's picture from a photo array. Id. at 145. Later, during trial preparation, an assistant prosecutor showed several witnesses either the array they had seen before or a single photo of the defendant from Facebook. Id. The witnesses later identified Washington in court; one did so for the first time at trial. Id. Washington was found guilty of passion

provocation manslaughter and his conviction was upheld by the Appellate Division.

The Supreme Court held that the protections in State v. Henderson, 208 N.J. 208 (2011), apply to impermissibly suggestive identification events during pretrial preparation. Washington, 256 N.J. at 161. Specifically, that absent good reason, "witnesses who have made a prior identification should not be shown photos of the defendant during trial preparation." Id. at 142. This includes new photos of the defendant or previously reviewed photos. The Court cautioned that "both practices have the potential to distort a witness's memory of the actual events and undermine the reliability of a later identification." Id. However, "[i]f a party can demonstrate a good reason to show witnesses a photo of the defendant they previously identified, the party must prepare and disclose a written record of what occurred." Id. at 143.

As to witnesses who have not previously identified a suspect, "investigators can conduct an identification procedure during pretrial preparation in accordance with Henderson." Id. "A record of the procedure should be created and disclosed under Rule 3:11." Id. The Court requested that the Committee "revise Rule 3:11 to comport with [these] principles." Id. at 166.

Consistent with the principles articulated in Washington, above, the Committee is proposing amendments to R. 3:11, including the creation of new paragraphs (d)(1) and (d)(2), and the redesignation of current paragraph (d) "Remedy" to paragraph (e). The Committee is also proposing an amendment to R. 3:13-3(b)(1)(J) to include contemporaneous written records relating to an identification procedure. Additionally,

the Committee's recommendation to revise the enumeration of R. 3:11 to R. 3:11-1 from page 7 of this Report is incorporated in this section for purposes of discussing the draft Rule. Hence, R. 3:11 will appear below as R. 3:11-1.

Proposed R. 3:11-1(d)(1) provides that, when an identification procedure is conducted during trial preparation with a witness who did not previously make an identification in the case, it shall be recorded electronically. Proposed R. 3:11-1(d)(2) provides that if a witness who has already made an identification is shown the same or new visual depiction(s) of a defendant during a trial preparation session, a contemporaneous written record of what occurred during that session shall be made.

In discussing the scope of the amendments to R. 3:11-1, the Committee explored whether to distinguish between the procedures for trial preparation sessions for witnesses who previously made an identification and those who did not. Members ultimately agreed to create two separate subparagraphs to distinguish between both scenarios. The Committee also discussed whether to include the "good reason" language from the opinion, but ultimately decided not to do so in order to be consistent with the Committee's recommendation on not including that language in the proposed amendments following the State v. Watson referral, above. Instead, the Committee members agreed to focus on the procedural aspects of conducting an identification during trial preparation sessions. The members also agreed that the word "photograph" was too limiting and decided to incorporate language from part (a) of R. 3:11 that referred to a "visual depiction". The members also felt that it was important to include

language referencing "any medium now known or later developed," which captures situations where a witness previously made an identification based on a photograph, and later made the identification based on some other form of media.

A conforming amendment was also made to R. 3:13-3(b)(1)(J) to include "contemporaneous written records" language in order to link the discovery rule to R. 3:11.

The proposed amendments to those rules follow, including the recommendation to amend the enumeration of R. 3:11 to R. 3:11-1, referred to on page 7 of the Report.

Rule [3:11]3:11-1. Record of an Out-of-Court Identification Procedure.

(a) Recordation … no change.

(b) Method of Recording … no change.

(c) Contents … no change.

(1) … no change.

(2) … no change.

(3) … no change.

(4) … no change.

(5) … no change.

(6) … no change.

(7) … no change.

(8) … no change.

(9) … no change.

(10) … no change.

(d) Identification Procedures Conducted During Trial Preparation Sessions.

(1) When an identification procedure is conducted during trial preparation with a witness who did not previously make an identification in the case, the procedure shall be recorded electronically consistent with the requirements of subsections (b) and (c) of this Rule.

(2) When a witness who has already made an identification in the case is shown the same or new visual depiction(s) of a defendant during a trial preparation

session, a contemporaneous written record of what occurred during that session shall be made, the contents of which shall conform to the requirements of subsection (c) of this Rule. The visual depiction may consist of photographs or images fixed in any medium now known or later developed.

(e) [(d)] Remedy … no change.

Note: Adopted July 19, 2012 to be effective September 4, 2012; paragraph (a); amended, paragraph (b) caption and text; amended, and paragraph (c); amended May 26, 2020 to be effective June 8, 2020. New subparagraphs (d)(1), (2) adopted ___ to be effective ___; paragraph (d) redesignated as paragraph (e) ___ to be effective ___.

R. 3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery … no change.

(1) … no change.

(2) … no change.

(b) Post-Indictment Discovery … no change.

(1) Discovery by the Defendant. Except for good cause shown, the prosecutor's discovery for each defendant named in the indictment shall be provided by the prosecutor's office, upon the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied.

If the defendant is represented by the public defender, defendant's attorney shall obtain a copy of the discovery from the prosecutor's office prior to the arraignment. However, if the defendant has retained private counsel, upon written request of counsel

submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the arraignment, the prosecutor shall, within three business days, send the discovery to defense counsel either by U.S. mail at the defendant's cost or by e-mail without charge, with the manner of transmittal at the prosecutor's discretion.

A defendant who does not seek discovery from the State shall so notify the prosecutor, and the defendant need not provide discovery to the State pursuant to sections (b)(2) or (f), except as required by R. 3:12-1 or otherwise required by law.

Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) … no change.

(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) all records, including notes, reports, contemporaneous written records and electronic recordings [including notes, reports and electronic recordings]

relating to an identification procedure, as well as identifications made or attempted to be made; and

(K) … no change.

(2) Discovery by the State … no change.

(A) … no change.

(B) … no change.

(C) … no change.

(D) … no change.

(E) … no change.

(3) Discovery Provided through Electronic Means … no change.

(c) Motions for Discovery … no change.

(d) Documents Not Subject to Discovery … no change.

(e) Protective Orders … no change.

(1) Grounds … no change.

(2) Procedure … no change.

(f) Continuing Duty to Disclose; Failure to Comply … no change.

Note: Source--R.R. 3:5-11(a) (b) (c) (d) (e) (f) (g) (h). Paragraphs (b) (c) (f) and (h) deleted; paragraph (a) amended and paragraphs (d) (e) (g) and (i) amended and redesignated June 29, 1973 to be effective September 10, 1973. Paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraph (a) amended July 15, 1982 to be effective September 13, 1982; paragraphs (a) and (b) amended July 22, 1983, to be effective September 12, 1983; new paragraphs (a) and (b) added, former paragraphs (a), (b), (c), (d) and (f) amended and redesignated paragraphs (c), (d), (e), (f) and (g) respectively and former paragraph (e) deleted July 13, 1994 to be effective January 1, 1995; rule redesignation of July 13, 1994 eliminated December 9, 1994, to be effective

January 1, 1995; paragraphs (c)(6) and (d)(3) amended June 15, 2007 to be effective September 1, 2007; subparagraph (f)(1) amended July 21, 2011 to be effective September 1, 2011; new subparagraph (c)(10) adopted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended, paragraph (b) text deleted, paragraph (c) amended and renumbered as paragraph (b)(1), paragraph (d) amended and renumbered as paragraph (b)(2), new paragraphs (b)(3) and (c) adopted, paragraphs (e) and (f) renumbered as paragraphs (d) and (e), paragraph (g) amended and renumbered as paragraph (f) December 4, 2012 to be effective January 1, 2013; paragraph (b)(1)(I) amended July 27, 2015 to be effective September 1, 2015; paragraph (b) amended April 12, 2016 to be effective May 20, 2016; paragraph (c) amended August 1, 2016 to be effective September 1, 2016; subparagraph (b)(1) amended July 30, 2021 to be effective September 1, 2021; new subparagraph (b)(1)(K) adopted August 5, 2022 to be effective September 1, 2022; subparagraph (b)(1)(J) amended ___ to be effective ___ .

C. Rule Amendments Resulting from Supreme Court Rule Relaxation Orders

1. Inclusion of New Motor Vehicle Theft and Pretrial Contempt Charges in R. 3:3-1(f) ("Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant (CDR-2) is Presumed")

On February 27, 2024, the Supreme Court issued a Rule Relaxation Order providing that for certain auto theft charges, including theft of a motor vehicle and receiving a stolen motor vehicle, and for a charge of contempt under N.J.S.A. 2C:29-9(a) for a violation of a pretrial release condition of no contact with the victim, or a condition of home detention or electronic monitoring ordered pursuant to N.J.S.A. 2A:162-17 *et seq.*, there shall be a presumption that a complaint-warrant (rather than a complaint-summons) shall issue upon a finding of probable cause. This action implemented two unanimous recommendations contained in the June 7, 2023, Report of the Reconvened Joint Committee on Criminal Justice (JCCJ), which in part addressed public safety concerns, supported by statistical analysis, related to auto thefts and the high rate of repeat offenses by defendants charged with such offenses.

The Report also noted that deriving statistical data was initially a challenge because, prior to July 7, 2023, while the Report was being drafted, theft of a motor vehicle fell within a broad band of theft offenses that included theft of non-motor vehicle moveable property or theft of other means of conveyance other than a motor vehicle. See pages 59-60 of the Reconvened JCCJ Report. Thus, a person charged with

theft of a motor vehicle and another person charged with theft of an expensive item in a similar dollar amount, such as jewelry, a smartphone, or television, etc., may have been charged under the same statute, such as N.J.S.A. 2C:20-3 (Theft of Moveable Property). However, on July 7, 2023, Governor Murphy signed A4931 into law as L. 2023, c. 101. This law updated the criminal charging statutes to include specific motor vehicle theft charges under N.J.S.A. 2C:20-10.1 (theft of a motor vehicle) and N.J.S.A. 2C:20-10.2 (receiving a stolen motor vehicle).

The Supreme Court's Rule Relaxation Order, issued on February 26, 2024, included reference to these specific charges, and relaxed and supplemented Rule 3:3-1(f) ("Issuance of a Complaint-Warrant (CDR-2) or a Complaint Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant is Presumed") and Rule 7:2-2 ("Issuance of a Complaint-Warrant (CDR-2) or Summons") as follows:

a. Rule 3:3-l(f) shall include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed (a) theft of a motor vehicle (N.J.S.A. 2C:20-10.1) or (b) receiving a stolen motor vehicle (N.J.S.A. 2C:20-10.2); and

b. Rules 3:3-l(f) and 7:2-2 shall include a presumption that a complaint-warrant shall issue upon a finding of probable cause to believe that the defendant committed contempt (N.J.S.A. 2C:29-9(a)) involving (a) a violation of a condition of pretrial release to avoid contact with an

alleged victim or (b) a violation of a condition of home detention with or without the use of an approved electronic monitoring device ordered pursuant to N.J.S.A. 2A:162-17;

c. The Rule 7:2-2 presumption that a complaint-warrant shall issue may be overcome using the factors and analysis set forth in Rule 3:3-1(g) ("Grounds for Overcoming the Presumption of Issuance of a Complaint-warrant [CDR-2]").

Per the Order, those provisions are to stay in effect pending adoption of conforming rule amendments. The Committee discussed the above conforming amendments and unanimously agreed to incorporate charges involving the newly recodified motor vehicle theft and receiving a stolen motor vehicle offenses and the charge of pretrial contempt into subparagraph (f) of R. 3:3-1.

Since the Committee is recommending including additional charges in R. 3:3-1(e) and (f)—specifically, as discussed below, new charges related to home invasion burglary and residential burglary—the proposed rules appear on pages 30-33 of this Report to reflect all recommended amendments.

2. Recommendation to Include New Charges of Home Invasion Burglary in R. 3:3-1(e) ("Offenses Where Issuance of a Complaint-Warrant (CDR-2) Is Required") and Residential Burglary in R. 3:3-1(f) ("Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1); Offenses Where Issuance of a Complaint-Warrant (CDR-2) is

Presumed")

On October 18, 2024, Governor Murphy signed S3006 into law as L. 2024, c. 83. The new law took immediate effect. The law created two new statutes: home invasion burglary (N.J.S.A. 2C:18-2.1) and residential burglary (N.J.S.A. 2C:18-2.2). Prior to the new law, all burglaries that are chargeable under these new statutes were charged under the previously more generic burglary statute (N.J.S.A. 2C:18-2). Additionally, all burglary charges under N.J.S.A. 2C:18-2 were treated as presumed warrants under R. 3:3-1(f). The new home invasion burglary and residential burglary charges, now under different statute numbers, were effectively removed from this paragraph and by default became presumed summonses under R. 3:3-1(c) (Offenses Where Issuance of a Complaint-Summons (CDR-1) is Presumed).

On November 19, 2024, the Supreme Court issued a Rule Relaxation Order, promulgated as part of Administrative Directive #13-24, to treat these charges as presumed warrants pending development and adoption of appropriate rule amendments to be proposed by the Criminal Practice Committee.

The Committee considered the new law, the Court's Rule Relaxation Order, and Administrative Directive #13-24 in developing its recommendation. At first the Committee considered adding both home invasion burglary and residential burglary to the presumed warrant rule R. 3:3-1(f), consistent with the temporary Rule Relaxation.

The Committee unanimously agreed that residential burglary be placed in R. 3:3-1(f) as it is conceptually similar to its previous incarnation under N.J.S.A. 2C:18-

2 burglary, with only minor exceptions.

However, the Committee further considered the nature of the new home invasion burglary offense and recommends adding it to R. 3:3-1(e) ("Offenses Where Issuance of a Complaint-Warrant (CDR-2) Is Required"). Specifically, the Committee believes that the language of the new home invasion burglary statute signals an intent to treat this crime more seriously than when it was originally chargeable under the more generic burglary statute. Under the prior burglary statute, N.J.S.A. 2C:18-2, a violation involving entering a structure with the intent to commit an offense therein was graded either as a third- or second-degree crime, depending on the presence of aggravating circumstances. The aggravating circumstances included either purposefully, knowingly, or recklessly inflicting or threatening bodily injury, or involved the possession or display of an explosive or deadly weapon. This aggravating language was used in the creation of the new home invasion burglary statute, N.J.S.A. 2C:20-2.1, as a standalone crime chargeable only in the first-degree.

The Committee also considered that other serious crimes with similar elements to home invasion burglary are contained in R. 3:3-1(e). These "similar" offenses include robbery under N.J.S.A. 2C:15-1 and carjacking under N.J.S.A. 2C:15-2. Robbery is established if the actor, in the course of committing a theft, causes or threatens bodily injury, and may be aggravated if the actor uses or threatens to use a deadly weapon, which upgrades the charge from a second- to a first-degree crime. Similarly, carjacking, which may only be charged as a first-degree crime, is established

if the actor, in the course of committing an unlawful taking of a motor vehicle, inflicts or threatens bodily injury on an occupant of the vehicle.

The Committee agreed that the most analogous charges fell within R. 3:3-1(e) and requires that a complaint-warrant issue upon a finding of probable cause. Members agreed that the Court's action likely amounted to a temporary stopgap rather than a final decision on the type of summons or warrant presumption to attend a finding of probable cause. Also, the Committee noted that in Administrative Directive #13-24 the Court amended the Decision Making Framework that governs pretrial release recommendations to include home invasion burglary (but not residential burglary) among the list of offenses that must receive of recommendation of no release. Thus, the Committee did not feel constrained to place home invasion burglary under R. 3:3-1(f). It was ultimately unanimously agreed instead to include home invasion burglary in R. 3:3-1(e).

The proposed rule amendments follow.

R. 3:3-1. Issuance of a Complaint-Warrant (CDR-2) or a Complaint-Summons (CDR-1)

(a) Issuance of a Complaint-Warrant (CDR-2) … no change.

(1) … no change.

(2) … no change.

(b) Issuance of a Complaint-Summons (CDR-1) … no change.

(1) … no change.

(2) … no change.

(c) Offenses Where Issuance of a Complaint-Summons (CDR-1) is Presumed … no change.

(d) Grounds for Overcoming the Presumption of Issuance of a Complaint-Summons (CDR-1) … no change.

(1) … no change.

(2) … no change.

(3) … no change.

(4) … no change.

(5) … no change.

(6) … no change.

(7) … no change.

(e) Offenses Where Issuance of a Complaint-Warrant (CDR-2) is Required. A complaint-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, home invasion burglary, 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 a Complaint-Warrant (CDR-2) is Presumed. Unless issuance of a complaint-summons rather than a complaint-warrant is authorized pursuant to paragraph (g) of this rule, a complaint-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 theft of a motor vehicle (N.J.S.A. 2C:20-10.1), receiving a stolen motor vehicle (N.J.S.A. 2C:20-10.2), contempt (N.J.S.A. 2C:29-9(a)) involving a violation of a condition of pretrial release to avoid contact with an alleged victim or a violation of a condition of home detention with or without the use of an approved electronic monitoring device ordered pursuant to N.J.S.A. 2A:162-17, 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.A. 2C:11-5), aggravated assault (N.J.S.A. 2C:12-1(b), disarming a law enforcement officer (N.J.S.A. 2C:12-11), kidnapping (N.J.S.A. 2C:13-1), aggravated arson (N.J.S.A. 2C: 17-1(a)(1)), residential burglary (N.J.S.A. 2C:18-2.2), burglary (N.J.S.A. 2C:18-2), extortion (N.J.S.A. 2C:20-5), booby traps in

manufacturing or distribution facilities (N.J.S.A. 2C:35-4.1(b)), strict liability for drug induced deaths (N.J.S.A. 2C:35-9), terrorism (N.J.S.A. 2C:38-2), producing or possessing chemical weapons, biological agents or nuclear or radiological devices (N.J.S.A. 2C:38-3), racketeering (N.J.S.A. 2C:41-2), firearms trafficking (N.J.S.A. 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.A. 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 a Complaint-Warrant (CDR-2) … no change.

(h) Finding of No Probable Cause … no change.

(i) Additional Warrants or Summonses … no change.

(j) Process Against Corporations … no change.

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; caption; amended, paragraphs (a), (b), (c), (d), (e), (f), and (g) caption and text; amended, and paragraphs (h) and (j); amended August 2, 2019 to be effective October 1, 2019; effective date of the August 2, 2019 amendments changed to January 1, 2020 by order dated September 25, 2019; text of paragraph (f) amended __ to be effective __.

3. Rule Amendments Related to the Withdrawal or Substitution of Counsel in Expungement Actions

To support attorneys and their clients in seeking expungements, the Supreme Court issued an Order dated April 2, 2024, relaxing and supplementing Rules 1:11-2 ("Withdrawal or Substitution"), 3:30-1 ("Expungement of Records"), and 3:30-2 ("Expungements for Marijuana/Hashish Offenses, Recovery Court, Dismissals/ Acquittals, and Clean Slate") as follows:

a. Rule 1:11-2(a) shall not apply to the entry, withdrawal, or substitution of counsel in petitions for expungement consistent with Rule 3:30-1 and Rule 3:30-2. All entries, withdrawals, and substitutions of appearance of counsel in expungement petitions may be filed at any time, without leave of court and with the consent of all parties, using the appropriate judiciary electronic court system and without payment of a fee.

b. Rule 3:30-1 and Rule 3:30-2 are supplemented to include that all entries, withdrawals, and substitutions of appearance of counsel in expungement petitions may be filed at any time, without leave of court and with the consent of all parties, using the appropriate judiciary electronic court system and without payment of a fee.

Per the Order, those provisions are to stay in effect pending adoption of conforming rule amendments. The Committee discussed the conforming amendments

and unanimously agreed to implement them by: (1) adding a reference to R. 3:30-1 and R. 3:30-2 to R. 1:11-2(a); (2) creating new paragraph (i) of R. 3:30-1, which incorporates the new provisions; and (3) creating new paragraph (e) of R. 3:30-2, which likewise incorporates the new provisions.

The proposed rule amendments follow.

R. 1:11-2. Withdrawal or Substitution

(a) Generally. Except as otherwise provided by R. 5:3-5(e) (withdrawal in a civil family action), [and] R. 7:7-9 (withdrawal and substitution in a municipal court action), R. 3:30-1 and R. 3:30-2 (withdrawal and substitution in an expungement action),

(1) … no change.

(2) … no change.

(3) … no change.

(4) … no change.

(b) Professional Associations … no change.

(c) Appearance by Attorney for Client Who Previously Had Appeared Pro Se … no change.

Note: Source - R.R. 1:12-7A; amended July 16, 1981 to be effective September 14, 1981; amended November 7, 1988 to be effective January 2, 1989; amended June 28, 1996 to be effective September 1, 1996; amended July 10, 1998 to be effective September 1, 1998; amended and paragraph designations and captions added January 21, 1999 to be effective April 5, 1999; paragraphs (a)(1) and (a)(2) amended July 27, 2006 to be effective September 1, 2006; subparagraph (a)(1) amended July 19, 2012 to be effective September 4, 2012; new paragraph (a)(3) adopted December 4, 2012 to be effective January 1, 2013; paragraph (a) amended; new paragraph (c) added July 28, 2017 to be effective September 1, 2017; paragraph (a) amended July 30, 2021 to be effective September 1, 2021; paragraph (a)(4) added and paragraph (c) amended July 15, 2024 to be effective September 1, 2024.; text of paragraph (a) amended __ to be effective __.

R. 3:30-1. Expungement of Records

(a) Expungement … no change.

(1) Defined … no change.

(2) Ineligible … no change.

(3) … no change.

(b) … no change.

(c) Notice of Petition … no change.

(d) Response by Prosecutor … no change.

(e) Reply to Objection … no change.

(f) Judicial Determination … no change.

(g) Records … no change.

(h) Motions to Vacate Expungement Order … no change.

(i) Withdrawal or Substitution of Counsel. All entries, withdrawals, and substitutions of appearance of counsel in expungement petitions may be filed at any time, without leave of court and with the consent of all parties, using the appropriate judiciary electronic court system and without payment of a fee.

Adopted August 4, 2023 to be effective September 1, 2023[.]; new paragraph (i) adopted __ to be effective __.

R. 3:30-2. Expungements for Marijuana/Hashish Offenses, Recovery Court, Dismissals/Acquittals, and Clean Slate

(a) Expungements Limited to Certain Marijuana or Hashish Offenses … no change.

(1) Applying … no change.

(2) Judicial Determination … no change.

(3) Objection by the Prosecutor … no change.

(b) Recovery Court Expungements … no change.

(1) Requested Prior to Graduation … no change.

(A) Proposed Order … no change.

(B) Response by the Prosecutor … no change.

(C) Judicial Determination … no change.

(2) Requests for an Expungement After Graduation … no change.

(3) Restoring Records to Public Access After a Recovery Court Expungement … no change.

(c) Expungement of Arrests Not Resulting in Conviction … no change.

(1) Dismissals or Acquittals After June 15, 2020 … no change.

(A) Plea Bargain … no change.

(B) Not Guilty by Reason of Insanity … no change.

(2) Dismissals or Acquittals Prior to June 15, 2020 … no change.

(3) Dismissals Due to Diversionary Programs … no change.

(d) Clean Slate … no change.

(1) Applying … no change.

(2) Ineligible … no change.

(3) Time Period to Apply … no change.

(4) Outstanding Court-Ordered Financial Assessment … no change.

(e) Withdrawal or Substitution of Counsel. All entries, withdrawals, and substitutions of appearance of counsel in expungement petitions may be filed at any time, without leave of court and with the consent of all parties, using the appropriate judiciary electronic court system and without payment of a fee.

Adopted August 4, 2023 to be effective September 1, 2023[.]; new paragraph (e) adopted __ to be effective __.

III. Non-Rule Referrals Not Recommended

A. Non-Rule Referral by the Director of the Rutgers Expungement Law Project – Request for Expungement Question in Plea Forms

By way of letter dated June 1, 2023, and subsequent clarification letter dated February 1, 2024, the Director of the Rutgers Expungement Law Project requested that the Committee consider revising the plea forms to include a question regarding whether defendants understand whether the crime or offense they are pleading to is eligible for an expungement, particularly for the offenses articulated in N.J.S.A. 2C:52-2(b).

The Committee reviewed and thoroughly discussed the request over two sessions. One member expressed concern that an attorney's failure to have that conversation could amount to ineffective assistance of counsel despite the Supreme Court not imposing such a requirement by way of case law or Court Rule. Several members agreed that defense attorneys should have a conversation with their clients regarding this issue, but that enforcing the conversation through the plea forms was not the appropriate method. Most members believed that the proposal should not be accepted because expungement ineligibility is not considered a consequence of magnitude, is non-penal in nature, and that a lawyer's failure to discuss potential expungement ineligibility does not justify withdrawing a plea agreement, which is distinguished from other provisions included on criminal plea forms that do form a

basis for withdrawal of a plea. Notably, it is distinguishable from other consequences of magnitude, such as collateral consequences attending a conviction on immigration status (See Padilla v. Kentucky, 559 U.S. 356 (2010) and State v. Nunez-Valdez, 200 N.J. 129 (2009)).

Additionally, the Committee considered the frequent legislative changes to the expungement laws over a relatively short period, the long waiting period before becoming eligible for an expungement, and that any number of statutory amendments might make moot a conversation related to the availability of an expungement at the time of a plea. The Committee noted that in the past 10 years the expungement statute was amended, sometimes significantly, 6 times, and that further amendments were being considered in the current legislative session.

Further, the Committee considered that although it would be helpful for counsel and a defendant to have a conversation on whether conviction of a specific charge would make them ineligible for an expungement, there were other factors and circumstances that could equally make the person ineligible for an expungement, such as the number of convictions or combination of convictions, which could occur after the plea. That, coupled with the other factors considered above, ultimately guided the Committee's decision.

After thorough conversations, the full Committee unanimously voted to reject the proposal.

IV. Matters Held Pending Recommendation

A. Referral Related to eDiscovery Exchange in Criminal Matters, and eDiscovery Access for Incarcerated and Detained Defendants

The Criminal Practice Committee received a referral from the Acting Administrative Director of the Courts, on behalf of the Judicial Council, dated October 2, 2024. The referral outlined concerns related to delays in criminal proceedings that are caused by issues in preparing, exchanging and reviewing discovery, in particular digital and video discovery. Concerns included the ability to access and view digital discovery, including the incompatibility between devices and the systems used to view files; reviewing and editing requirements of the Attorney General's Office, coupled with the overwhelming volume of discovery, which requires substantial time to edit and review recordings; policies that restrict access to external viewing devices brought by attorneys to detention facilities; time constraints imposed on detained or incarcerated defendants that limit the ability to fully view discovery; and more.

In considering the referral, the Committee determined that the issues could be divided into three categories:

> (1) pre-discovery exchange issues—where the reviewing and editing requirements of the Attorney General's Office and law enforcement, coupled with the overwhelming volume of discovery, require a substantial amount of time to edit and view the recordings prior to the discovery becoming available to exchange with the defendant and counsel;
>
> (2) post-discovery exchange issues—where, after the parties have

exchanged discovery, incompatibility between devices storing video files and the systems used to view those files leads to barriers in opening/viewing particular file types; and

(3) access issues for incarcerated and detained clients—where policies that restrict access to external viewing devices brought by attorneys, and time constraints imposed by detention facilities, limit the opportunity for clients to fully view digital discovery and videos.

Committee members agreed to the creation of three subcommittees, each chaired by a judge member, to address the identified categories of the above issues. Those subcommittees, their charges, and their findings to date are summarized below.

(1) Subcommittee on the Pre-Exchange Phase of eDiscovery and Video Discovery

This subcommittee is responsible for evaluating whether to amend the Court Rules or make any non-Rule recommendations in support of the process before the prosecutor and defense counsel have exchanged discovery. This can include but is not limited to the preparation of lengthy digital and video discovery, such as body-worn camera (BWC) footage.

The subcommittee reported to the larger Criminal Practice Committee that members had gathered information on statewide pre-exchange discovery practices. Most surveyed counties redact BWC footage within the County Prosecutors' Offices and distribute discovery using Axon or Evidence.com or NJeDiscovery.com. These are software applications that deliver discovery through an online cloud platform. The minority of responding counties release unredacted BWC footage. In these instances, the parties relied on consent orders limiting the copying or redistribution of the

discovery. The subcommittee intends to collect and distribute sample consent orders for the group to review, in consideration of developing a uniform or model protective order for use statewide, if the full Committee agrees and recommends the use of the form.

The subcommittee also reported on their discussions regarding redactions, determining that the most common issue is a local disagreement as to which law enforcement agency—the arresting or the prosecuting agency—is responsible for redacting digital or video discovery. After discussion, the subcommittee agreed that because the crux of this issue is one of resource allocation among law enforcement, it is therefore internal to law enforcement. Discussion of implementing a uniform statewide process for redaction was deemed similarly internal in nature.

(2) Subcommittee on the Post-Exchange Phase of eDiscovery and Video Discovery

This subcommittee is tasked with evaluating whether to amend the Court Rules or make any non-Rule recommendations in support of the process after the prosecutor and defense counsel have exchanged discovery. This can include but is not limited to issues related to ensuring compatibility to be able to access lengthy digital and video discovery, such as through the use of standardized media formats or proprietary software, and/or establishing timeframes for reviewing discovery or making further demands for discovery after initial receipt.

The subcommittee has reported to the larger Criminal Practice Committee that

most post-exchange issues were user-related technological issues or lack of familiarity by counsel, which were all addressed between the parties or, if needed, under the impartial management of the trial judge. There was a report however that there is a significant disparity in the way different counties are using Axon/Evidence.com, and that counties using the same system have different requirements for counsel to access discovery through that platform. The Committee discussed that regardless of whether individual counsel have issues accessing electronic discovery, it may be prudent to recommend minimum standards among the various agencies that would bridge the technology gap between those agencies and defense counsel attempting to navigate the many different ways of obtaining discovery.

(3) Subcommittee on Access Issues for Incarcerated or Detained Clients

This subcommittee is responsible for evaluating whether to amend the Court Rules or make any non-Rule recommendations in support of the discovery process for incarcerated or detained clients at the jails, prison or other custodial facilities. The subcommittee benefits from the participation of outside stakeholders—including County Jail Wardens and representatives from the Department of Corrections.

The subcommittee presented to the Criminal Practice Committee a list of identified issues relating to incarcerated and detained clients' access to discovery. Flagged topics included questions surrounding attorney visitation; restrictions on the ways an attorney may provide discovery to their clients; logistics and time constraints

related to attorney-client joint review of discovery at the facility; clients' access to review electronic discovery without counsel present; and the means of delivering and processing mailed paper discovery at the jail or prison. After review and modification by the larger Criminal Practice Committee, the list was converted into a survey that was distributed to all County Jail Wardens and the Department of Corrections. As of the time of the writing of this report, complete survey responses are being collected and finalized for presentation to the full Criminal Practice Committee for discussion.

The Committee will continue to explore this topic in 2025 and will produce a supplemental report if any recommendations are made during the current Rules cycle.

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Respectfully submitted,

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Hon. Benjamin C. Telsey, A.J.S.C., Chair

Dated: January 15, 2024