

**Garden State CLE Presents:**

**New Rules of Court 2017:**  
**Criminal Justice Reform**



**Lesson Plan**

# Introduction

## Article 1, paragraph 11 of New Jersey Constitution of 1947 (as amended effective January 1, 2017)

**No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be lawful for the Legislature to establish by law procedures, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision.**

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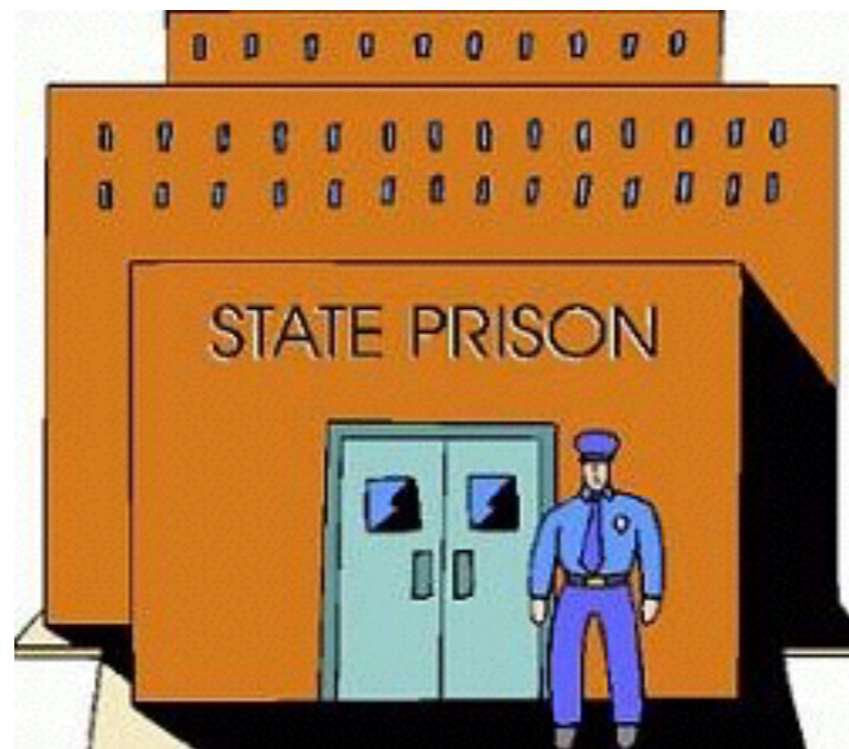


**The referenced legislation has been codified at NJSA 2A:162-15 thru 26 (effective January 1, 2017)**

**Effective for criminal summonses and arrest warrants issued on or after January 1, 2017.**

**Amended Rules are effective January 1, 2017**

**[Municipal Court (Part VII) amendments generally track the Part II amendments.]**



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

**(b) Requires that indictable complaints on a summons or a warrant be forwarded through the judiciary's computer system to the county prosecutor and criminal division manager immediately.**

**(c) Investigative reports for complaints on a summons must be sent to the prosecutor within 48 hours. Investigative reports for complaints prepared on a warrant must be immediately sent to the prosecutor.**

**[The purposes of these Rules is to comply with the needs of pretrial services and the prosecutor in making rapid and accurate bail determinations.]**

## 3:2-2. Summons

**The amended Rule requires that when a defendant does not appear in court for a first appearance after being served with a summons, the court must first issue a failure to appear notice (FTA) with a warning that a future failure to appear will result in the issuance of a bench warrant.**

**The summons must provide a warning of this procedure to the defendant.**



## **3:2-3. Arrest Warrant**

### **(a) Issuance when the applicant is physically before a judicial officer.**

**When an applicant for an arrest warrant is personally before a judicial officer, the judicial officer may issue the warrant by signing it.**

**A judicial officer is defined as judge, clerk of the court, deputy clerk, an authorized municipal court administrator or authorized deputy court administrator.**

**"Authorized" in this context means approved by the municipal court judge.**

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**(b) Issuance when the applicant is not physically before a judicial officer.**

**The issuance of the warrant may be made by a judicial officer based upon sworn testimony. The testimony may be communicated from the applicant to the judicial officer by electronic means [telephone, radio, other electronic means.]**

**The judicial officer shall administer the oath, consider the testimony, the contents of the complaint and any supplemental affidavits. If the judicial officer is satisfied that probable cause exists, the warrant shall issue.**

**Depending upon availability, either the judicial officer or the applicant must enter the complaint warrant into the Judiciary's computer system.**

**[Note - the main changes to this Rule are the expansion of those judicial officers who can issue arrest warrants to an applicant who is not present and the requirement that the defendant, when apprehended be taken directly to the county jail.]**

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

### **(c) Offenses Where Issuance of a Summons is Presumed.**

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



## **(d) Grounds for Overcoming the Presumption of issuance of a Complaint-Summons**

**A judicial officer may issue an arrest warrant when the judicial officer finds**

**(a) that there is probable cause to believe that the defendant committed the offense, and has reason to believe, based on one or more of the following factors, that a complaint warrant is needed to reasonably assure a defendant's appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process:**

**The defendant has been served with a summons for any prior indictable offense and has failed to appear;**



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

**There are one or more outstanding warrants for the defendant;**

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



**There is reason to believe that the defendant will obstruct or attempt to obstruct the criminal justice process if released on a summons;**

**There is reason to believe that the defendant will not appear in response to a summons; or**

**if there is reason to believe that the monitoring of pretrial release conditions by the pretrial**

**services program established pursuant to N.J.S.A. 2A:162-25 is necessary to protect any victim, witness, other specified person, or the community.**

**When the application for an arrest warrant is based on reason to believe that the defendant will not appear in response to a summons, will pose a danger to the safety of any other person or the community, or will obstruct or attempt to obstruct the criminal justice process if released on a summons, the judicial officer shall consider the results of any available preliminary public safety assessment using a risk assessment instrument approved by the Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and shall also consider, when such information is available, whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses.**

**The judicial officer shall also consider any additional relevant information provided by the law enforcement officer or prosecutor applying for an arrest warrant.**



## **(e) Offenses Where Issuance of an Arrest Warrant Is Required.**

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



## **(f) Offenses Where Issuance of an Arrest Warrant is Presumed.**

**Unless issuance of a summons rather than an arrest warrant is authorized pursuant to paragraph (g) of this rule, an arrest warrant shall be issued when a judicial officer finds pursuant to paragraph (a) of this rule that there is probable cause to believe that the defendant committed a violation of Chapter 35 of Title 2C that constitutes a first or second degree crime, a crime involving the possession or use of a firearm, or the following first or second degree crimes subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), vehicular homicide (N.J.S. 2C: 11-5), aggravated assault (N.J.S. 2C: 12l(b)), disarming a law enforcement officer (N.J.S. 2C:12-11), kidnapping (N.J.S. 2C:13-1), aggravated arson (N.J.S. 2C:17-(a)(l)), burglary (N.J.S. 2C:18-2), extortion (N.J.S. 2C: 20-5), booby traps in manufacturing or distribution facilities (N.J.S. 2C: 35-4.1(b)), strict liability for drug induced deaths (N.J.S. 2C:35-9), terrorism (N.J.S. 2C:38-2); producing or possessing chemical weapons, biological agents or nuclear or radiological devices (N.J.S. 2C:38-3), racketeering (N.J.S. 2C: 41-2), firearms trafficking (N.J.S. 2C:39-9(i)), causing or permitting a child to engage in a prohibited sexual act knowing that the act may be reproduced or reconstructed in any manner, or be part of an exhibition or performance (N.J.S. 2C:24-4(b)(3)) or finds that there is probable cause to believe that the defendant attempted to commit any of the foregoing crimes.**

## **(g) Grounds for Overcoming the Presumption of Issuance of an Arrest Warrant.**

**Notwithstanding the presumption that an arrest warrant shall be issued when a defendant is charged with an offense set forth in paragraph (f) of this rule: (1) a judicial officer may authorize issuance of a summons rather than an arrest warrant if the judicial officer finds that were the defendant to be released without imposing or monitoring any conditions authorized under N.J.S.A. 2A:162-17, there are reasonable assurances that the defendant will appear in court when required, the safety of any other person or the community will be protected, and the defendant will not obstruct or attempt to obstruct the criminal justice process. The judicial officer shall not make such finding without considering the results of a preliminary public safety assessment using a risk assessment instrument approved by the**

**Administrative Director of the Courts pursuant to N.J.S.A. 2A:162-25, and without also considering whether within the preceding ten years the defendant as a juvenile was adjudicated delinquent for escape, a crime involving a firearm, or a crime that if committed by an adult would be subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), or an attempt to commit any of the foregoing offenses. The judicial officer shall also consider any additional information provided by a law enforcement officer or the prosecutor relevant to the pretrial release decision; or (2) a law enforcement officer may issue a summons in accordance with guidelines issued by the Attorney General pursuant to N.J.S.A. 2A:162-16.**



## **(h) Finding of No Probable Cause.**

**If a judicial officer finds that there is no probable cause to believe that an offense was committed or that the defendant committed it, the officer shall not issue a warrant or summons on the complaint. If the finding is made by an officer other than a judge, the finding shall be reviewed by a judge. If the judge finds no probable cause, the judge shall dismiss the complaint.**



### **3 :4-1. Procedure After Arrest**

#### **(a)(2) Issuance of process (on a warrant)**

**If the judicial officer determines to issue an arrest warrant and the defendant is in custody, the defendant shall be remanded to the county jail pending a determination of conditions of pretrial release or a determination regarding pretrial detention if a motion has been filed by the prosecutor.**

**[No initial bail will be set on arrest warrants. Rather, every defendant will be remanded to the county jail in order to afford pretrial services an opportunity to decide on any conditions of pretrial release. The time goal is 48 hours.]**

## **(b) Arrest on an arrest warrant**

**If the defendant is taken into custody on an arrest warrant that was previously issued, he shall be remanded to the county jail in order to afford pretrial services an opportunity to decide on any conditions of pretrial release.**



## **3:4-2. First Appearance After Filing Complaint**

### **(a) Time of First Appearance.**

**Within 48 hours of defendant's commitment to the county jail.**

**[Rule permits arraignments to be held in a CJP court presided over by a municipal court judge as approved by the chief Justice.]**

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## **(c) Procedure in Indictable Offenses.**

**At the defendant's first appearance before a judge, if the defendant is charged with an indictable offense, the judge shall:**

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

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



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

**(d)(5) Judge can set conditions of pre-trial release.**

**3:4A Pretrial Detention**

**(a) Timing of Motion.**

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

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## **(b) Hearing on the motion**

**Must be held before a Superior Court judge no later than first appearance unless either side seeks a continuance which will not exceed 5-days.**

**Defendant has a right to counsel (and appointed counsel.)**

**The defendant shall be provided discovery pursuant to Rule 3:4-2(c)(1)(B). The defendant shall be afforded the right to testify, to present witnesses, to cross-examine witnesses who appear at the hearing and to present information by proffer or otherwise.**



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



## **(4) Presumption of detention.**

**There shall be a rebuttable presumption that the defendant shall be detained pending trial because no amount of monetary bail, non-monetary condition or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process, if the court finds probable cause that the defendant: (i) committed murder pursuant to N.J.S.A. 2C:11-3; or (ii) committed any crime for which the defendant would be subject to an ordinary or extended term of life imprisonment.**



## **(5) Presumption of release.**

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

**The standard of proof for the rebuttal of the presumption of pretrial release shall be by clear and convincing evidence. The court may**

**The court may consider as prima facie evidence sufficient to overcome the presumption of release a recommendation by the Pretrial Services Program**

## **3 :25-4. Speedy Trial for Certain Defendants**

### **(a) Eligible Defendant.**

**For purposes of this rule, the term "defendant" or "eligible defendant" shall mean a person for whom a complaint-warrant or complaint-warrant on indictment was issued for an initial charge involving an indictable offense and who:**

**(1) is detained pursuant to R. 3 :4A, or (2) is detained in jail due to an inability to post monetary bail pursuant to R. 3:26. This rule only applies to an eligible defendant who is arrested on or after January 1, 2017, regardless of whether the crime or offense related to the arrest was allegedly committed before, on, or after January 1, 2017. For defendants who are detained only for a disorderly persons offense or a petty disorderly persons offense, the limits on pretrial incarceration are governed by R. 7: 8-11.**

## **(b)(1) and (2) Failure to Indict**

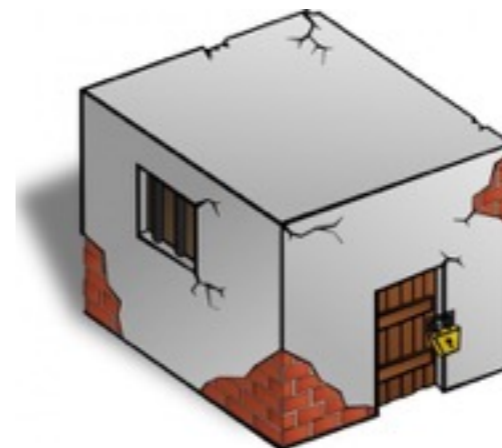
**Prior to the return of an indictment, the defendant shall not remain in jail for more than 90 days. Prosecutor may move for extension for good cause. Judge may extend pre-indictment term for an additional 45 days. Otherwise, defendant is to be released.**



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## **(c)(1) On Failure to Commence Trial**

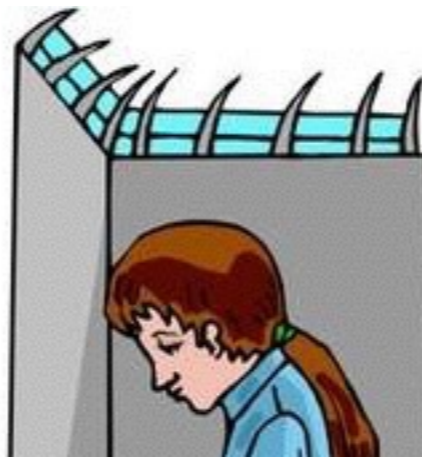
**Time limit to trial for an eligible defendant is 180 days. Court may grant a 60-day extension upon application of the state for good cause. Additional extension may be granted in extraordinary circumstances. Otherwise, defendant is to be released.**



## **3 :26-1. Right to Pretrial Release Before Conviction**

### **(a)(1) Persons Entitled; Standards for Fixing. Persons Charged on a Complaint-Warrant.**

**Except when the prosecutor files a motion for pretrial detention pursuant to N.J.S.A. 2A:162-18 and 19 and R. 3:4A, all persons for whom a complaint-warrant or a complaint-warrant on indictment is issued for an initial charge involving an indictable offense, disorderly persons offense, or petty disorderly persons offense, shall be released before conviction on the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably ensure their presence in court when required, the protection of the safety of any other person' or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process.**



**In addition to these non-monetary conditions, monetary conditions may be set for a defendant but only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court when required. The court shall consider all the circumstances, the Pretrial Services Program's risk assessment and recommendations and any information that may have been provided by a prosecutor or the defendant on conditions of release before making any pretrial release decision. If the court enters a release order containing conditions contrary to those recommended by the Pretrial Services Program obtained using a risk assessment instrument then the court shall set forth its reasons for not accepting those recommendations. The court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail.**



**(2) People charged on a complaint-summons shall be released from custody.**

**[Note how the revised rule tracks the Constitutional amendment.]**



## **3:26-2**

### **(b) Conditions of Release.**

**The court shall order the pretrial release of a defendant on personal recognizance or on the execution of an unsecured appearance bond when, after considering all the circumstances, the Pretrial Services Program's risk assessment and recommendations on conditions of release**

**prepared pursuant to section 11 of P .L.2014, c. 31 ( c.2A: 162-25), and any information that may be provided by a prosecutor or the defendant, the court finds that the release would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. When the court orders pretrial release pursuant to this subparagraph, the court shall, in the document authorizing the release, notify the defendant that the defendant.**

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

**the defendant shall appear in court as required;**

**the defendant shall not commit any offense during the period of release;**

**the defendant shall avoid all contact with an alleged victim of the crime;**

**and**

**the defendant shall avoid all contact with all witnesses who may testify concerning the**

**offense that are named in the document authorizing the defendant's release or in a subsequent court order.**

**The court may impose other non-monetary conditions of release.**

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



**Examples: The defendant.....**

**will maintain employment, or, if unemployed, actively seek employment;**

**maintain or commence an educational program;**

**abide by specified restrictions on personal associations, place of abode or travel;**

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

**comply with a specified curfew;**

**refrain from possessing a firearm, destructive device, or other dangerous weapon;**

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

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

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

**be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device.**

**The court may order the defendant to pay all or a portion of the costs of the electronic monitoring, but the court may waive the payment for a defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs; or**

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



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