REPORT OF THE

SUPREME COURT

CRIMINAL PRACTICE COMMITTEE

2019 – 2021 TERM

JANUARY 14, 2021

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I. Introduction

During the 2019-2021 term, the Criminal Practice Committee proposed amendments to the Part III Rules Governing Criminal Practice contained in the Report of the Supreme Court Criminal Practice Committee on Rule 3:4-2 (First Appearance) and Rule 3:11 (Out-of-Court Identification Procedure) (October 28, 2019). The report was published for comment and acted upon by the Supreme Court. The Committee also recommended revisions to several criminal plea forms during this term, which have been promulgated by Directive #01-18 and Supplements to that Directive.

This Report contains additional recommendations and issues considered by the Committee during this term.

II. Rule Amendments Recommended for Adoption

A. R. 3:1-4 - Orders; Form; Entry

The Committee is proposing an amendment to R. 3:1-4 to add to the exceptions in paragraph (a) for when the parties do not have to submit proposed court orders to the court. Specifically, "pretrial detention orders" and "release revocation orders" have been added because like "pretrial release orders," they are prepared electronically in the Judiciary's computerized system. Additional language is also proposed to accommodate future automation of court orders in the Judiciary's computerized systems.

The proposed amendments to Rule 3:1-4 follow.

3:1-4. Orders; Form; Entry

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

(b) … no change.

(c) … no change.

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

B. Proposed Amendments to the Search Warrant Rules

The Criminal Practice Committee is proposing amendments to Rules 3:5-3 through 3:5-6 to address the electronic processing of search warrants in the Judiciary's "Search and Data Warrant System" pursuant to the Order of the Supreme Court issued April 1, 2020, which relaxed and supplemented some of these court rules.

The Supreme Court in its Order dated April 1, 2020 states in pertinent part:

> In response to the unprecedented public health crisis resulting from the COVID-19 coronavirus…
>
> it is ORDERED, pursuant to N.J. Const. Art. VI, sec. 2., par. 3 that effective immediately, and until further order, Rule 3:5-3 ("Issuance and Contents") of the Rules Governing the Courts of the State of New Jersey is supplemented and relaxed so as to remove the requirement that the applicant for a search warrant either must appear personally before the judge or telephonically to provide sworn oral testimony to a Superior Court judge who must record the testimony and to provide that instead the applicant for a search warrant may transmit to a Superior Court judge electronically an application that includes a certification in lieu of oath in accordance with Rule 1:4-4(b), and the Superior Court judge may authorize issuance of the warrant electronically.
>
> It is FURTHER ORDERED, effective immediately and until further order, that Rules 3:5-3, 3:5-5, and 3:5-6 are specifically supplemented and relaxed to remove the requirements that (1) a search warrant direct that the executed warrant be returned to the issuing judge, (2) the return and any inventory be delivered to the issuing judge following execution of the search warrant, and (3) the issuing judge file documents with the criminal division manager's office or, in the case of search warrants described in Rule 3:5-6(b), the wiretap judge; and instead, for the duration of the COVID-19 public health crisis and until further order, the county prosecutor of the issuing county shall be responsible for (1) retaining the executed search warrant, any inventory, and any other accompanying documents, (2) complying with any request for a copy of the inventory as authorized by Rule 3:5-5(a), and (3) providing all search warrant information to the defendant as part of discovery pursuant to Rule 3:13-3.

The Committee was cognizant that the "Search and Data Warrant System" was implemented in response to the Covid-19 pandemic and the need for social distancing measures. These rules were drafted with the mindset that the submission and authorization of search warrants will continue electronically after the public health crisis ends because the electronic processing of search warrants has been very efficient. Also, while other related applications have been incorporated into the electronic system, such as communications data warrants, communications information orders, and nondisclosure orders, the Committee decided that the rules should continue to address only the procedures for search warrants and should not be amended to include these other applications because the procedures for these other applications are straightforward and are already adequately addressed in the documentation for the electronic system.

Prior to the COVID-19 pandemic, there were some vicinages in which Assignment Judges authorized Municipal Court judges to hear search warrant applications. This practice ended in accordance with the April 1, 2020 Court Order, which limited issuance of search warrants to Superior Court judges. See also Directive # 10-20 ("Process for Search Warrants and Communications Data Warrants in Response to COVID-10"). Municipal Court judges continued to handle blood-draw search warrants since those warrants do not involve an in-person appearance by law enforcement before the judge.

Therefore, the Committee did not recommend any changes to R. 7:5-1, the Part VII rule that governs search warrants issued by Municipal Court judges. However, if Municipal Court judges are later authorized to issue search warrants in the computerized

system a referral for conforming amendments to R. 7:5-1(a) should be made to the Municipal Court Practice Committee.

For the reasons described below the Committee recommends amendments to Rules 3:5-3 through 3:5-6.

1. R. 3:5-3 – Issuance and Contents

The Committee is proposing captions for each paragraph to distinguish between the three methods for requesting search warrants, which are electronic, in-person and telephonic. It should be noted that this rule was drafted with the intent that the preference is to request search warrants electronically in the Judiciary's computerized system. Thus, qualifying language has been added in paragraphs (b) and (c) to recognize that there may be circumstances for which applicants may need to make the request in-person or telephonically.

Paragraph (a)

New paragraph (a) addresses the electronic receipt and authorization of search warrant applications in the Judiciary's computerized system. To conform with the Court's April 1, 2020 order, the language requires submission of a "certification in lieu of oath in accordance with R. 1:4-4(b)" because the applicant will not be appearing in-person before the judge to provide sworn oral testimony.

The current requirements contained in former paragraph (a), now designated paragraph (b), as to the probable cause finding and the information that must be included when a search warrant is granted have also been included.

Additional language indicates that the execution of the search warrant and return shall be in accordance with the procedures in R. 3:5-5(a).

Paragraph (b)

Former paragraph (a) was redesignated paragraph (b) to address in-person search warrant applications, which may be sought in "emergent circumstances." As noted above, this qualifying language serves to recognize that circumstances may arise for which the applicant needs to apply for the search warrant immediately, and thus will need to make the request in-person so that the judge can immediately review the application and, if appropriate, sign the warrant upon finding probable cause.

To conform with paragraph (a), language was added to indicate that the execution of the search warrant and return shall be pursuant to R. 3:5-5(a).

Paragraph (c)

Former paragraph (b) was redesignated paragraph (c) for requests made telephonically. The language concerning the judge finding "exigent circumstances" to "excuse the failure to obtain a written warrant" was removed in accordance with State v. Pena-Flores, 198 N.J. 6, 35 (2009). To account for that change, language was added to recognize that while an applicant may request the warrant telephonically, it is not the preferred method and should only be used if making the electronic request pursuant to paragraph (a) "is not feasible." Modifications are also proposed to reflect current practices where the "applicant" rather than the "judge" makes the arrangements to contemporaneously record the sworn oral testimony.

The language concerning getting the "testimony transcribed as soon as practicable" was removed because as a practical matter the recording is retained by law enforcement so that a transcript can be made when it is needed for example, for purposes of discovery or a motion. Additionally, outdated terminology was removed concerning "tapes," stenographic records, and "longhand" notes. *Note*: This change was also made in the other proposed rules for consistency.

The proposed amendments to Rule 3:5-3 follow.

3:5-3. Issuance and Contents

(a) Electronic. Except as provided in paragraphs (b) and (c) of this rule, an [An] applicant shall request a search warrant electronically in the Judiciary's computerized system used for such applications. The application shall include a certification in lieu of oath completed by the applicant in accordance with R. 1:4-4(b). If the judge is satisfied that grounds for granting the application exist or that there is probable cause to believe they exist, the judge may authorize issuance of the warrant electronically, and the warrant shall contain the information specified in paragraph (b). The execution of the search warrant and return shall be pursuant to R. 3:5-5(a).

(b) [(a)] In-Person. If there are emergent circumstances, an [An] applicant for a search warrant may [shall] appear personally before the judge, who must take the applicant's affidavit or testimony before issuing the warrant. The judge may also examine, under oath, any witness the applicant produces, and may require that any person upon whose information the applicant relies appear personally and be examined under oath concerning such information. If the judge is satisfied that grounds for granting the application exist or that there is probable cause to believe they exist, the judge shall date and issue the warrant identifying the property to be seized, naming or describing the person or place to be searched and specifying the hours when it may be executed. The warrant shall be directed to any law enforcement officer, without naming an officer, and it shall state the basis for its issuance and the names of the persons whose affidavits or testimony have been taken in support thereof. The warrant shall direct that it be returned to the judge

who issued it. The execution of the search warrant and return shall be pursuant to R. 3:5-5(a).

(c) [(b)] Telephonic. If a certification in lieu of oath pursuant to paragraph (a) of this rule is not feasible, a [A] Superior Court judge may issue a search warrant upon sworn oral testimony of an applicant who is not physically present. Such sworn oral testimony may be communicated to the judge by telephone, [radio] or other means of electronic communication. The applicant [judge] shall arrange to contemporaneously record such sworn oral testimony by means of a [tape-] recording device [or stenographic machine] if [such are] available; otherwise, adequate [longhand] notes summarizing what is said shall be made by the judge. Subsequent to taking the oath, the applicant must identify himself or herself, specify the purpose of the request and disclose the basis of his or her information. This sworn testimony shall be deemed to be an affidavit for the purposes of issuance of a search warrant. A warrant may issue if the judge is satisfied [that exigent circumstances exist sufficient to excuse the failure to obtain a written warrant, and] that sufficient grounds for granting the application have been shown. Upon approval, the judge shall memorialize the specific terms of the authorization to search and shall direct the applicant to enter this authorization verbatim on a form, or other appropriate paper, designated the duplicate original search warrant. This warrant shall be deemed a search warrant for the purpose of R. 3:5. The judge shall direct the applicant to print the judge's name on the warrant. [The judge shall also contemporaneously record factual determinations as to exigent circumstances. If a recording is made, the judge shall direct that the testimony be transcribed as soon as practicable. This transcribed record shall be certified by the judge.]

The judge shall promptly issue a written confirmatory search warrant and shall enter thereon the exact time of issuance of the duplicate original warrant. In all other respects, the method of issuance and contents of the warrant shall be that required by [subsection (a) of] this rule.

Note: Source--R.R. 3:2A-3, 3:2A-4 (second sentence); former rule redesignated paragraph (a) and paragraph (b) adopted July 26, 1984 to be effective September 10, 1984; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

2. R. 3:5-4 – Secrecy

Consistent with the proposed amendment to R. 3:5-3(a), the Committee proposes adding "certification" in the first sentence. The language concerning filing the search warrant records with the criminal division manager's office was removed because the returns are now included in the Judiciary's computerized system.

The proposed amendments to Rule 3:5-4 follow.

3:5-4. Secrecy

A search warrant shall be issued with all practicable secrecy and the affidavit, certification, or testimony upon which it is based shall not be [filed with the criminal division manager's office or] made public in any way prior to execution. The disclosure, prior to its execution, that a warrant has been applied for or issued, except as necessary for its execution, may constitute a contempt. After execution a warrant and accompanying papers shall remain confidential except as provided in R. 3:5-6(c).

Note: Source--R.R. 3:2A-9 (first paragraph); amended July 13, 1994 to be effective January 1, 1995; amended July 12, 2002 to be effective September 3, 2002.

3. R. 3:5-5 – Execution and Return with Inventory

Paragraph (a)

Paragraph (a), which addresses the execution of search warrants and returns, was revised to add a caption ("In General") and to require the "executing law enforcement agency" to include the executed search warrant, inventory and accompanying documents in the Judiciary's computerized system within 14 days of execution. The Committee thought it was important that the rule set a time period for law enforcement to include the return in the computerized system.

This paragraph was also revised to require that the "executing law enforcement agency" rather than the "judge" deliver a copy of the inventory to the person from whom or from whose premises the property was taken.

Paragraph (b)

Current paragraph (b) which addresses duplicate search warrants for telephonic requests was revised to add a caption ("Duplicate Search Warrant") and to cross-reference R. 3:5-3(c). To conform with the proposed amendments to R. 3:5-3(c), the outdated terminology concerning "tapes" and a "stenographic record" was removed and replaced with "recording." The rule requires the "executing law enforcement agency" to retain the recording if applicable. The language concerning the transcript was removed consistent with the amendments proposed in R. 3:5-3(c).

The proposed amendments to Rule 3:5-5 follow.

3:5-5. Execution and Return with inventory

(a) In General. A search warrant may be executed by any law enforcement officer, including the Attorney General or county prosecutor or sheriff or members of their staffs. The warrant must be executed within 10 days after its issuance and within the hours fixed therein by the judge issuing it, unless for good cause shown the warrant provides for its execution at any time of day or night. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made and verified by the officer executing the warrant in the presence of the person from whom or from whose premises the property is taken or, if such person is not present, in the presence of some other person. It shall be the responsibility of the executing law enforcement agency to ensure that the executed search warrant, inventory, and any other accompanying documents are included in the Judiciary's computerized system within 14 days of execution. The [judge] executing law enforcement agency shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken [and to the applicant for the warrant].

(b) Duplicate Search Warrant. If a duplicate original search warrant issued telephonically pursuant to R. 3:5-3(c) has been executed, the person who executed the warrant shall enter the exact time of its execution on its face. If a [tape or stenographic record] recording of the oral testimony has been made, [the judge shall require the applicant

to sign a transcript of that record.] the [The] executing law enforcement agency shall be responsible to retain the recording. In all other respects, execution and return of the duplicate original search warrant shall be that required by paragraph (a) of this rule.

Note: Source--R.R. 3:2A-4; former rule redesignated as paragraph (a) and paragraph (b) adopted July 26, 1984 to be effective September 10, 1984.

4. R. 3:5-6 – Filing; Confidentiality

The caption was revised to refer to "Records" rather than "Filing" to reflect that the applicant will be including the return and accompanying papers in the computerized system.

Paragraph (a)

A caption was added ("In General") to this paragraph. Consistent with the proposed amendment to R. 3:5-4, the language concerning filing the papers with the criminal division manager's office was removed and replaced with the requirement for the "applicant" to include that information in the Judiciary's computerized system. Language was also added to include the "certification" and the transcript "if available" in the system. When a recording has been made the "executing law enforcement agency" is required to retain it.

Paragraph (b)

A caption was added ("Subsequent Applications Related to Electronic Communications") to indicate that this paragraph addresses search warrant applications where the warrant is issued based in whole or in part on electronic communications authorized by a wiretap judge. In those instances, the "executing law enforcement agency" rather than the "judge who issued the warrant" shall provide notice to that wiretap judge. The language requiring the warrant and inventory to be provided to the criminal division manager was removed.

Paragraph (c)

Paragraph (c) was revised to add a caption ("Discovery"), reference "certification," and remove the outdated "tape" and "stenographic" terminology.

The proposed amendments to Rule 3:5-6 follow.

3:5-6. Records [Filing]; Confidentiality

(a) In General. Except as provided in paragraph [subsection] (b), the applicant [judge who issued the warrant] shall [attach thereto] include the return, inventory, and all other papers in connection therewith, including the affidavits, certification, and [a] any transcript or summary of any oral testimony, if available, and, where applicable, a duplicate original search warrant, in the Judiciary's computerized system [and shall file them with the criminal division manager's office of the county wherein the property was seized]. When a recording [tape or stenographic record] has been made, it shall [also] be [filed by the judge] retained by the executing law enforcement agency.

(b) Subsequent Applications Related to Electronic Communications. In the event a search warrant is issued based in whole or in part on oral, wire, or electronic communications authorized by a wiretap judge under the provisions of the New Jersey Wiretapping and Electronic Surveillance Control Act, N.J.S.A. 2A:156A-1 et seq., [the judge who issued the warrant shall file only with the wiretap judge the application for the search warrant and all other affidavits, documents and exhibits submitted in connection therewith, as well as any tape or stenographic record of oral testimony taken by the wiretap judge. The] the executing law enforcement agency [judge who issued the warrant] shall file a notice of such application [filing] with the wiretap judge [, as aforesaid, together with the warrant and, where applicable, a duplicate original search warrant and inventory with the criminal division manager's office of the county wherein the property was seized].

(c) Discovery. All warrants that have been completely executed and the papers accompanying them, including the affidavits, certification, transcript or summary of any

oral testimony, duplicate original search warrant, return and inventory, and any original [tape or stenographic] recording shall be confidential except that the warrant and accompanying papers shall be provided to the defendant in discovery pursuant to R. 3:13-3 and available for inspection and copying by any person claiming to be aggrieved by an unlawful search and seizure upon notice to the county prosecutor for good cause shown.

Note: Source--R.R. 3:2A-5, 3:2A-9 (second paragraph). Amended June 29, 1973 to be effective September10, 1973; amended July 26, 1984 to be effective September 10, 1984; paragraph designations and text of paragraph (b) adopted and paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 13, 1994, paragraph (c) amended December 9, 1994, to be effective January 1, 1995; paragraph (b) amended June 28, 1996 to be effective September 1, 1996; caption amended and paragraph (c) amended July 12, 2002 to be effective September 3, 2002; paragraph (c) amended December 4, 2012 to be effective January 1, 2013.

C. R. 3:9-1 and R. 3:13-3 and Delivery of Discovery

The Committee is proposing amendments to R. 3:9-1(a) and R. 3:13-3(b)(1) to remove the language as to the prosecutor's discovery being delivered to the criminal division manager's office in light of the electronic exchange of this information between the parties. In instances when this exchange cannot be done electronically, the current language provides for the discovery to be made available at the prosecutor's office.

Similarly, the language concerning defense counsel sending the criminal division manager's office a copy of its discovery request or its intention not to request discovery from the State was removed in R. 3:13-3(b)(1).

The proposed amendments to Rules 3:9-1 and 3:13-3 follow.

3:9-1. Post-Indictment Procedure; Arraignment; Meet and Confer; Plea Offer; Conferences; Pretrial Hearings; Pretrial Conference

(a) Post-Indictment Procedure. When an indictment is returned, or an indictment sealed pursuant to R. 3:6-8 is unsealed, a copy of the indictment, together with all available discovery as provided for in R. 3:13-3(b)(1) for each defendant named therein, shall be [either delivered to the criminal division manager's office, or be] available through the prosecutor's office. If a plea offer is tendered, it must be in writing and should be included in the discovery package. Upon the return or unsealing of the indictment the defendant shall be notified in writing by the criminal division manager's office of the date, time and location to appear for arraignment which shall occur within 14 days of the return or unsealing of the indictment. The criminal division manager's office shall ascertain whether the defendant is represented by counsel and that an appearance has been filed pursuant to Rule 3:8-1. Upon receipt of the indictment by the criminal division manager's office, counsel for the defendant shall immediately be notified electronically of the return or unsealing of the indictment and the date, time and location of the arraignment. If the defendant is unrepresented, the criminal division manager's office shall ascertain whether the defendant has completed an application form for public defender services and the status of that application.

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) … no change.

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.

3:13-3. Discovery and Inspection

(a) … no change.

(b) Post-Indictment Discovery.

(1) Discovery by the Defendant. Except for good cause shown, the prosecutor's discovery for each defendant named in the indictment shall be [delivered to the criminal division manager's office, or shall be] available through 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 [or the criminal division manager'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. [Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery to the criminal division manager's office.]

A defendant who does not seek discovery from the State shall so notify [the criminal division manager's office and] 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:

… no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) … 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.

D. R. 3:14-4 - Order for Change of Venue; Costs

R. 3:14-4 was revised to recognize that when cases are transferred to another county the case documents are available statewide to staff in eCourts, so there is no need for the criminal division manager's office to send or transmit documents to the criminal division manager's office in the county where the case is transferred. As such, the language concerning the transmittal of documents was eliminated and replaced with notice of the change of venue to the other county. References to "complaint-warrants" and "complaint-summons" were also added. The last sentence concerning the certification of the costs of trial was simplified to reference the county where the "matter originated."

The proposed amendments to R. 3:14-4 follow.

3:14-4. Order for Change of Venue; Costs

If a change of venue is ordered, the criminal division manager's office in which the complaint-warrant or complaint-summons, indictment or accusation is pending shall notify [transmit to] the criminal division manager's office to which the matter is transferred [all papers filed therein or duplicates thereof], and the prosecution shall continue in that county. The costs of trial shall be certified to the Assignment Judge of the county in which the matter originated [the indictment was found or the accusation was filed].

Note: Source--R.R. 3:6-2(d); amended July 13, 1994 to be effective January 1, 1995.

E. Referral in State v. Courtney for Proposed Amendments to R. 3:21-4

The Committee is proposing amendments to R. 3:21-4 in accordance with the Supreme Court's referral to implement its procedures to address instances where a defendant's extended-term eligibility for repeat drug offenders under N.J.S.A. 2C:43-6(f) is a disputed point. See State v. Courtney, 243 N.J. 77 (2020).

In considering the referral, the Committee took into account the particular circumstances presented in Courtney. The defendant was charged with first-degree possession of heroin with intent to distribute, but due to his criminal history faced a mandatory extended-term sentence and minimum period of parole ineligibility under N.J.S.A. 2C:43-6(f) if convicted and if the prosecutor applied for an extended-term sentence. During plea negotiations, the State alerted the court and defendant that defendant qualified for a mandatory extended term but agreed to a sentence of fourteen year's imprisonment with a sixty-three-month parole disqualifier. Defendant entered a guilty plea under the terms of the negotiated plea agreement. The State noted that "the plea agreement is based on the fact that the State will not move for an extended term pursuant to N.J.S.A. 2C:46-3(f)." The court imposed the agreed-upon sentence. At that time, defense counsel and defendant both acknowledged their understanding of the terms of the guilty plea and raised no objections regarding defendant's eligibility for an extended term pursuant to N.J.S.A. 2C:43-6(f).

At sentencing, defense counsel requested a reduced sentence despite acknowledging the plea agreement. The sentencing judge rejected defendant's request, finding the plea agreement to be appropriate and sentenced defendant accordingly. The court noted that

"the State has agreed in this particular case not to extend the term, which is a key component of the negotiations in this court's view and the agreement to [sixty-three] months." Id. at 83-84.

The Appellate Division affirmed, rejecting defendant's argument that the sentencing court had discretion to lower his sentence because the State failed to file a formal application requesting the extended mandatory term.

The Supreme Court affirmed the judgment of the Appellate Division and held that N.J.S.A. 2C:35-12 ("Waiver of Mandatory Minimum and Extended Terms") does not require a formal application when a prosecutor agrees not to request a mandatory extended-term sentence under N.J.S.A. 2C:43-6(f) yet seeks the benefit of a N.J.S.A. 2C:35-12 plea agreement. Courtney, 243 N.J. at 83.

To provide greater clarity and an opportunity to resolve extended term eligibility disputes the Court modified the procedures in R. 3:21-4(e) as follows:

> (1) If the prosecutor agrees not to file an application for an extended term as part of a plea agreement but intends to seek the benefit of N.J.S.A. 2C:35-12 at sentencing, then the trial court shall ask the prosecution on the record whether defendant is extended-term eligible;
>
> (2) Defendant shall be given an opportunity to object;
>
> (3) If defendant does not object, the trial court's inquiry ends there, and the prosecution may proceed under the plea agreement without being required to file a formal motion;
>
> (4) If, however defendant objects, then the prosecution would have to meet its burden of proof by demonstrating defendant's eligibility for an extended term; and
>
> (5) The trial court would then make a finding as to whether the

prosecution has met its burden.
[Courtney, 243 N.J. at 90-91.]

Consistent with the above principles, the Committee is proposing amendments in new paragraph (f) of R. 3:21-4. A new paragraph was created to specifically address the procedures for sentences pursuant to a negotiated disposition under N.J.S.A. 2C:35-12, rather than including them in current paragraph (e), because that paragraph includes other extended term and enhanced sentences.

Accordingly, the subsequent paragraphs have been renumbered.

The proposed amendments to Rule 3:21-4 follow.

3:21-4. Sentence

(a) … no change.

(b) … no change.

(c) … no change.

(d) … no change.

(e) … no change.

(f) Sentence Pursuant to Negotiated Disposition under N.J.S.A. 2C:35-12. Where the defendant is pleading guilty pursuant to a negotiated disposition governed by N.J.S.A. 2C:35-12, and, as part of that negotiated disposition, the prosecutor has agreed to not file a motion for a mandatory extended-term sentence under N.J.S.A. 2C:43-6(f), the prosecutor shall represent to the court, on the record at the time of the guilty plea, that (a) the plea is pursuant to N.J.S.A. 2C:35-12, (b) the defendant would ordinarily be eligible for a mandatory extended-term sentence under N.J.S.A. 2C:43-6(f), and (c) the State is waiving the extended-term sentence in exchange for the defendant's guilty plea. The parties shall also record this information on the plea form. If the defendant disputes the prosecutor's representation that he or she is eligible for a mandatory extended-term sentence under N.J.S.A. 2C:43-6(f), the court shall hold a hearing, at which the State shall have the burden to prove the defendant's eligibility for such a sentence by a preponderance of the evidence.

(g) [(f)] … no change.

(h) [(g)] … no change.

(i) [(h)] … no change.

(j) [i)] … no change.

(k) [(j)] … no change.

Note: Source -- R.R. 3:7-10(d). Paragraph (f) amended September 13, 1971, paragraph (c) deleted and paragraphs (d), (e) and (f) redesignated as (c), (d) and (e) July 14, 1972 to be effective September 5, 1972; paragraph (e) adopted and former paragraph (e) redesignated as (f) August 27, 1974 to be effective September 9, 1974; paragraph (b) amended July 17, 1975 to be effective September 8, 1975; paragraphs (d) and (e) amended August 28, 1979 to be effective September 1, 1979; paragraph (d) amended December 26, 1979 to be effective January 1, 1980; paragraph (g) adopted July 26, 1984 to be effective September 10, 1984; paragraph (d) caption and text amended November 5, 1986 to be effective January 1, 1987; paragraph (d) amended November 2, 1987 to be effective January 1, 1988; paragraph (d) amended January 5, 1988 to be effective February 1, 1988; new paragraph (c) adopted and former paragraphs (c), (d), (e), (f), and (g) redesignated (d), (e), (f), (g), and (h) respectively June 29, 1990 to be effective September 4, 1990; paragraph (b) amended July 14, 1992 to be effective September 1, 1992; paragraph (i) adopted April 21, 1994 to be effective June 1, 1994; paragraphs (b), (e), (f) and (g) amended July 13, 1994 to be effective January 1, 1995; former paragraphs (f), (g), (h), and (i) redesignated as paragraphs (g), (h), (i), and (j) and new paragraph (f) adopted July 10, 1998 to be effective September 1, 1998; paragraph (j) amended July 5, 2000 to be effective September 5, 2000; paragraph (e) caption and text amended, and paragraph (f) amended June 15, 2007 to be effective September 1, 2007; paragraph (h) caption and text amended July 16, 2009 to be effective September 1, 2009; paragraph (g) amended July 21, 2011 to be effective September 1, 2011; paragraph (a) caption and text amended August 30, 2016 to be effective January 1, 2017; paragraph (a) amended July 29, 2019 to be effective September 1, 2019.

III. Rule Amendments Considered and Not Recommended

A. Referral in State v. Devine

The Committee considered a referral by the Supreme Court to make a recommendation for appropriate action in accordance with the unpublished Appellate Division decision, State v. Devine, 2019 N.J. Super. Unpub. LEXIS 2405 (App. Div. Nov. 25, 2019).

Specifically, the Appellate Division in Devine stated:

> In the future, we respectfully urge trial judges who permit a defendant to withdraw a guilty plea to an accusation to specifically address the defendant's previously-entered waiver of his right to indictment and the accusation itself, deciding whether either has continued vitality in light of the court's ruling on the motion. Through this opinion, we also express our concerns to the Criminal Practice Committee and commend to its collective consideration possible amendments to the rules.
> [Id. at *15.]

In considering this referral, the Committee reviewed the circumstances presented in Devine. At sentencing, the trial court granted defendant's motion to withdraw his guilty pleas to the indictment and accusation. The court did not vacate, nor was it asked to vacate, defendant's waiver of his right to indictment, nor was the court asked to dismiss the accusation.

Subsequently, the trial court released the defendant because the State had not moved to indict within the 90-day speedy trial period permitted under N.J.S.A. 2A:162-22(a)(1)(a) or requested other relief. The court rejected the State's argument that the defendant had waived his right to indictment and that the filing of the accusation (R. 3:7-2 expressly providing that "the defendant may be tried on accusation" after valid waiver of right to

indictment) was the functional equivalent of the return or unsealing of an indictment for purposes of the Criminal Justice Reform Act. As such, the State argued that the case fell under the 180-days post-indictment speedy trial period under N.J.S.A. 2A:162-22(a)(2)(a). The court disagreed. The State filed a motion for reconsideration, which the trial court also denied.

The Appellate Division granted the State's motion for leave to appeal. The Appellate Division concluded that the defendant waived his right to indictment, the waiver was never revoked or vacated, and the filed accusation, which was never dismissed by the court, served as the functional equivalent of an indictment for purposes of N.J.S.A. 2A:162-22. As such, the Appellate Division reversed and vacated the trial court's order releasing the defendant from pretrial detention.

After discussing the circumstances presented in Devine, the Committee determined that no further action was required. This was a rare incident that was more appropriately addressed on a case-by-case basis, rather than proposing a rule amendment for such limited occurrences.

IV. Non-Rule Recommendation

A. Arrests Not Resulting in Convictions and the Presentence Investigation Report

I. Initial Proposal and Committee Recommendation

The Criminal Practice Committee considered a proposal by the Office of the Public Defender to delete all reference in a presentence investigation report to a defendant's arrest that did not result in a conviction. See Attachment A for an example of a presentence investigation report, which has been redacted to remove case identifiers. This proposal sought to address the disproportionate arrest and incarceration rates for Black and Hispanic defendants. This proposal was premised upon a belief that courts "unconsciously" consider arrests not resulting in conviction in sentencing a defendant because these arrests are listed in the presentence investigation report.

A subcommittee was formed which recommended a modified form of this initial proposal. Consistent with the initial proposal, the subcommittee recommended excluding all references in the presentence investigation report to arrests not resulting in conviction. Recognizing the legitimate purposes for which this information may be used in a sentencing proceeding under certain circumstances, the subcommittee majority modified the initial proposal by including a disclaimer[1] to appear in both R. 3:21-2 and within the presentence investigation report.

[1] The proposed disclaimer provided that, "[n]othing in this rule precludes a prosecutor from discussing an arrest that did not result in conviction, if the prosecutor submits competent evidence that there is a factual basis for the court to consider that arrest in sentencing a defendant."

The full Committee rejected this proposal. Instead, the Committee is recommending a different approach that would both minimize the risk of any "unconscious" consideration of arrests not resulting in convictions and retain a full sentencing record. The Committee proposes modifications to the presentence investigation report format to retain reference to arrests not resulting in conviction but in a redacted form (excluding the nature of the offense and statutory citation) and placed in a new section of the report that is separate from the section that lists arrests resulting in conviction. Such physical separation seeks to reinforce the sentencing court's responsibility to make the reliability determinations in accordance with case law before considering in its sentencing decisions conduct underlying an arrest not resulting in conviction. The inclusion of the redacted arrest information is designed to promote the development of an accurate sentencing record.

II. Existing Procedures

Members were mindful of the statutory requirements for presentence investigation reports. Pursuant to N.J.S.A. 2C:44-6(a), "[t]he court shall not impose sentence without first ordering a presentence investigation of the defendant and according due consideration to a written report of such investigation." The statute further sets forth the information that must be included in the presentence investigation report.

N.J.S.A. 2C:44-6(b) provides in relevant part:

> The presentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation, financial resources, including whether or not the defendant is an enrollee or covered person under a health insurance contract, policy or plan, debts, including any amount owed for a fine, assessment or restitution ordered in accordance with the provisions of Title 2C,

> any obligation of child support including any child support delinquencies, employment history, personal habits, the disposition of any charge made against any codefendants, the defendant's history of civil commitment, any disposition which arose out of charges suspended pursuant to N.J.S.A. 2C:4-6 including the records of the disposition of those charges and any acquittal by reason of insanity pursuant to N.J.S.A. 2C:4-1, and any other matters that the probation officer deems relevant or the court directs to be included.

Id. (emphasis added). Additionally, R. 3:21-2 "Presentence Procedure" provides:

> (a) Investigation. Before the imposition of a sentence or the granting of probation court support staff shall make a presentence investigation in accordance with N.J.S.A. 2C:44-6 and report to the court. The report shall contain all presentence material having any bearing whatever on the sentence and shall be furnished to the defendant and the prosecutor.

Id. (emphasis added).

The Supreme Court's decision in State v. K.S., 220 N.J. 190, 199 (2015), was also referenced during the discussion of this proposal. In K.S., the Court held that prosecutors could not rely on the mere fact of arrest in determining whether to admit a defendant to the pretrial intervention program. The Court stated "[f]or the prior dismissed charges to be considered properly by a prosecutor in connection with an application, the reason for consideration must be supported by undisputed facts or record or facts found at a hearing." Id., Accord, State v. Green, 62 N.J. 547, 571 (1973) (permits consideration of fact underlying arrests in sentencing proceedings). Thus, existing Supreme Court precedent instructs that while the mere fact of arrest may not be considered, the conduct underlying a dismissed charge may be considered if supported by reliable evidence presented at a (sentencing) hearing. Id.

III. Committee Assessment of Subcommittee Proposal

To assess the initial proposal to amend R. 3:21-2, and to otherwise modify existing procedures, the Committee formed a subcommittee.

The subcommittee sought to address a concern that courts will "unconsciously" consider arrests not resulting in conviction in sentencing a defendant because the arrest is listed in the presentence investigation report. To remedy the potential for this "unconscious consideration," the subcommittee proposed to eliminate all references to these arrests within the presentence investigation report. The full Committee disagreed with the subcommittee's approach for two primary reasons: (i) lack of demonstrated need, and (ii) interference with the development of an accurate sentencing record.

(i) Lack of Demonstrated Need

Most fundamentally, the Committee recognized that the law presently guards against a sentencing court's "unconscious" consideration of arrests not resulting in conviction. The law is clear -- the arrests themselves may not be considered. State v. Green, 62 N.J. 547, 571 (1973). Accord State v. K.S., 220 N.J. 190, 199 (2015) (pretrial intervention). However, the law is equally clear that conduct underlying a dismissed charge may be considered if supported by reliable evidence[2] presented at a sentencing hearing. Id. Thus, any consideration of such arrests must be "conscious," as both Green and K.S. require the sentencing court to make affirmative findings that reliable evidence supports consideration of defendant's conduct underlying a dismissed charge.

[2] The subcommittee acknowledged such proper consideration through their proposed disclaimer quoted in note 1.

Despite this affirmative finding requirement, the subcommittee sought to support its proposal by contending, "while sentencing judges are not citing this information, negative inferences *could* be drawn simply because the presentence investigation report lists dismissed charges." Since the subcommittee report did not document a single instance in which a sentencing court did not adhere to the affirmative finding requirements of Green and K.S., the full Committee was not persuaded that the subcommittee's well-intentioned concerns regarding the "unconscious" judicial misuse of arrest information was supported in the record.

(ii) Interference with the Development of an Accurate Sentencing Record

The subcommittee's proposal would effectively direct Judiciary employees to withhold information potentially relevant to the imposition of an appropriate sentence. Thus, neither the court nor the State would be notified of the initial arrest in the presentence investigation report, thereby impeding the development of an accurate record at sentencing.

Members in support of the subcommittee proposal asserted that the State has access to the defendant's criminal history and can investigate this information on their own without relying on the presentence investigation report as the sole resource. Members responded that a defendant's Computerized Criminal History, commonly known as the rap sheet, does not always include all the dismissed charges. As such, criminal probation officers check multiple computer systems to ensure that the defendant's criminal history is complete.

Nonetheless, corrections are sometimes made at sentencing after the parties have an opportunity to review the presentence investigation report in advance of sentencing and

advise the court of the need to correct that information. For example, the presentence investigation report may mistakenly reflect charges as dismissed. If that arrest was not listed in the presentence investigation report the prosecutor would not know to run the defendant's rap sheet so as to trigger further investigation to contest that disposition and provide the court with evidence of a conviction.

Additional concerns arose over the process that would need to be employed to remove these arrests from the presentence investigation report if the subcommittee's proposal was adopted. Specifically, criminal probation officers would need to manually check the computer systems to determine the arrests that did not result in a conviction and then remove those arrests. In the Committee's view, the risks of charges being removed that should have remained on the presentence investigation report – whether due to data entry errors or mistakes – seemed relatively high. Moreover, if these errors were not brought to the court's attention, the sentencing court would be relying on an inaccurate sentencing record.

IV. Committee's Proposal to Amend the Presentence Investigation Report

As previously noted, the Committee ultimately rejected the initial proposal by the Office of the Public Defender to eliminate arrests not resulting in convictions from the presentence investigation report, and also rejected the modified proposal by the subcommittee to add a disclaimer and amend R. 3:21-2(a). In its place, the Committee recommends modifying the presentence investigation report format to address the concerns that sentencing courts will "unconsciously" consider arrests not resulting in conviction. Specifically, this proposal would create a separate new section for arrests not resulting in

conviction, rather than eliminating any reference to arrests not resulting in convictions in presentence investigation reports.

This approach would reinforce the sentencing court's responsibility to make reliability determinations before considering such underlying conduct in its sentencing determinations consistent with the case law. It also ensures that information is not withheld from courts that could possibly be relevant when supported by reliable evidence. This proposal can also be implemented without any revisions to the court rules.

Specifically, this proposal would modify the presentence investigation report as follows:

> (1) Amend the "Discussion of Prior Court History and Pending Charges" section to summarize only the information referenced in (2) below. This narrative would not include references to arrests not resulting in conviction. (See Attachment B for an example of a simple narrative.)
>
> (2) Continue to include in "Court History" all criminal convictions, pending criminal charges, acquittals by reason of insanity and suspended charges due to incompetence. (See Attachment C with dismissed charges redacted in the sample PSI beginning on page 5. Also note that the "Discussion" section at the top of page 5 would consist of a narrative as referenced in (1) above and not the type of narrative presently used.)
>
> (3) Remove from "Court History" all "arrests that did not result in a conviction" and include them in a separate new section captioned "Court History – Charges." (See Attachment D.)
>
> This new "Court History – Charges" section would list:
> - the date of arrest/contact,
> - place of arrest/contact,
> - charging document identifier,
> - prosecutor case number,
> - court,
> - disposition, and
> - date of disposition.

It is important to note that the "Court History – Charges" section described in (3) above would not list the name of the underlying offense (e.g., possession of heroin) or the corresponding statutory citation (e.g., N.J.S.A. 2C:35-10) for which the defendant was arrested. The rationale was that the deletion of the alleged offense and citation would lessen the possibility that impermissible negative inferences could be drawn from listing this information in the presentence investigation report. Inclusion of the charging document identifier and prosecutor case number would facilitate investigation by the prosecutor as to the dismissed charge so as to determine whether "reliable evidence" exists that the defendant actually committed the conduct underlying the dismissed charge.

Additionally, listing these charges in the new "Court History – Charges" section is designed to separate them from charges that resulted in convictions that would continue to be listed in the "Court History" section referenced in section (2) above. Such physical separation also seeks to reinforce the sentencing court's responsibility to make the reliability determinations in accordance with K.S. and Green before considering such underlying conduct in its sentencing decisions. This separation is further reinforced through the changes to the summary section of the "Discussion of Prior Court History and Pending Charges," which will not refer to these arrests. (Compare the language in the sample in Attachment B with the language from the current form of PSI in Attachment A.)

For the reasons noted above, the Committee recommends modifications to the presentence investigation report as follows.

(1) Amend the "Discussion of Prior Court History and Pending Charges" section to summarize only the information referenced in (2) below. This narrative would not include references to arrests not resulting in conviction.

(2) Continue to include in "Court History" all criminal convictions, pending criminal charges, acquittals by reason of insanity and suspended charges due to incompetence.

(3) Remove from "Court History" all "arrests that did not result in a conviction" and include them in a separate new section captioned "Court History – Charges."

ATTACHMENT A

CURRENT PRESENTENCE INVESTIGATION REPORT

APPROVED FOR SENTENCING

Adult Presentence Report
Superior Court of New Jersey, ESSEX County

This report shall remain confidential and copies thereof shall not be made nor the disclosure of the contents of such report be made to third persons except as may be necessary in subsequent court proceedings involving the sentence imposed or disposition made.

Last Name	First Name	Middle Name
[redacted]	[redacted]	[redacted]

Also Known As	Sex	Date of Birth	Age	Place of Birth
[redacted] (Cont...)	☑ M ☐ F	[redacted]	32	

Race	Social Security Number	Driver's License Number	Eye Color
[redacted]	[redacted]	NJ-[redacted]	BROWN

Address	State	Zip Code	Residence Phone
[redacted] IRVINGTON	NJ	07111	[redacted]

Indictment / Accusation / Complaint Number	PROMIS Number	SPN	SBI Number	FBI Number
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Original Charges
1. DISTRIBUTE CDS, MARIJUANA<1 OZ, 2C:35-5A(1), DEG:4;

2. DISTRIBUTE CDS, MARIJUANA, ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7A, DEG:3;

3. CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSITUTE A CRIME, 2C:5-2A(1), MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1), DEG:1;
(Cont...)

Final Charges
6. POSSESSION WITH INTENT TO DISTRIBUTE CDS, MARIJUANA, ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7A, DEG:3;

7. POSSESSION OF CDS, METHAMPHETAMINE, 2C:35-10A(1), DEG:3;

Plea Agreement / Special Factors ☐ Trial ☑ Plea

The prosecutor has recommended 5 years flat NJSP. Defendant is to exculpate co-defendant.

All remaining counts are for dismissal.

Mandatory Minimum Sentence Pursuant to *N.J.S.A.* 2C:

☐ 11-3	☐ 11-5	☐ 12-2	☐ 13-1
☐ 14-6	☐ 15-2	☐ 17-1	☐ 20-11
☐ 29-6	☐ 35-3	☐ 35-4	☐ 35-5
☐ 35-6	☑ 35-7	☐ 35-8	☐ 39-10
☐ 43-6	☐ 43-7	☐ 43-7.1	☐ 43-7.2

Offense Date	Arrest Date	Plea / Conviction Date	Sentence Date	
07/26/2017	07/26/2017	08/05/2019	09/27/2019	☑ Pending Charges ☐ Detainers

Custodial Status	Bail Amount	Date Bail Posted	Interpreter Needed	Language
☐ ROR ☑ Pretrial Release ☐ Bail ☐ Jail ____	.00		☐ Yes ☑ No	

Jail Time Credit

From (Date)	To (Date)	Total Jail Time Credit Days
07/26/2017 02/06/2019	07/28/2017 02/06/2019	4

Gap Time Credit

From (Date)	To (Date)	Total Gap Time Credit Days

☐ Public Defender ☑ Private ☐ Assigned

Defense Attorney	Phone Number
[redacted]	[redacted]

Address: [redacted]

Sentencing Judge: [redacted]

Assistant Prosecutor: [redacted]

Comments
LEVEL II Jail Time Credit has been verified by CCIS and Promis/Gavel. The defendant was (Cont...)

Probation Officer	Date Prepared	Team Leader / Supervisor	Date Approved
[redacted]		[redacted]	9/30/19

Revised: 08/2017, CN: 10693

[redacted]

APPROVED FOR SENTENCING

Court History

LAST NAME	FIRST NAME	MIDDLE NAME
[redacted]	[redacted]	[redacted]

SBI #	FBI #	PENDING CHARGES	ACTIVE BENCH WARRANTS	DETAINERS
[redacted]	[redacted]	☑ YES ☐ NO	☐ YES ☑ NO	☐ YES ☑ NO

DISCUSSION OF PRIOR COURT HISTORY AND PENDING CHARGES

A search of FACTS revealed no juvenile history for the defendant.

The defendant's adult criminal history is comprised of twelve arrests and two additional summonses/complaints. On the municipal level, he has had one Conditional Discharge (violation) and four Disorderly Persons Convictions all drug related matters. He has been sentenced to probation, jail time and fees/fines. He has two matters pending in Irvington Municipal Court and owes a total of $308.00 (S 2019 000219 08709) to Irvington Municipal Court.

On the superior level, the defendant has one prior indictable conviction out of Union Superior Court. He was convicted for Possession With Intent To Distribute Marijuana, 4th Degree. He was sentenced to 3 years probation by Judge Fasciale. He completed his probationary term and was discharged on 05/09/2013.

The present matter represents the defendant's 2nd indictable conviction.

A search of FACTS revealed one domestic violence matter for the defendant (FV 07 003032 10) which resulted in a dismissal.

COURT HISTORY [redacted]

DATE	PLACE	OFFENSE	COURT	DISPOSITION
		****** ADULT. ******		
06/21/2005	IRVINGTON, NJ	ESX 05 005615-002 W-2005-002012-0709 1. POSS CDS/ANALOG - SCHD I II III IV, 2C:35-10A(1); 2. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1); 3. CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7;	Superior	Disp Date: 07/26/2005 Disp: DOWNGRADED REMAND COURT JUDGE FRASCA 1. POSS OF DRUG PARAPHERNALIA 2. DISORDERLY CONDUCT 3. LOITERING OBT/SELL CDS IN PUBLIC DISP DATE: 08/25/2005 CONDITIONAL DISCHARGE 1 YR DISMISSED: CTS: 2 & 3 AMOUNT ASSESSED: $800.00 02/27/2006: VIOLATION OF PROBATION BW ISSUED FTA 07/19/2006 - EXECUTED 07/24/2006 - RE SE PROB TERM W/O IMP (TERM SUPERVISION) 60 ECJ SUSPENDED 07/27/2006 - CONVERT TO COLLECTIONS 11/05/2012 - DISCHARGED COMPLETED TERM CAPS CLIENT ID: K 0014335
06/22/2006	IRVINGTON, NJ	SC-2006-023685-0709 1.POSSESSION MARIJUANA/HASH UNDER, 2C:35-10A(4);	Municipal	Disp Date: 09/11/2006 DISMISSED-OTHER

[redacted]

APPROVED FOR SENTENCING

Court History Continued

LAST NAME	FIRST NAME	MIDDLE NAME
[redacted]	[redacted]	[redacted]

COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
04/23/2007	IRVINGTON, NJ	SC-2007-024658-0709 1.LOITERING IN PUBLIC PLACES, 139-21;	Municipal	GUILTY Disp Date: 04/26/2007 Fine/Fees: $133.00 BALANCE OWED: $0.00
06/17/2008	IRVINGTON, NJ	S-2008-001755-0709 1.POSSESSION MARIJUANA/HASH UNDER, 2C:35-10A(4);	Municipal	07/31/2008 TRANSFERRED TO SUPERIOR COURT 09/23/2019 - DOWNGRADED BACK TO MUNICIPAL COURT PENDING
10/21/2008	IRVINGTON, NJ	S-2008-003040-0709 1.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 2.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B;	Municipal	Disp Date: 12/03/2008 Fine/Fees: $458.00 Balance Due: $.00 1. Guilty 2. Dism - Other
10/21/2008	IRVINGTON, NJ	S-2008-003041-0709 1.POSSESSION MARIJUANA/HASH UNDER, 2C:35-10A(4);	Municipal	Disp Date: 12/03/2008 DISMISSED-OTHER
01/20/2009	UNION, NJ	UNN 09 000319-002 09-04-00572-A 1. CDS - MANU/DIST/PWID - MARIJ<1OZ, HASH<5G, 2C:35-5B(12), DEG:4; W-2009-000130-2019 DP01. POSS CDS - < 50G MARIJUANA, 5G HASHISH, 2C:35-10A(4);	Superior	JUDGE FASCIALE Disp Date: 04/30/2009 Disp: GUILTY CT: 1; Sent Date: 06/19/2009 JAIL CREDIT: 2D LIC SUSP: 6M PROB: 3Y0M In Jail: 000Y00M030 DEDR: $750.00 LAB: $50.00 LETF: $30.00 PSUP: $5.00 SNSF: $75.00 VCCA: $50.00 05/09/2013 - DISCHARGED COMPLETED TERM CLIENT ID: K 0014335
06/05/2009	IRVINGTON, NJ	W-2009-002038-0709 1.POSS CDS - < 50G MARIJUANA, 5G HASHISH, 2C:35-10A(4);	Municipal	Disp Date: 07/08/2009 1. Dism - Plea Agmt
06/05/2009	IRVINGTON, NJ	W-2009-002039-0709 1.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 2.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 3.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B;	Municipal	Disp Date: 07/08/2009 Fine/Fees: $551.00 Balance Due: $.00 1. Guilty 2. Dism - Plea Agmt 3. Dism - Plea Agmt
07/09/2009	IRVINGTON, NJ	ESX 09 005167-001 W-2009-002539-0709 1. CONSPIRACY - AGREE/ENGAGE AID IN COND CONSITUTE A CRIME, 2C:5-2A, DISORDERLY CONDUCT, 2C:33-2; W-2009-002540-0709	Superior	Disp Date: 07/13/2009 Disp: DOWNGRADED REMAND COURT W-2009-002539-0709 1.DISORDERLY CONDUCT-IMPROP BEHAVIOR-FIGHT/THREATEN/ ETC, 2C:33-2A(1);

[redacted]

APPROVED FOR SENTENCING

Court History Continued

LAST NAME	FIRST NAME	MIDDLE NAME
[redacted]	[redacted]	[redacted]

COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
		2. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1); 3. CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7; DP01. W-2009-002535-0709 1.POSS CDS - < 50G MARIJUANA, 5G HASHISH, 2C:35-10A(4);		Disp Date: 09/10/2009 1. Dism - Plea Agmt W-2009-002540-0709 1.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 2. USE/POSSESS W/INTENT TO USE DRUG PARAPHERNALIA DP01. W-2009-002535-0709 Disp Date: 09/10/2009 Fine/Fees: $189.00 Balance Due: $.00 1. Jail: 7 days Probation: 18 months 04/29/2010 - DISCHARGED RETURN COLLECTIONS TO MUNICIPAL CAPS CLIENT ID: K 0014335 2.USE/POSS W/INTENT TO USE DRUG PARAPHERNALIA, 2C:36-2; Disp Date: 09/10/2009 1. Dism - Plea Agmt 2. Dism - Plea Agmt
05/15/2010	IRVINGTON, NJ	FV 07 003032 10 ASSAULT;	Family	Order Type: DISMISSAL Case Status: DISPOSED;PRE-DISP CPL/MTN on 06/04/2010;
06/04/2010	IRVINGTON, NJ DATE OF OFFENSE 05/17/2010	W-2010-001467-0709 1.SIMPLE ASSAULT-PURPOSELY/KNOWINGLY CAUSE BOD. INJURY, 2C:12-1A(1);	Municipal	Disp Date: 03/30/2011 1. Dism - Prosecutorial Discr
07/30/2016	IRVINGTON, NJ	ESX 16 005456-001 16-10-02905-I 1. CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSITUTE A CRIME, 2C:5-2A(1), CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7A, DEG:3; 2. POSS CDS - > 50G MARIJUANA, 5G HASHISH, 2C:35-10A(3), DEG:4; 3. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1), DEG:3; 4. CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7A, DEG:3; W-2016-001806-0709 DP01. USE/POSS W/INTENT TO USE DRUG PARAPHERNALIA, 2C:36-2;	Superior	Disp Date: 02/03/2017 Disp: DISMISSED
07/12/2017	IRVINGTON, NJ	ESX 19 007837-001 W-2017-001161-0709 1. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR	Superior	Disp Date: 09/23/2019 Disp: DOWNGRADED IRVINGTON MUNICIPAL COURT Pending

[redacted]

ATTACHMENT B

SAMPLE DISCUSSION OF "PRIOR COURT HISTORY AND PENDING – CHARGES" SECTION

PRIOR COURT HISTORY AND PENDING CHARGES

As an adult, the defendant has one felony conviction for a drug distribution offense. He was sentenced to probation which he successfully completed in 2013.

On a municipal level, the defendant has four convictions for disorderly person offenses and one conditional discharge, all for drug related offenses.

Defendant has two pending matters in municipal court where he now owes $308 in fines.

Defendant does not have any open bench warrants.

ATTACHMENT C

REVISED "COURT HISTORY" SECTION

APPROVED FOR SENTENCING

Adult Presentence Report
Superior Court of New Jersey, ESSEX County

This report shall remain confidential and copies thereof shall not be made nor the disclosure of the contents of such report be made to third persons except as may be necessary in subsequent court proceedings involving the sentence imposed or disposition made.

Last Name	First Name	Middle Name
[redacted]	[redacted]	[redacted]

Also Known As	Sex	Date of Birth	Age	Place of Birth
[redacted] (Cont...)	☑ M ☐ F	[redacted]	32	

Race	Social Security Number	Driver's License Number	Eye Color
[redacted]	[redacted]	NJ - [redacted]	BROWN

Address	State	Zip Code	Residence Phone
[redacted] IRVINGTON	NJ	07111	[redacted]

Indictment / Accusation / Complaint Number	PROMIS Number	SPN	SBI Number	FBI Number
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Original Charges
1. DISTRIBUTE CDS, MARIJUANA<1 OZ, 2C:35-5A(1), DEG:4;

2. DISTRIBUTE CDS, MARIJUANA, ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7A, DEG:3;

3. CONSPIRACY - AGREE/ENGAGE IN CONDUCT CONSITUTE A CRIME, 2C:5-2A(1), MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1), DEG:1;
(Cont...)

Final Charges
6. POSSESSION WITH INTENT TO DISTRIBUTE CDS, MARIJUANA, ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7A, DEG:3;

7. POSSESSION OF CDS, METHAMPHETAMINE, 2C:35-10A(1), DEG:3;

Plea Agreement / Special Factors ☐ Trial ☑ Plea

The prosecutor has recommended 5 years flat NJSP. Defendant is to exculpate co-defendant.

All remaining counts are for dismissal.

Mandatory Minimum Sentence Pursuant to *N.J.S.A.* 2C:

☐ 11-3	☐ 11-5	☐ 12-2	☐ 13-1
☐ 14-6	☐ 15-2	☐ 17-1	☐ 20-11
☐ 29-6	☐ 35-3	☐ 35-4	☐ 35-5
☐ 35-6	☑ 35-7	☐ 35-8	☐ 39-10
☐ 43-6	☐ 43-7	☐ 43-7.1	☐ 43-7.2

Offense Date	Arrest Date	Plea / Conviction Date	Sentence Date	
07/26/2017	07/26/2017	08/05/2019	09/27/2019	☑ Pending Charges ☐ Detainers

Custodial Status	Bail Amount	Date Bail Posted	Interpreter Needed	Language
☐ ROR ☑ Pretrial Release ☐ Bail ☐ Jail _____	.00		☐ Yes ☑ No	

Jail Time Credit

From (Date)	To (Date)	Total Jail Time Credit Days
07/26/2017 02/06/2019	07/28/2017 02/06/2019	4

Gap Time Credit

From (Date)	To (Date)	Total Gap Time Credit Days

☐ Public Defender ☑ Private ☐ Assigned

Defense Attorney	Phone Number
[redacted]	[redacted]

Address: [redacted]

Sentencing Judge: [redacted]

Assistant Prosecutor: [redacted]

Comments
LEVEL II Jail Time Credit has been verified by CCIS and Promis/Gavel. The defendant was (Cont...)

Probation Officer	Date Prepared	Team Leader / Supervisor	Date Approved
[redacted]		[redacted]	9/30/19

Revised: 08/2017; CN: 10693

[redacted]

APPROVED FOR SENTENCING

Court History

LAST NAME	FIRST NAME	MIDDLE NAME
[redacted]	[redacted]	[redacted]

SBI #	FBI #	PENDING CHARGES	ACTIVE BENCH WARRANTS	DETAINERS
[redacted]	[redacted]	☑ YES ☐ NO	☐ YES ☑ NO	☐ YES ☑ NO

DISCUSSION OF PRIOR COURT HISTORY AND PENDING CHARGES

A search of FACTS revealed no juvenile history for the defendant.

The defendant's adult criminal history is comprised of twelve arrests and two additional summonses/complaints. On the municipal level, he has had one Conditional Discharge (violation) and four Disorderly Persons Convictions all drug related matters. He has been sentenced to probation, jail time and fees/fines. He has two matters pending in Irvington Municipal Court and owes a total of $308.00 (S 2019 000219 08709) to Irvington Municipal Court.

On the superior level, the defendant has one prior indictable conviction out of Union Superior Court. He was convicted for Possession With Intent To Distribute Marijuana, 4th Degree. He was sentenced to 3 years probation by Judge Fasciale. He completed his probationary term and was discharged on 05/09/2013.

The present matter represents the defendant's 2nd indictable conviction.

[redacted]

COURT HISTORY [redacted]

DATE	PLACE	OFFENSE	COURT	DISPOSITION
		****** ADULT. ******		
06/21/2005	IRVINGTON, NJ	ESX 05 005615-002 W-2005-002012-0709 1. POSS CDS/ANALOG - SCHD I II III IV, 2C:35-10A(1); 2. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1); 3. CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7;	Superior	Disp Date: 07/26/2005 Disp: DOWNGRADED REMAND COURT JUDGE FRASCA 1. POSS OF DRUG PARAPHERNALIA 2. DISORDERLY CONDUCT 3. LOITERING OBT/SELL CDS IN PUBLIC DISP DATE: 08/25/2005 CONDITIONAL DISCHARGE 1 YR DISMISSED: CTS: 2 & 3 AMOUNT ASSESSED: $800.00 02/27/2006: VIOLATION OF PROBATION BW ISSUED FTA 07/19/2006 - EXECUTED 07/24/2006 - RE SE PROB TERM W/O IMP (TERM SUPERVISION) 60 ECJ SUSPENDED 07/27/2006 - CONVERT TO COLLECTIONS 11/05/2012 - DISCHARGED COMPLETED TERM CAPS CLIENT ID: K 0014335

[redacted]

[redacted]

APPROVED FOR SENTENCING

Court History Continued

LAST NAME	FIRST NAME	MIDDLE NAME
[redacted]	[redacted]	[redacted]

COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
04/23/2007	IRVINGTON, NJ	SC-2007-024658-0709 1.LOITERING IN PUBLIC PLACES, 139-21;	Municipal	GUILTY Disp Date: 04/26/2007 Fine/Fees: $133.00 BALANCE OWED: $0.00
06/17/2008	IRVINGTON, NJ	S-2008-001755-0709 1.POSSESSION MARIJUANA/HASH UNDER, 2C:35-10A(4);	Municipal	07/31/2008 TRANSFERRED TO SUPERIOR COURT 09/23/2019 - DOWNGRADED BACK TO MUNICIPAL COURT PENDING
10/21/2008	IRVINGTON, NJ	S-2008-003040-0709 1.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 2.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B;	Municipal	Disp Date: 12/03/2008 Fine/Fees: $458.00 Balance Due: $.00 1. Guilty 2. Dism - Other
[redacted]				
01/20/2009	UNION, NJ	UNN 09 000319-002 09-04-00572-A 1. CDS - MANU/DIST/PWID - MARIJ<1OZ, HASH<5G, 2C:35-5B(12), DEG:4; W-2009-000130-2019 DP01. POSS CDS - < 50G MARIJUANA, 5G HASHISH, 2C:35-10A(4);	Superior	JUDGE FASCIALE Disp Date: 04/30/2009 Disp: GUILTY CT: 1; Sent Date: 06/19/2009 JAIL CREDIT: 2D LIC SUSP: 6M PROB: 3Y0M In Jail: 000Y00M030 DEDR: $750.00 LAB: $50.00 LETF: $30.00 PSUP: $5.00 SNSF: $75.00 VCCA: $50.00 05/09/2013 - DISCHARGED COMPLETED TERM CLIENT ID: K 0014335
[redacted]				
06/05/2009	IRVINGTON, NJ	W-2009-002039-0709 1.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 2.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 3.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B;	Municipal	Disp Date: 07/08/2009 Fine/Fees: $551.00 Balance Due: $.00 1. Guilty 2. Dism - Plea Agmt 3. Dism - Plea Agmt
07/09/2009	IRVINGTON, NJ	ESX 09 005167-001 W-2009-002539-0709 1. CONSPIRACY - AGREE/ENGAGE AID IN COND CONSITUTE A CRIME, 2C:5-2A, DISORDERLY CONDUCT, 2C:33-2; W-2009-002540-0709	Superior	Disp Date: 07/13/2009 Disp: DOWNGRADED REMAND COURT W-2009-002539-0709 1.DISORDERLY CONDUCT-IMPROP BEHAVIOR-FIGHT/THREATEN/ ETC, 2C:33-2A(1);

[redacted]

APPROVED FOR SENTENCING

Court History Continued

LAST NAME	FIRST NAME	MIDDLE NAME
[redacted]	[redacted]	[redacted]

COURT HISTORY

DATE	PLACE	OFFENSE	COURT	DISPOSITION
		2. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR CDS, 2C:35-5A(1); 3. CDS/ANALOG - DISTRIBUTE ON/NEAR SCHOOL PROPERTY/BUS, 2C:35-7; DP01. W-2009-002535-0709 1.POSS CDS - < 50G MARIJUANA, 5G HASHISH, 2C:35-10A(4);		Disp Date: 09/10/2009 1. Dism - Plea Agmt W-2009-002540-0709 1.WANDERING/PROWLING TO OBTAIN/SELL CDS, 2C:33-2.1B; 2. USE/POSSESS W/INTENT TO USE DRUG PARAPHERNALIA DP01. W-2009-002535-0709 Disp Date: 09/10/2009 Fine/Fees: $189.00 Balance Due: $.00 1. Jail: 7 days Probation: 18 months 04/29/2010 - DISCHARGED RETURN COLLECTIONS TO MUNICIPAL CAPS CLIENT ID: K 0014335 2.USE/POSS W/INTENT TO USE DRUG PARAPHERNALIA, 2C:36-2; Disp Date: 09/10/2009 1. Dism - Plea Agmt 2. Dism - Plea Agmt
[redacted]				
06/04/2010	IRVINGTON, NJ DATE OF OFFENSE 05/17/2010	W-2010-001467-0709 1.SIMPLE ASSAULT-PURPOSELY/KNOWINGLY CAUSE BOD. INJURY, 2C:12-1A(1);	Municipal	Disp Date: 03/30/2011 1. Dism - Prosecutorial Discr
[redacted]				
07/12/2017	IRVINGTON, NJ	ESX 19 007837-001 W-2017-001161-0709 1. MANUF/DISTR CDS OR INTENT TO MANUF/DISTR	Superior	Disp Date: 09/23/2019 Disp: DOWNGRADED IRVINGTON MUNICIPAL COURT Pending

[redacted]

ATTACHMENT D

NEW "COURT HISTORY – CHARGES" SECTION

COURT HISTORY – CHARGES

06/22/2006	**Irvington, NJ**	**SC-2006-023685-0709**	**Municipal**	**Disp. Date: 09/11/2006 DISMISSED-OTHER**
10/21/2008	**Irvington, NJ**	**S-2008-003041-0709**	**Municipal**	**Disp. Date: 12/03/2008 DISMISSED-OTHER**
06/05/2009	**Irvington, NJ**	**W-2009-002038-0709**	**Municipal**	**Disp. Date: 07/08/2009 1. Dism-Plea Agmt**
05/15/2010	**Irvington, NJ**	**FV-07-003032-10**	**Family**	**Disp. Date: 06/04/2010 Disp: DISMISSED**
06/04/2010	**Irvington, NJ**	**W-2010-001467-0709**	**Municipal**	**Disp. Date: 03/30/2011 1. Dism-Prosecutorial Discr**
07/30/2016	**Irvington, NJ**	**ESX 16 005456-001 16-10-02905-I**	**Superior**	**Disp. Date: 02/03/2017 Disp: DISMISSED**

Respectfully submitted,

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