

**TESTIMONY OF A COOPERATING CO-DEFENDANT OR WITNESS<sup>1</sup>**  
**(When witness<sup>2</sup> is a co-defendant)**

\_\_\_\_\_, who was [charged with] [indicted for] the crime(s) that defendant is on trial for, has testified on behalf of the State.

**(When witness is a co-defendant and has pleaded guilty prior to defendant's trial)**

\_\_\_\_\_, who was [charged with] [indicted for] the crime(s) that defendant is on trial for, has pleaded guilty to (one/some of) those charges, namely \_\_\_\_\_, and has testified on behalf of the State. Evidence of \_\_\_\_\_'s plea of guilty may be used only in determining the credibility or believability of the witness' testimony. A jury has a right to consider whether a person who has admitted that he/she failed to comply with society's rules would be more likely to ignore the oath requiring truthfulness on the witness stand than a person who has never been convicted or pleaded guilty to a crime. You may consider such evidence along with all the other factors that I mentioned previously in determining the credibility of a witness. However, you may not use \_\_\_\_\_'s plea of guilty as evidence that this defendant is guilty of the crimes that he/she is charged with.<sup>3</sup>

**OR**

**(When witness is not a co-defendant)**

\_\_\_\_\_, a witness herein, has testified to facts which may show some involvement on his/her part in CHOOSE AS APPROPRIATE: [the criminal situation out of which

---

<sup>1</sup> This charge should not be given except upon the request of defense counsel. "While a defendant is entitled to such a charge if requested and a judge may give it on his own motion if he thinks it advisable under the circumstances, it is generally not wise to do so absent a request, because of the possible prejudice to the defendant. State v. Begyn, 34 N.J. 35, 54-56 (1961); State v. Gardner, 51 N.J. 444, 460-461 (1968). Certainly, it is not error, let alone plain error, for a trial judge to fail to give this cautionary comment where it has not been requested." State v. Artis, 57 N.J. 24, 33 (1970). See also State v. Gardner, 51 N.J. 444, 460-461 (1968); State v. Anderson, 104 N.J. Super. 18 (App. Div. 1968), aff'd 53 N.J. 65 (1968), cert. denied, 394 U.S. 966 (1969). Other cases discussing a charge regarding a cooperating codefendant or witness' testimony are as follows: State v. Harris, 156 N.J. 122, 179-180 (1998); State v. Gross, 121 N.J. 1, 16 (1990); State v. Begyn, 34 N.J. 35, 54 et seq. (1961); State v. Spruill, 16 N.J. 73, 78 et seq. (1954).

<sup>2</sup> Use of the word "accomplice" should be avoided. State v. Gardner, 51 N.J. 444, 461 (1968); State v. Anderson, 104 N.J. Super. 19 (App. Div. 1968).

<sup>3</sup> There may be circumstances where this last sentence is not appropriate. See State v. Murphy, 376 N.J. Super. 114, 122-23 (App. Div. 2005).

**TESTIMONY OF A COOPERATING  
CO-DEFENDANT OR WITNESS**

the indictment and trial of the defendant arose] [another criminal matter].<sup>4</sup>

**(In all cases)**

The law requires that the testimony of such a witness be given careful scrutiny. In weighing his/her testimony, therefore, you may consider whether he/she has a special interest in the outcome of the case and whether his/her testimony was influenced by the hope or expectation of any favorable treatment or reward, or by any feelings of revenge or reprisal.

If you believe this witness to be credible and worthy of belief, you have a right to convict the defendant on his/her testimony alone, provided, of course, that upon a consideration of the whole case, you are satisfied beyond a reasonable doubt of the defendant's guilt.

---

<sup>4</sup> There may be other circumstances where a prosecution witness may have a motive to curry favor with the State, e.g., when the witness is on parole or probation, and/or facing other pending or potential charges. In such instances, an appropriate cautionary charge should be tailored to the facts.