

**WITNESS - TESTIFYING IN JAIL GARB OR PRISON GARB**<sup>1</sup>

During trial, (NAME OF WITNESS) testified in [jail] [prison] garb. You must not speculate about the reason the witness is wearing such clothing. The fact that (NAME OF WITNESS) testified while wearing [jail] [prison] clothing should not enter into your discussions or deliberations in any manner, as you decide whether the State has proven defendant's guilt of the charge(s) beyond a reasonable doubt.<sup>2</sup>

---

<sup>1</sup> Because of the potential impact it might have on the defendant's right to a fair trial, an incarcerated defense witness may not be required by the trial court to testify in jail clothing or prison clothing, absent a waiver by defendant. State v. Artwell, 177 N.J. 526, 539 (2003).

As for an incarcerated State witness, a trial court may, upon application of the prosecution, exercise its discretion to allow an incarcerated state witness to testify in distinctive jail clothing or prison clothing in front of a jury under certain limited circumstances. State v. Kuchera, 198 N.J. 483, 501 (2009).

This jury instruction must be given where a trial court allows any witness to testify at a trial and the witness is wearing jail clothing or prison clothing. Id. at 497.

<sup>2</sup> Kuchera, supra, 198 N.J. at 501.