

NEW JERSEY RULES OF EVIDENCE

N.J.R.E. 104. Preliminary Questions

(a) In General.

(1) The court shall decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege and Rule 403.

(2) The court may hear and determine such matters out of the presence or hearing of the jury.

(b) Relevance That Depends on a Fact.

(1) When the relevance of evidence depends on whether a fact or condition exists, proof must be introduced sufficient to support a finding that the fact or condition does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(2) In such cases the court shall instruct the jury to consider the issue of the existence of the fact and to disregard the evidence if it finds that fact does not exist. The jury shall be instructed to disregard the evidence if the court subsequently determines that a jury could not reasonably find the existence of the fact.

(c) Preliminary Hearing on Admissibility of Defendant's Statements in Criminal Cases.

(1) If the hearing involves the admissibility of defendant's statements, the court shall conduct such hearing out of the presence of the jury.

(2) In such a hearing the rules of evidence shall apply and the burden of persuasion as to the admissibility of the statement is on the prosecution.

If the court admits the statement the jury shall not be informed of the finding that the statement is admissible but shall be instructed to disregard the statement if it finds that it is not credible.

If the court subsequently determines from all of the evidence that the statement is not admissible, the court shall take appropriate action.

(d) Cross-Examining a Defendant in a Criminal Proceeding. By testifying on a preliminary matter, a defendant in a criminal proceeding does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce, before the trier of fact, evidence relevant to the weight or credibility of other evidence.

Note: Adopted September 15, 1992 to be effective July 1, 1993; paragraphs (a) captions and text amended and portions redesignated as paragraphs (a)(1) and (2), paragraph (b) captions and text amended and portions redesignated as paragraphs (b)(1) and (2), paragraph (c) captions and text amended and portions redesignated as paragraphs (c)(1) and (2), paragraphs (d) and (e) captions and text amended September 16, 2019 to be effective July 1, 2020.