

**RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY  
RULE 3:4 PROCEEDINGS BEFORE THE COMMITTING JUDGE; PRETRIAL  
RELEASE**

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

**(a) Arrest without an Arrest Warrant.**

(1) Preparation of Complaint. A law enforcement officer shall take a person who was arrested without a warrant to a police station where a complaint shall be prepared immediately. If it appears that issuance of a warrant is authorized by Rule 3:3-1(d), (e) or (f), the complaint may be prepared on a Complaint-Warrant (CDR-2) form. Otherwise, the complaint shall be prepared on a Complaint-Summons (CDR-1) form.

(2) Issuance of Process. If a Complaint-Summons (CDR-1) has been prepared, the law enforcement officer may serve the summons and release the defendant. If a Complaint-Warrant (CDR-2) has been prepared, without unnecessary delay, and no later than 12 hours after arrest, the matter shall be presented to a judge, or, in the absence of a judge, to a judicial officer who has the authority to determine whether a warrant or summons will issue. The judicial officer shall determine whether to issue a warrant or summons as provided in Rule 3:3-1, and if a warrant is issued, shall order the defendant 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.

**(b) Arrest on an Arrest Warrant.** The person who is arrested on that warrant 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. For a defendant for whom a Complaint-Warrant has been issued following waiver of jurisdiction by the Family Part, the place of commitment should be continued as previously determined by the court waiving jurisdiction, unless otherwise ordered, in accordance with N.J.S.A. 2A:4A-36(a).

**(c) Identification procedures.** If the defendant has been released on a summons, any post-arrest identification procedures required by N.J.S.A 53:1-15 or otherwise required by law, shall be completed on the return date of the summons.

**Note:** Source - R.R. 3:2-3(a), 8:3-3(a). Amended July 7, 1971 to be effective September 13, 1971; caption amended, former rule redesignated as paragraph (a) and paragraphs (b) and (c) adopted July 21, 1980 to be effective September 8, 1980; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a) and (b) amended, new paragraph (c) adopted and former paragraph (c) redesignated paragraph (d) and paragraph (d)(7) deleted November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (c) amended April 10, 1987 to be effective immediately; paragraph (b) amended January 5, 1988 to be effective February 1, 1988; captions added to paragraphs (a)(b) and (c), new paragraph (c) adopted, paragraph (d) introductory text deleted and paragraphs (d)(1)(2)(3)(4)(5) and (6) redesignated as paragraphs (b)(1)(a)(b)(c)(d) and (f) and paragraph (1)(e) amended and paragraphs (b)(2) and (3) adopted, July 13, 1994 to be effective January 1, 1995; paragraph (a) amended and redesignated as paragraph (b), paragraph (b) amended and redesignated as paragraph (a), paragraph (c) deleted, and new paragraph (c) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) caption amended, paragraphs (a)(1) and (a)(2) amended, and paragraph (b) caption and text amended

August 30, 2016 to be effective January 1, 2017; paragraph (b) amended July 27, 2018 to be effective September 1, 2018.

### **Rule 3:4-2. First Appearance After Filing Complaint; Prehearing Rights Advisement**

**(a) Time of First Appearance.** Following the filing of a complaint the defendant shall be brought before a judge for a first appearance as provided in this Rule.

(1) If the defendant remains in custody and the prosecutor has not filed a motion for pretrial detention, the first appearance shall occur within 48 hours of a defendant's commitment to the county jail, and shall be before a judge with authority to set conditions of release for the offenses charged. However, if a motion for pretrial detention is filed prior to the first appearance, the first appearance shall occur in conjunction with the pretrial detention hearing and shall be before a Superior Court judge. If the motion for pretrial detention is withdrawn prior to the first appearance, then the first appearance shall occur no later than the next business day after the withdrawal of the motion and shall be before a Superior Court judge or a judge designated by the Chief Justice.

(2) If a defendant is released on a complaint-summons, the first appearance shall be held no more than 60 days after the issuance of the complaint-summons or the defendant's arrest.

**(b) First Appearance; Where Held.** All first appearances for indictable offenses shall occur at a centralized location and before a Superior Court judge or a judge designated by the Chief Justice. If the defendant is unrepresented at the first appearance, the court is authorized to assign the Office of the Public Defender to represent the defendant for purposes of the first appearance.

#### **(c) Discovery.**

(1) If the prosecutor is not seeking pretrial detention, the prosecutor at or before the first appearance shall provide the defendant with a copy of any available preliminary law enforcement incident report concerning the offense and the affidavit of probable cause.

(2) If the prosecutor is seeking pretrial detention, the prosecutor no later than 24 hours before the detention hearing shall provide the defendant with (A) the discovery referenced in subparagraph (1) above, (B) all statements or reports relating to the affidavit of probable cause, (C) all statements or reports relating to additional evidence the State relies on to establish probable cause at the hearing, (D) all statements or reports relating to the factors listed in N.J.S.A. 2A:162-18(a)(1) that the State advances at the hearing, and (E) all exculpatory evidence.

**(d) 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 provide the following information but may omit the information in subparagraphs (1)

through (5) when that information has been provided at a prehearing rights advisement conducted pursuant to paragraph (h) of this Rule:

(1) give the defendant a copy of the complaint and inform the defendant of the charge;

(2) inform the defendant of the right to remain silent and that any statement may be used against the defendant;

(3) inform the defendant of the right to retain counsel and, if indigent, the right to be represented by the public defender;

(4) ask the defendant specifically whether he or she wants counsel and record the defendant's answer on the complaint;

(5) provide the defendant who asserts indigence with an application for public defender services, which the defendant shall complete and submit at that time for immediate processing by the court, unless the defendant affirmatively and knowingly waives the right to counsel;

(6) inform the defendant that there is a pretrial intervention program and where and how an application to it may be made;

(7) inform the defendant that there is a drug court program and where and how to make an application to that program;

(8) inform the defendant of his or her right to have a hearing as to probable cause and of his or her right to indictment by the grand jury and trial by jury, and if the offense charged may be tried by the court upon waiver of indictment and trial by jury, the court shall so inform the defendant. All such waivers shall be in writing, signed by the defendant, and shall be filed and entered on the docket. If the complaint charges an indictable offense which cannot be tried by the court on waiver, it shall not ask for or accept a plea to the offense;

(9) set conditions of pretrial release, when appropriate as provided in Rule 3:26, unless a motion for pretrial detention has been filed or granted; and,

(10) schedule a pre-indictment disposition conference to occur no later than 45 days after the date of the first appearance.

**(e) Procedure in Non-Indictable Offenses.** At the defendant's first appearance before a judge, if the defendant is charged with a non-indictable offense, the judge shall provide the following information but may omit the information in subparagraphs (1) through (4) when that information has been provided at a prehearing rights advisement conducted pursuant to paragraph (h) of this Rule:

(1) give the defendant a copy of the complaint and inform the defendant of the charge;

(2) inform the defendant of the right to remain silent and that any statement may be used against the defendant;

(3) inform the defendant of the right to retain counsel and, if indigent and entitled by law to the appointment of counsel, the right to be represented by a public defender or assigned counsel;

(4) assign counsel, if the defendant is indigent and entitled by law to the appointment of counsel, and does not affirmatively, and with understanding, waive the right to counsel; and

(5) set conditions of pretrial release as provided in Rule 3:26 if the defendant has been committed to the county jail, unless a motion for pretrial detention has been filed or granted.

**(f) Trial of Indictable Offenses in Municipal Court.** If a defendant who is charged with an indictable offense that may be tried in Municipal Court is brought before a Municipal Court, that court may try the matter provided that the defendant waives the rights to indictment and trial by jury. The waivers shall be in writing, signed by the defendant, and approved by the county prosecutor, and retained by the Municipal Court.

**(g) Waiver of First Appearance By Written Statement.** Unless otherwise ordered by the court, a defendant charged on a complaint-summons (CDR-1) for an indictable offense and who is represented by an attorney and is not incarcerated may waive the first appearance by electronically filing, at or before the time fixed for the first appearance, a written statement in a form prescribed by the Administrative Director of the Courts, signed by the attorney, certifying that the defendant has:

(1) received a copy of the complaint and has read it or the attorney has read it and explained it to the defendant;

(2) understands the substance of the charge;

(3) been informed of the right to remain silent and that any statement may be used against the defendant;

(4) been informed that there is a pretrial intervention program and where and how an application to it may be made;

(5) been informed of the right to have a hearing as to probable cause, the right to indictment by the grand jury and trial by jury, and if applicable, that the offense charged may be tried by the court upon waiver of indictment and trial by jury, if in writing and signed by the defendant;

(6) been informed of the date of the pre-indictment disposition conference held pursuant to Rule 3:4-6, which shall occur no later than 45 days after the date of the first appearance; and

(7) been informed that there is a drug court program and where and how to make an application to that program.

The written statement waiving the first appearance shall be electronically filed with the court, and notification provided to the County Prosecutor or the Attorney General, if the Attorney General is the prosecuting attorney.

**(h) Prehearing Rights Advisement.** If a motion for pretrial detention is filed prior to the first appearance, the defendant shall be brought before the court within 48 hours of the defendant's confinement to the county jail for a proceeding before a Superior Court judge or a judge designated by the Chief Justice at which the court shall provide to the defendant the information set forth in paragraph (d)(1) through (5) of this Rule or, in the case of a defendant charged with a non-indictable offense, paragraph (e)(1) through (4) of this Rule and advise the defendant of the date when the pretrial detention hearing is scheduled to be held, which shall be on a date within three working days of the date of the filing of the motion for pretrial detention.

**Note:** Source -- R.R. 3:2-3(b), 8:4-2 (second sentence). Amended July 7, 1971 effective September 13, 1971; amended April 1, 1974 effective immediately; text of former Rule 3:4-2 amended and redesignated paragraphs (a) and (b) and text of former Rule 3:27-1 and -2 amended and incorporated into Rule 3:4-2, July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (b) amended June 28, 1996 to be effective September 1, 1996; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraphs (a) and (b) deleted, new paragraphs (a), (b), (c), and (d) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (e) adopted July 21, 2011 to be effective September 1, 2011; paragraph (a) amended, new paragraph (b) added, former paragraphs (b), (c), and (e) amended and redesignated as paragraphs (c), (d), and (f), and former paragraph (d) redesignated as paragraph (e) April 12, 2016 to be effective September 1, 2016; paragraphs (a) and (b) amended, subparagraph (c)(1) amended, new subparagraphs (c)(1)(A) and (c)(1)(B) adopted, subparagraphs (c)(9) and (c)(10) amended, new subparagraph (c)(11) adopted, subparagraphs (d)(3) and (d)(4) amended, and new subparagraph (d)(5) adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended December 6, 2016 to be effective January 1, 2017; subparagraph (c)(1) amended May 10, 2017 to be effective immediately; paragraph (f) amended July 28, 2017 to be effective September 1, 2017, subparagraph (a)(1) amended, paragraph (b) amended, new paragraph (c) adopted, former paragraph (c) amended and redesignated as paragraph (d), former paragraph (d) amended and redesignated as paragraph (e), former paragraph (e) redesignated as paragraph (f), and former paragraph (f) redesignated as paragraph (g) July 27, 2018, to be effective September 1, 2018; caption amended, paragraphs (a)(1), (d), (e) amended, and new paragraph (h) adopted May 26, 2020 to be effective June 8, 2020.

### **Rule 3:4-3. Hearing as to Probable Cause on Indictable Offenses**

(a) If the defendant does not waive indictment and trial by jury but does waive a hearing as to probable cause, the court shall forthwith bind the defendant over to await final determination of the cause. If the defendant does not waive a hearing as to probable cause and if before the hearing an indictment has not been returned against the defendant with respect to the offense charged, after notice to the county prosecutor a judge of the Superior Court shall hear the evidence offered by the State within a reasonable time and the defendant may cross-examine witnesses offered by the State. If, from the evidence, it appears to the court that there is probable cause to believe that an offense has been committed and the defendant has committed it, the court shall forthwith bind the defendant over to await final determination of the cause; otherwise, the court shall discharge the defendant from custody if the defendant is detained. Notice to the county prosecutor may be oral or in writing. An entry shall be made on the docket as to when and how such notice was given.

(b) After concluding the proceeding the court shall transmit, forthwith, to the county prosecutor all papers in the cause. Whether or not the court finds probable

cause, it shall continue in effect any monetary bail previously posted in accordance with R. 3:26 or any other condition of pretrial release not involving restraints on liberty; and any monetary bail taken by the court shall be transmitted to the financial division manager's office. If the defendant is discharged for lack of probable cause and an indictment is not returned within 120 days, the bail shall thereafter be returned and conditions of pretrial release, if any, terminated.

**Note:** Source-R.R. 3:2-3(c). Paragraph designations added and paragraphs (a) and (b) amended July 16, 1979 to be effective September 10, 1979; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraph (b) amended August 30, 2016 to be effective January 1, 2017.

#### **Rule 3:4-4. Proceedings in Arrest Under Uniform Fresh Pursuit Law**

If an arrest is made in this State by an officer of another state in accordance with the provisions of N.J.S. 2A:155-1 to N.J.S. 2A:155-7, inclusive (Uniform Law on Fresh Pursuit), the officer shall take the arrested person, without unnecessary delay, before the nearest available judge who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, the judge shall commit the person to await, for a reasonable time, the issuance of an extradition warrant by the Governor of this State, or admit the person to monetary bail for such purpose. If the court determines that the arrest was unlawful it shall discharge the person arrested.

**Note:** Source -- R.R. 3:2-3(d), 8:3-3(d); amended July 13, 1994 to be effective September 1, 1994; amended August 30, 2016 to be effective January 1, 2017.

#### **Rule 3:4-5. Effect of Technical Insufficiency or Irregularity in the Proceedings**

A defendant held in custody under a commitment after a hearing as to probable cause shall not be discharged nor shall such hearing be deemed invalid because of any technical insufficiency or irregularity in the commitment or prior proceedings not prejudicial to the defendant, or because the offense for which the defendant is held to answer is other than that stated in the complaint or arrest warrant.

**Note:** Source R.R. 3:2-3(e), 8:3-3(e).

#### **Rule 3:4-6. Pre-Indictment Disposition Conference**

The court shall conduct a conference for the purpose of discussing and/or finalizing any pre-indictment dispositions. The conference shall be conducted on the record, in open court in the presence of the prosecutor, the defendant and defense counsel.

**Note:** Adopted April 12, 2016 to be effective September 1, 2016.

### **3:4-7. Pre-Indictment Hearing**

(a) **Eligible Defendant.** The court shall conduct a pre-indictment hearing for an eligible defendant, as defined in N.J.S.A. 2A:162-15, who has been charged with an indictable offense, has not been indicted, and is detained.

(b) **Scheduling.** The court shall schedule the hearing to occur before the expiration of the 90-day period for the return of the indictment pursuant to N.J.S.A. 2A:162-22, adjusted for excludable time, and not earlier than 15 calendar days before that expiration date.

(c) **Discovery.** Unless previously provided, the prosecutor shall provide to the defendant all available relevant material pursuant to R. 3:13-3(a) no later than three business days prior to the hearing date.

(d) **Hearing and Finding.** At the hearing, the State must establish probable cause to support the criminal charges. To meet that burden, the State must present oral testimony from at least one witness with personal knowledge of the case; that witness may be a law enforcement officer involved in the investigation. The defendant shall be afforded the right to cross-examine any witness who appears at the hearing, to testify, to present witnesses, and to present information by proffer or otherwise. Hearsay testimony is permissible. The hearing shall be held remotely unless the court finds good cause to conduct the hearing in-person.

(1) **Probable Cause.** If from the evidence presented by the prosecutor, the court finds probable cause to believe the offense has been committed and the defendant committed it, the court may allocate an additional period of time, not to exceed 20 days, in which the return of an indictment shall occur.

(2) **No Probable Cause.** If from the evidence presented by the prosecutor, the court does not find probable cause, the court shall dismiss the complaint and discharge the defendant. A discharge does not preclude the prosecutor from filing a new complaint and prosecuting the defendant for the same offense.

(e) **Return of Indictment.** The hearing shall not be held if an indictment has been returned against the defendant.

**Note:** Adopted November 10, 2020 to be effective January 15, 2021.