

**RULE GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:4A PRETRIAL DETENTION**

Rule 3:4A. Pretrial Detention

(a) Timing of Motion. A prosecutor may file a motion at any time seeking the pretrial detention of a defendant for whom a complaint-warrant or warrant on indictment is issued for an initial charge involving an indictable offense, or a disorderly persons offense involving domestic violence, as provided in N.J.S.A. 2A:162-15 et seq. A defendant who is the subject of a warrant on indictment is an eligible defendant pursuant to N.J.S.A. 2A:162-15 et seq.

(b) Hearing on Motion.

(1) A pretrial detention hearing shall be held before a Superior Court judge no later than the defendant's first appearance unless the defendant or the prosecutor seeks a continuance or the prosecutor files a motion after the defendant's first appearance. If the prosecutor files a motion after the defendant's first appearance the pretrial detention hearing shall be held within three working days of the date of the prosecutor's motion unless the defendant or prosecutor seek a continuance. Except for good cause, a continuance on motion of the defendant may not exceed five days, not including any intermediate Saturday, Sunday or holiday. Except for good cause, a continuance on motion of the prosecutor may not exceed three days, not including any intervening Saturday, Sunday or holiday. The Superior Court judge in making the pretrial detention decision may take into account information as set forth in N.J.S.A. 2A:162-20.

(2) The defendant shall have a right to be represented by counsel and, if indigent, to have counsel appointed if he or she cannot afford counsel. The defendant shall be provided discovery pursuant to Rule 3:4-2(c)(2). The defendant shall be afforded the right to testify, to present witnesses, to cross-examine witnesses who appear at the hearing and to present information by proffer or otherwise. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings related to the defendant's subsequent failure to appear, proceedings related to any subsequent offenses committed during the defendant's release, proceedings related to the defendant's subsequent violation of any conditions of release, any subsequent perjury proceedings, and for the purpose of impeachment in any subsequent proceedings. The defendant shall have the right to be present at the hearing. The rules governing admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing. The return of an indictment shall establish probable cause to believe that the defendant committed any offense alleged therein. Where there is no indictment at the point of the detention hearing, the prosecutor shall establish probable cause that the defendant committed the predicate offense.

(3) A hearing may be reopened at any time before trial if the court finds that information exists that was not known by the prosecutor or defendant at the time of

the hearing and that information has a material bearing on the issue of whether there are conditions of release that will reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the defendant will not obstruct or attempt to obstruct the criminal justice process.

(4) **Presumption of detention.** When a motion for pretrial detention is filed pursuant to paragraph (a), there shall be a rebuttable presumption that the defendant shall be detained pending trial because no amount of monetary bail, non-monetary condition or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process, if the court finds probable cause that the defendant: (i) committed murder pursuant to N.J.S.A. 2C:11-3; or (ii) committed any crime for which the defendant would be subject to an ordinary or extended term of life imprisonment.

(5) **Presumption of release.** Except when a presumption of detention is required pursuant to paragraph (b)(4), when a motion for pretrial detention is filed pursuant to paragraph (a), there shall be a rebuttable presumption that some amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process.

The standard of proof for the rebuttal of the presumption of pretrial release shall be by clear and convincing evidence. To determine whether a motion for pretrial detention should be granted, the court may take into account information about the factors listed in N.J.S.A. 2A:162-20.

(c) Pretrial Detention Order. If the court determines that pretrial detention is necessary it shall issue an order containing written findings of fact and a written statement of reasons for the detention. That order shall also direct that the defendant be afforded reasonable opportunity for private consultation with counsel.

(d) Temporary Release Order. The court may issue an order temporarily releasing the defendant, subject to conditions, to the extent that the court determines the release is necessary for the preparation of a defendant's defense or for another compelling reason.

(e) Interlocutory Order from Appellate Division. The State may move for leave to appeal from an interlocutory order granting an eligible defendant's pretrial release.

Note: Adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended July 28, 2017 to be effective September 1, 2017; paragraph (b)(5) amended May 1, 2018 to be effective immediately; subparagraphs (b)(1) and (b)(2) amended July 27, 2018 to be effective September 1, 2018; paragraph (e) amended April 17, 2019 to be effective May 1, 2019.