

# **CRIMINAL DIVISION OVERVIEW**

## **NEW JERSEY JUDICIARY**



**Independence • Integrity**  
**Fairness • Quality Service**

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Conference of Criminal Presiding Judges  
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## **I. NOTICE**

This overview is intended to provide an introduction to the Criminal Division of the Superior Court for staff assigned to the division. The overview will acquaint them with the basic flow of a criminal case through the system and the various proceedings and actions that may occur. The overview was prepared under the supervision of the Conference of Criminal Presiding Judges, along with the Conference of Criminal Division Managers and the Criminal Practice Division of the Administrative Office of the Courts (AOC). It is intended to embody the policies adopted by the New Jersey Supreme Court, the Judicial Council and the Administrative Director of the Courts, but does not itself establish case management policy. It has been approved by the Judicial Council, on the recommendation of the Conference of Presiding Judges, in order to promote the education of Judiciary personnel.

While the overview reflects Court policies existing as of the date of its preparation, in the event there is a conflict between the overview and any statement of policy issued by the Supreme Court, the Judicial Council, or the Administrative Director of the Courts, that statement of policy, rather than the overview, will be controlling.

## **II. NEW JERSEY JUDICIARY MISSION STATEMENT**

We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State.

### **A. VISION STATEMENT**

We will be a Court system, characterized by excellence, which strives to attain justice for the individual and society through the rule of law. We will:

- Provide equal access to a fair and effective system of justice for all without excess cost, inconvenience, or delay, with sensitivity to an increasingly diverse society.
- Offer complementary methods of dispute resolution while preserving the constitutional right to trial by an impartial judge or jury and ensuring compliance with the results achieved through effective enforcement of court orders.
- Provide quality service that continuously improves, that meets or exceeds public expectations, and that ensures that all are treated with courtesy, dignity, and respect.
- Maintain the independence of the Judiciary while strengthening relations with the public, the bar, and the other branches of government.
- Acknowledge and enhance the potential of every person in our organization to contribute to the administration of justice through participation, training, and technology.
- Share a sense of common identity and purpose as a statewide Judiciary.
- Earn the respect and confidence of an informed public.

### **B. STATEMENT OF CORE VALUES**

Required to accomplish our mission are four paramount values representing the core of what we stand for as an organization

- Independence
- Integrity
- Fairness
- Quality Service

### **III. CRIMINAL CASE PROCESS OVERVIEW**

This section describes the basic steps a criminal case will follow from the initial filing of charges until disposition and post sentencing proceedings.

#### **A. PRE-INDICTMENT**

The pre-indictment phase of criminal case processing encompasses all actions taken in relation to the case from the filing of the initial charges through presentation of the case to a grand jury.

##### **1. Complaint**

The criminal process normally begins with the filing of a complaint in Municipal Court. The process can also begin with an arrest without a warrant or by the return of an indictment. The complaint is a written statement accusing a specific person of committing an offense and citing the essential facts constituting the offense. Complaints are normally made by police officers, but all citizens have the right to lodge complaints. The Court Rules require that the court clerk or deputy clerk, Municipal Court administrator or deputy court administrator accept for filing complaints made by any person. See R. 3:2-1(a). The Rules require that the complaint be made upon oath or by certification before a judge or other person, e.g. Municipal Court administrator, authorized by N.J.S.A. 2B:12-21 to take complaints.

##### **2. Summons or Warrant upon Complaint**

The procedure after a complaint is made depends on who is making the complaint and/or whether a complaint-summons or complaint-warrant is being sought. If a private citizen is making the complaint, or a law enforcement officer is seeking an arrest warrant once a complaint is filed, a judicial officer (judge, municipal court administrator or deputy court administrator) makes a determination of whether there is probable cause to believe an offense has been committed and that the defendant may have committed it. If a judge reviews a complaint and does not find probable cause, the complaint is dismissed. If a judicial official other than a judge finds no probable cause, then the procedure contained in R. 3:3-1(d) is utilized to dismiss the complaint. If probable cause is found, a judicial officer must determine whether a summons or warrant should be issued. A summons will be issued unless a judicial officer finds that one of the conditions set forth in R. 3:3-1(c) exists. The conditions for issuing a warrant are: (1) the accused is charged with a serious crime; (2) the accused has previously failed to respond to a summons; (3) the accused is dangerous to self, other persons, or property; (4) there is an outstanding warrant against the accused; (5) the identity or address of the

accused is unknown or (6) there is reason to believe the accused will not respond to a summons. If one or more of these conditions exist, the judicial officer must issue a warrant, as opposed to a summons.

If the law enforcement officer decides to issue a summons, that officer may do so without a prior determination of probable cause.

**a. Summons**

A summons is the process by which a defendant is ordered to appear before the Court on a certain date. If a summons is used, a Court Disposition Report – 1 (CDR -1) is filled out and a copy is handed to the defendant, who is then released. These reports are forwarded to the State Police and are used to create an offender's computerized criminal history (CCH) commonly referred to as a rap sheet.

**b. Arrest Pursuant to a Warrant**

An arrest warrant is a document that orders the police to arrest a defendant and bring him before the court issuing the warrant. If an arrest warrant is used, a CDR-2 is filled out and bail is set. If bail is posted the defendant is set free. If bail is not posted, the defendant is detained pending a first appearance, which is normally held in Municipal Court. However, in some counties first appearances are centralized before the presiding judge of the Municipal Courts or a Superior Court judge.

**c. Arrest without a Warrant**

In many instances, the criminal process actually begins with an arrest by a police officer where no formal papers, i.e. complaint, have been filed with the court. Where this occurs, the accused is arrested, brought to police headquarters where a complaint is prepared. The matter is then brought before a judicial officer, who determines whether there is probable cause that an offense has been committed by the accused and determines whether a summons or warrant will be issued. See R. 3:4-1. If the judicial officer issues a summons, the defendant is given the complaint-summons (CDR-1) and told to appear at a later date. If the judicial officer issues a complaint-warrant (CDR-2), the defendant is remanded to jail unless bail is posted. Simultaneous with making of the probable cause determination, the judicial officer should also set bail, or the conditions under which the defendant may be released from jail pre-trial, such as Released on

his/her own Recognizance (R.O.R.), no contact with victim, or cash bail. The present Court Rules allow for the setting of bail by a Municipal Court administrator or deputy court administrator in the absence of a judge at the judge's discretion. There is also statutory authority for this responsibility. See N.J.S.A. 2B:12-21c.

**d. Indictable Complaints**

Where the complaint alleges an indictable offense, the complaint, and all investigative reports, are required to be forwarded to the prosecutor within 48 hours. The Municipal Court is to forward the complaint to the Criminal Division Manager's Office within 48 hours. See R. 3:2-1(b).

**3. Bail**

Bail is the money or property deposited with the court to secure the release of a person held in custody awaiting the resolution of charges against him or her.

**a. Right to Bail**

The right to bail, except in capital cases, is guaranteed by the New Jersey Constitution and is provided for in the Court Rules. See R. 3:26-1(a). The New Jersey Constitution, Article I, paragraph 11, provides that

All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or presumption great.

Paragraph 12 further provides that

excessive bail shall not be required . . .

The Court, in interpreting this right, has said that the right to bail means that

the accused has the right to pre-trial liberty on such bond and in such amount as in the judgment of the trial court under the circumstances of the case will assure his appearance at the trial. State v. Johnson, 61 N.J. 351, 359-360 (1972).

However, the Court has recognized that bail may not always be possible. In Johnson, the Court also said

if, however, the court is satisfied from the evidence presented on the application for bail that regardless of the amount of bail fixed, the accused if released will probably flee to avoid trial, bail may be denied. Id. at 360.

Note also that a person may be denied bail in a capital case where the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed. See R. 3:26-1(a).

**b. Purpose of Bail**

The purpose of bail is to ensure that a defendant appears for all court events, both pre-trial and trial. Its purpose is not to punish nor is it to detain a person pre-trial to assure he doesn't commit another crime (preventative detention). State v. Johnson, 61 N.J. 351, 364 (1972); State v. Fann, 239 N.J. Super. 507 (Law Div. 1990). Additionally, the Court has said that the constitutional right to bail must not be unduly burdened, i.e., that excessive bail should not be utilized as a means of confining the accused until trial. State v. Johnson, supra, 61 N.J. at, 364-365.

**c. Authority to Set Bail**

A Superior Court judge may set bail for a person charged with any offense. Bail for any offense except murder, kidnapping, manslaughter, aggravated manslaughter, aggravated sexual assault, sexual assault, aggravated criminal sexual contact, a person arrested in any extradition proceeding or a person arrested under N.J.S.A. 2C:29-9b for violating a restraining order may be set by any other judge, or in the absence of a judge, by a Municipal Court administrator or deputy court administrator. In most cases, bail is set initially in Municipal Court by a Municipal Court judge. See R. 3:26-2(2).

**d. Factors to Consider when Setting Bail in a non-capital case.**

In State v. Johnson, supra, 61 N.J. at 364-365 the Court identified a number of factors that must be considered in fixing bail

1. The seriousness of the crime charged against the defendant, the apparent likelihood of conviction, and the extent of the punishment prescribed by the legislature.
2. The defendant's criminal record, if any, and previous record on bail, if any.
3. The defendant's reputation and mental condition.
4. The length of the defendant's residence in the community.
5. The defendant's family ties and relationships.
6. The defendant's employment status, record of employment, and financial condition.
7. The identity of responsible members of the community who would vouch for the defendant's reliability.
8. Any other factors indicating defendant's mode of life, or ties to the community, or bearing on the risk of failure to appear.

See also R. 3:26-1, which lists background, residence, employment, family status, the general policy against unnecessary sureties and detention as factors to consider when setting bail. R. 3:26-1 also allows the court to R.O.R. defendants and impose terms or conditions necessary to protect persons in the community.

**e. Domestic Violence Cases**

Violations of domestic violence restraining orders should be reviewed with the same severity as high impact offenses. Once a defendant has been arrested and charged with an indictable domestic violence offense, a Superior Court judge will set bail. Non-indictable N.J.S.A. 2C:29-9(b) bail matters should be handled by a Superior Court judge, unless otherwise approved by the Assignment Judge. In domestic violence cases some special rules apply:

1. A judge **cannot** set bail without considering the defendant's prior record.
2. There is a statutory requirement that bail be set within 12 hours of arrest.
3. Once bail has been set, it may not be reduced without prior notice to the county prosecutor and the victim.
4. Bail shall not be reduced by a judge other than the judge who originally ordered bail, unless the reasons for the amount of the original bail are available to the judge who reduces the bail and are set forth on the record.
5. The victim's address is to be kept confidential.
6. A copy of the bail order, specifying conditions of bail/release, including restraints, must be given to the victim forthwith.
7. Bail orders on domestic violence cases must capture
  - a. the gender of the parties,
  - b. the relationship of the parties,
  - c. the relief sought, and
  - d. the nature of the relief granted.

Where relief is sought or granted, a uniform record of this information must be kept for the Administrative Office of the Courts (AOC) to file mandated periodic reports to the legislature. See P.L. 1991, c. 261 and the "Domestic Violence Procedures Manual."

**f. When Bail is Set**

Bail is initially set either contemporaneously with the issuance of a warrant, subsequent to the issuance of a warrant but prior to the first appearance, or at the first appearance. However, if bail was not set when an arrest warrant was issued, the person who is arrested on that warrant shall have bail set without unnecessary delay, and no later than 12 hours after arrest.

**g. Review of Initial Bail Set**

**1. Informal Review**

Any person unable to post bail shall have his or her bail reviewed by a Superior Court judge no later than the next day, that is not a Saturday, Sunday, nor a legal holiday. See R. 3:26-22. In most counties, the Superior Court judge reviews the

bail shortly after the offender reaches the county jail by reviewing the complaint, usually in chambers, but in some instances with a Criminal Division probation officer or investigator who has interviewed the offender in jail. In some counties, an assistant prosecutor is present during the review. This procedure was started largely as a response to jail overcrowding and provides a quick method of reviewing bail.

## **2. Formal Review**

The Court Rules only provide for a bail review via motion. Under R. 3:26-2(d), bail reduction motions are to be heard no later than seven days after the motion is filed. In some counties, the full seven days is required before a motion to reduce bail is heard while in others these motions are scheduled in less than seven days. However, in order to alleviate jail over crowding and reduce the volume of work created by the filing of motions, most counties do not require the filing of a motion for this review. These counties automatically schedule a review for any new defendant that remains in custody unable to post bail. However, a motion is required for any subsequent bail review requested by defense counsel.

## **h. Types of Bail**

When bail is set, it can be satisfied in one or more of the following ways

### **1. Cash Bail**

The defendant or surety must deposit with the court a certain amount of money. A surety is a person, other than defendant, who is posting bail.

### **Full Cash**

Full cash bail must be posted when a defendant is charged with certain crimes of the first or second degree as enumerated at N.J.S.A. 2A:162-12a. and the defendant

1. has two other indictable cases pending at the time of the arrest;
2. has two prior convictions for a first or second degree crime or for a violation of N.J.S.A. 2C:35-7 or any combination thereof;

3. has one prior conviction for murder, aggravated manslaughter, aggravated sexual assault, kidnapping or bail jumping; or
4. was on parole at the time of the arrest.

### **Ten Percent Cash Bail**

Except in first or second degree crimes as set forth in N.J.S.A. 2A:162-12 and unless the order setting bail specifies the contrary, whenever bail is set pursuant to R. 3:26-1, bail may be satisfied by the deposit in court of cash in the amount of ten percent of the bail amount, and by the defendant executing a recognizance for the remaining ninety percent. Under the Court Rules, ten percent cash bail is presumed when the judge sets an amount, unless the judge orders otherwise. See R. 3:26-4(g). When ten percent cash is deposited with the court and is owned by someone other than the defendant, the owner of the cash cannot charge a fee other than the lawful interest. See R. 3:26-4(g).

### **2. Corporate Surety Bonds**

A corporate surety bond usually is posted by a bail agent (bondsman) who represents an insurance company that is approved by the commissioner of the Department of Banking and Insurance. The bail agent must have a power of attorney from the insurance company. The bond is a contract between the court and the insurance company whereby the insurance agency agrees to be responsible for the full amount of the bail should the defendant fail to appear in court.

### **3. Property Bonds**

For a property bond, the defendant or a surety posts real property, (e.g., a house) to satisfy the bail amount. In order to post real property, the defendant or surety must provide the court with the following information in accordance with N.J.S.A. 2A:162-12:

1. a legal description of the property;
2. a description of each encumbrance on the real property;

3. the market value of the unencumbered equity owned by the affiant as determined in a full appraisal conducted by an appraiser licensed by the state of New Jersey; and
4. a statement that the affiant is the sole owner of the unencumbered equity.

If real property is going to be posted for a crime with bail restrictions as identified in N.J.S.A. 2A:162-12a, the property must be located in New Jersey with an unencumbered equity equal to the amount of the bail undertaken plus \$20,000.

#### **4. Released on Own Recognizance (ROR)**

When a court releases a defendant on his/her own recognizance the court does not set a bail amount. However, a recognizance must be signed by the defendant thereby acknowledging that he or she will appear in court and abide by any other conditions imposed by the court.

Additional information about bail forms, procedures and guidelines is available at the Criminal Practice Division section of the Judiciary Infonet site.

#### **4. First Appearance**

The first appearance is, generally, the first time a defendant appears before a judge. If the defendant is in custody, the first appearance is to be conducted within 72 hours, excluding holidays. If the defendant is released on bail, the first appearance is to occur without unnecessary delay. See R. 3:4-2(a). At the first appearance the judge informs the defendant

- a. of the charges and furnishes a copy of the charges;
- b. of the right not to make a statement as to the charge. The defendant also is informed that any statement he or she makes may be used against him or her;
- c. of the right to counsel or, if indigent, the right to have counsel furnished without cost.

If the defendant is charged with an indictable offense, the judge also informs the defendant

- of the existence of the PTI program and how to apply for admission to the program;
- of the right to indictment by grand jury;
- of the right to a trial by jury;
- of the right to have a hearing as to probable cause.

R. 3:4-3 provides that if a defendant does not waive a hearing as to probable cause, one shall be held. As a practical matter, once such a hearing is requested, an indictment normally occurs prior to the hearing thus averting the need for such a hearing.

At this first appearance, the court also reviews bail if the defendant is incarcerated. See R. 3:4-2. The first appearance can take place in front of either a Municipal Court judge or a Superior Court judge. In some instances it occurs at a pre-indictment event such as CJP or PIP.

## **5. Pre-indictment Event**

One of the clearest messages from the experiences of speedy trial programs during the 1980s was that it is important to assess cases early. Doing so saves valuable system resources and promotes a just resolution of cases. In that vein, most counties have moved to bring the judge, attorneys and Criminal Division staff together pre-indictment. Many counties hold a formal in-court event, such as Central Judicial Processing (CJP) or Pre-indictment Program (PIP). At this event, the prosecutor screens the case to determine whether to remand the case to Municipal Court, to administratively dismiss the case or to proceed to indictment. For those cases that will proceed to indictment, the pre-indictment event is also used as a vehicle for early diversion into the Pretrial Intervention Program (PTI) or to plea to an accusation; to resolve issues regarding defense representation, e.g., indigency; to screen for eligible Drug Court candidates; and to complete the uniform defendant intake report (UDIR). Other counties hold a less formal event that is normally scheduled after the prosecutor has screened the case. Staff from the criminal division meet with the defendant and the UDIR is completed and counsel is identified, or if the defendant does not have counsel, an application for a public defender is completed and indigence is determined. The defendant is also told he or she can apply for PTI. If the defendant wishes to do so, a PTI application is taken.

## **6. Grand Jury**

If a complaint is not resolved pre-indictment, it is presented to a grand jury for action. The right to have charges presented to a grand jury is guaranteed by the New Jersey Constitution. See N.J. Const. art. I. 8. The function of the grand jury is to investigate criminal complaints, with the goal of either bringing charges against those responsible for criminal conduct, or refusing to bring charges where prosecution is unwarranted.

A grand jury consists of no more than 23 members, randomly selected from the general public. The assignment judge appoints one juror to be foreperson and another deputy foreperson. Each county must have a grand jury at all times. The deliberations of the grand jury are secret. An assistant prosecutor presents the State's case to the grand jury. Neither the defendant, nor his or her attorney attend grand jury proceedings unless the defendant asks to testify before the grand jury. If 12 or more members of the grand jury find that charges are warranted, the panel renders an indictment, which is called a "True Bill." If the grand jury finds charges are unwarranted, it returns a "No Bill." If a case is "No Billed," the grand jury, through the foreperson, reports this in writing to the assignment judge, who, if the defendant is in jail, will order the defendant's release unless there are other charges pending for which detention is required.

## **B. POST-INDICTMENT**

### **1. Indictment**

An indictment is a written statement of the essential facts constituting the crime charged. The Court Rules require that the indictment be signed by the prosecuting attorney and endorsed by the foreperson of the grand jury as a True Bill. The indictment must also state the official statutory citation for the crime charged. See R. 3:7-3. Once an indictment has been returned, it is filed with the court, either by returning it to the assignment judge, or, with his approval, any other Superior Court judge. R. 3:6-8(a). Once returned, the assignment judge can order that the indictment be kept secret, i.e. sealed, until the defendant is arrested or the indictment is ordered unsealed by the court. When an indictment is sealed it is usually at the request of the prosecutor who may not want an on-going investigation to be compromised by public knowledge of the indictment or if there is concern that the defendant who may not have been arrested on the underlying charges may flee the jurisdiction of the court before being arrested.

## **2. Pre-arraignment Conference**

The first post-indictment event is a pre-arraignment conference, which is conducted by the Criminal Division of the Superior Court. This conference occurs within 21 days after indictment. At this conference, defense representation is confirmed, discovery<sup>1</sup> is available, and the uniform defendant intake form is completed. If the defendant has not previously applied for PTI, and asks to do so, an application is taken. The court can also screen for eligible Drug Court candidates. The purpose of this conference is to insure routine matters, which need not take up valuable judicial resources, are resolved prior to the arraignment/status conference. This allows the first court event, the arraignment/status conference, to be used as a tool to dispose of cases or to set firm dates for motions, future conferences and trials. The arraignment/status conference is scheduled to occur a few weeks after the pre-arraignment conference, by which time defense counsel should have reviewed discovery and discussed a negotiated plea with the state. Giving the parties time to review discovery prior to the arraignment/status conference provides a better opportunity to discuss a realistic plea bargain,<sup>2</sup> diversion or dismissal, or, if the case is going to proceed to trial, to discuss the specific needs of the case, e.g., motions, and to set realistic dates to meet these specific case needs.

No pre-arraignment conference is required where the defendant has obtained counsel and the Criminal Division Manager's Office has established to its satisfaction that (1) an appearance has been filed under R. 3:8-1; (2) discovery has been obtained, and (3) the defendant and counsel have obtained a date, place and time for the arraignment/status conference. See R. 3:9-1(a).

## **3. Arraignment/Status Conference**

The first in-Court event after indictment is the arraignment/status conference. The arraignment/status conference, which occurs within 50 days of the return of the indictment, is held in Superior Court and consists of the judge advising the defendant of the substance of the

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1 Discovery is the facts and information that will be relied upon in trial and is provided to the opposing party. A copy of discovery is required to be delivered to the Criminal Division Manager's Office or available at the Prosecutor's Office, within 14 days of indictment. Defense counsel is required to obtain discovery no later than 28 days after the return or unsealing of the indictment. See R.3:9-1(a).

2 A plea bargain is an offer by the State to the defendant, which gives the defendant some consideration or benefit in return for his or her plea of guilty. Sometimes the bargain is for a plea in exchange for a reduction or dismissal of charges (charge bargain). Other times the bargain is for a plea in exchange for a recommendation of reduced sentence (sentence bargain). Still other times the bargain is for both a reduction or dismissal of charges and for a reduced sentence (charge and sentence bargain).

charges against him or her, as contained in the indictment, confirming that the defendant has reviewed the indictment and discovery with counsel, and asking him or her to enter a plea to the charges. If the plea is not guilty, counsel is to report to the judge on the status of plea negotiations. At the arraignment/status conference, the dates for hearing motions and a further status conference are set. See R. 3:9-1(c).

#### **4. Motions**

A motion is a legal pleading which asks the court for some specific action, e.g., to suppress evidence unlawfully obtained. It is normally a document that sets forth facts and legal arguments to persuade a judge to grant the action requested. The most common type of motion is a motion to suppress evidence. Most motions are filed by defense counsel, but some, such as a motion for depositions, may be filed by the State. At the time of filing, motions are normally accompanied by an affidavit. See R. 1:6-2; 1:6-6.

For purposes of continuity this section on motions is included before the discussion on pre-trial conferences. In practice, motions should have been addressed either well before the conference, or will be addressed subsequent to this point (e.g., motion for judgment of acquittal after the jury's verdict). All motions that can be disposed of before the pre-trial conference should be in order to make the pre-trial conference a more productive event.

#### **5. Pre-trial Conference**

At the arraignment/status conference, motion dates and a date for a future status conference are set. All motions are heard prior to the last status conference. The last status conference is the pre-trial conference. The court conducts a conference when there are no motions pending, discovery is complete, all reasonable attempts to dispose of the case prior to trial have been made and it appears that further negotiations or an additional status conference will not result in either the disposition of a case or progress towards the disposition of a case. The pre-trial conference is conducted in open court with the defendant, defense counsel and prosecutor present. At the pre-trial conference, unless objected to by a party, the judge will ask the prosecutor to describe the case. The judge then addresses the defendant and advises the defendant of the State's final plea offer and the authorized sentence for the offenses charged. The defendant is also advised of a plea cutoff, which means that ordinarily a negotiated plea will not be accepted after the conference and after a trial date has been set. The judge also advises the defendant of his or her right to trial. If the defendant wishes to proceed to trial, a

trial memorandum is prepared and reviewed on the record and a trial date is set. No motions are normally heard after this event and a plea cutoff is in effect. A plea cutoff means that, after the last status conference, the State's plea offer is withdrawn and the defendant must either proceed to trial or enter a plea to the indictment without a recommendation from the State. Negotiated pleas shall not be accepted absent the approval of the Criminal Presiding Judge based on a material change of circumstance, or the need to avoid a protracted trial or manifest injustice. See R. 3:9-3(g).

## **6. Trial**

### **a. Right to Trial by Jury**

If a defendant decides to contest guilt, the defendant is entitled, by both the United States and New Jersey Constitutions,<sup>3</sup> to a trial by a jury. The right to a jury trial generally applies to all criminal acts where the penalty for the offense exceeds six months in confinement. The right to a jury trial can be waived by the defendant if the court approves. The defendant also needs the approval of the prosecutor to waive a jury trial in the sentencing phase of a capital case. If the judge grants such a request, the judge alone hears the case. See R. 1:8-1(a). This is known as a bench trial. In addition to the right to a jury trial, the defendant has the right to be present at every stage of a trial, including jury selection. See R. 3:16.

### **b. Selection of a Jury**

In criminal cases a jury consists of 12 persons, unless the parties agree that the jury may consist of fewer than 12. One exception is a capital case where there must be 12 jurors. See R. 1:8-2. Normally, 14 persons are selected who sit and hear the case, with two designated as alternate jurors at the end of the trial. In many cases judges will empanel alternate jurors in the event that one of the twelve jurors cannot finish the trial, e.g., due to sickness. The alternate jurors are available for deliberations if one of the 12 deliberating jurors becomes ill or otherwise cannot continue to serve. Jurors are drawn from a merged list of registered voters, licensed drivers, filers of state gross income tax returns, and filers of home state rebate application forms in the county where the case will be tried.

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<sup>3</sup> U.S. Const. art. III, 2; U.S. Const. amend. VI; N.J. Const. art. I, 9.

The jury is selected after the judge questions prospective jurors about their backgrounds or the answers provided on the juror questionnaire. If the court allows, counsel may be permitted to personally question jurors or offer questions for the court to ask of jurors. This process is known as jury voir dire. This process seeks to determine whether jurors have a bias or prejudice which would render them unable to objectively evaluate all testimony and render a fair and impartial verdict. During this process, both the defense and the prosecution are given what are known as peremptory challenges. These challenges allow the parties to exclude prospective jurors who are being considered for selection to the jury without giving a reason for excluding them. See R. 1:8-3(d). Of course, the court will always exclude jurors for cause, such as where a juror has personal knowledge of the case.

**c. Trial**

Once all 12 jurors and any alternates have been selected, the jury is sworn and is considered impaneled. If there are no pre-trial motions, the trial begins. The trial begins with opening statements by the prosecutor. Defense counsel may then choose to give an opening statement. After opening statements are complete, both sides present their evidence to the jury. The State presents its case first. When both sides have finished presenting their evidence, each side presents closing arguments to the jury. After closing arguments are finished, the judge charges the jury as to the applicable law. The jury then deliberates and eventually returns a verdict of guilty or not guilty. In order to return a guilty verdict the jury must be unanimous. If the jury is unable to arrive at a unanimous verdict (“hung jury”), the judge can declare a mistrial.

**7. Sentencing**

**a. Overview**

Sentencing in New Jersey is governed by the New Jersey Code of Criminal Justice, Title 2C. The Code of Criminal Justice defines what constitutes criminal activity and what the penalties are for violating the law. There are four degrees of crime: first degree, second degree, third degree and fourth degree. The most serious criminal activity is encompassed in the first degree category. An example of a first degree crime is armed robbery. The least serious type of criminal activity is contained in the fourth degree category. An example of this would be theft of goods valued at between \$200-\$500. Below these four levels of crimes there are two levels of less serious offenses,

which are categorized as disorderly persons, and petty disorderly persons offenses. Upon conviction of a crime of the first degree, a judge may sentence within a prescribed range of 10-20 years in state prison; for violating a second degree crime, within a range of 5-10 years in state prison; for a third degree crime, within a range of 3-5 years in state prison; and for fourth degree crime, within a range of up to 18 months. Any sentence of one year or greater is a sentence to state prison unless the county has a penitentiary or workhouse. N.J.S.A. 2C:43-10(a) and (b).

These sentencing ranges were placed in the Criminal Code to guide judges' discretion and, hopefully, avoid undue sentencing disparity. Sentencing disparity occurs when two offenders who have similar backgrounds and who committed similar offenses receive dissimilar sentences. A judge can determine the length of sentence, within the permissible range by first starting at the mid-range of the sentence range and then considering the aggravating and mitigating factors. Aggravating factors are factors that aggravate the crime or make the crime more serious while the mitigating factors are factors that mitigate the crime or make the crime less serious.

Under the Code, there is a presumption of incarceration for persons sentenced for first and second degree crimes or for persons convicted for a second time of theft of a motor vehicle or of the unlawful taking of a motor vehicle. This means that it is presumed that the judge will sentence an offender to state prison. In order to overcome this presumption, which would allow the judge to sentence the offender to probation or another non-incarcerative term, the court, having regard for the character and condition of the defendant, must find that the defendant's imprisonment would be a serious injustice which overrides the need to deter such conduct by others. N.J.S.A. 2C:44-1(d).

There is no presumption of incarceration for crimes of the third and fourth degree. This means that the judge is free to determine whether or not to sentence the offender to incarceration. However, there is a presumption against incarceration if the offender is a first offender. This presumption against incarceration does not apply to certain third or fourth degree crimes such as theft of a motor vehicle, unlawful taking of a motor vehicle, eluding, or a crime of the third or fourth degree constituting bias intimidation. N.J.S.A. 2C:44-1(e).

Once a judge decides to impose a prison sentence, the judge can also fix a minimum term of parole ineligibility if he or she is clearly convinced that the aggravating factors substantially outweigh the mitigating factors. These minimum terms are called discretionary minimum terms as they are solely within the discretion of the judge. A minimum parole ineligibility term is a period of time that the offender must serve in prison before becoming eligible for release on parole. A minimum parole ineligibility term can be up to one half of the maximum sentence that is imposed. N.J.S.A. 2C:43-6(b).

There are a number of statutes that require that the judge impose a mandatory minimum parole ineligibility term, meaning that the judge has no discretion whether to impose a minimum term. Some examples are persons convicted of possession of a firearm with intent to use it against the person of another or committing certain offenses while using or possessing a firearm (Graves Act), death by auto while under the influence of alcohol or drugs, sex offenses (second or subsequent offenses) and distributing drugs near or on school property (School Zone).

The Criminal Code also gives sentencing judges the discretion to extend the term of imprisonment of offenders convicted of first, second, or third degree offenses who are (1) persistent offenders, (2) professional criminals, (3) hired criminals, (4) second offenders with a firearm, (5) convicted of committing certain crimes and during the course of committing the crime used, or were in possession of a stolen motor vehicle, or (6) convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact or criminal sexual contact involving violence and the victim was 16 years of age or younger, or (7) knowingly involved in criminal street gang activity. In most cases in order to extend the term, the prosecutor must make an application to the court and the court must hold a hearing. At the hearing, the State must prove that the defendant falls within the enhancement criteria set forth in N.J.S.A. 2C:44-3. Pursuant to Rule 3:21-4 (e), (f), the prosecutor need not file notice to seek an extended term if the extended term exposure is part of the negotiated plea agreement and is set forth on the guilty plea form. The following chart depicts the ordinary and presumptive terms, as well as the extended term ranges and presumptive extended term sentences for each degree of crime.

<b>TERMS OF IMPRISONMENT</b>	<i>N.J.S.A. 2C:43-6(a)</i> Ordinary	<i>N.J.S.A.2C:44-1(f)</i> Presumptive*	<i>N.J.S.A.2C:43-7(a)</i> Extended Term Range	<i>N.J.S.A.2C:44-1(f)</i> Presumptive**
1 <sup>st</sup> Degree (See below Exceptions)	10-20 years	15 years	20 - Life	50 years
2 <sup>nd</sup> Degree	5-10 years	7 years	10-20 years	15 years
3 <sup>rd</sup> Degree	3-5 years	4 years	5-10 years	7 years
4 <sup>th</sup> Degree	up to 18 months	9 months	5 years***	5 years****

\* While the Criminal Code contains presumptive terms for ordinary sentences, (*N.J.S.A. 2C:44-1f(1)*) in *State v. Natale*, 184 N.J. 458 (Aug. 2, 2005), the New Jersey Supreme Court eliminated the presumptive term from the sentencing process. These designated terms of years are now considered the mid-range of the sentence.

\*\* While the Criminal Code contains presumptive terms for extended term sentences (*N.J.S.A. 2C:43-7*) in *State v. Young*, 379 N.J. Super. 498 (App. Div. 2005), the Appellate Division, eliminated the presumptive term from the process of imposing an extended term. These designated terms of years are now considered the mid-range of the sentence.

\*\*\* In the case of a crime of the fourth degree pursuant to *N.J.S.A. 2C:43-6f* and *N.J.S.A. 2C:43-6g*, for a term of three to five years.

\*\*\*\* In the case of a crime of the fourth degree pursuant to *N.J.S.A. 2C:43-6c* and *N.J.S.A. 2C:44-3d*.

#### **b. Allocution Hearing**

After the defendant's guilt has been determined, or he has pled guilty, a Presentence Investigation (PSI) is ordered by the court. R. 3:21-2(a) has been interpreted as requiring that a presentence report be prepared in all indictable cases except death penalty cases. See State v. Buglione, 233 N.J. Super. 110, 113 (App. Div.), certif. den., 117 N.J. 636 (1989). See also Pressler, *Rules Governing the Courts*, Comment 3 to R. 3:21-2. However, where a functional equivalent of a full PSI is present in the file, the court may, on 3rd and 4th degree victimless offenses, sentence the defendant at the time of the plea when the sentencing can be expedited without jeopardizing fairness. This is known as simultaneous sentencing. Under the normal process, after the presentence report is prepared, a sentencing hearing is held. This is known as the allocution hearing, which is the court's inquiry of the defendant as to whether he or she has any legal cause to show why the sentence should not be pronounced against him or her and whether he or she would like to make a statement and present any information in mitigation of sentence. At this hearing the prosecution and defense make sentence recommendations to the court. The defendant also is allowed to make a personal plea to the court regarding the sentence. The judge then imposes the sentence and states his or her reasons for the sentence on the record.

### c. **Victims' Rights**

In 1990 the voters approved a constitutional amendment requiring that victims of crimes be treated with fairness and respect by the criminal justice system. The amendment entitled victims to be present at public judicial proceedings when not sequestered and authorized the Legislature to define rights and remedies for victims of crimes. Thereafter, a number of laws were enacted defining victims' rights. Legislation was enacted

- Allowing crime victims to submit a written statement about the impact of the crime to the Prosecutor's Office prior to his or her final decision to file charges. The legislation also gave victims the right to make an in-person statement directly to the sentencing Court prior to sentencing. L. 1991, c. 44; N.J.S.A. 52:4B-36, -44.
- Requiring restitution to crime victims, or, in the case of a homicide, to the nearest relative of the victim, where the victim suffered a loss. N.J.S.A. 2C:43-3.
- Giving victims of a crime, or a relative of a murder victim, the right to present testimony, or make a presentation, to the parole board when the offender becomes eligible for parole. L. 1992, c. 59.
- Allowing victims of certain crimes to demand that the offender be tested for HIV/AIDS. N.J.S.A. 2C:43-2.2.
- Requiring community notification that an inmate convicted, or adjudicated delinquent, for a sex offense is to be released from incarceration or is going to relocate into a community. N.J.S.A. 2C:7-6.
- Requiring the AOC to give advance notice to prosecutors, in certain cases, regarding defendant's appearance before a judicial officer. This legislation then requires the prosecutor to give notice to the victim. L. 1994, c. 131.
- Requiring prosecutors to provide notice to victims of a defendant's escape or release from custody via ISP, commutation or parole release. L. 1994, c. 131.
- Requires the prosecutor to notify the victim whenever a defendant charged with domestic violence is released from custody. N.J.S.A. 2C:25-26.1.
- Requires the court to tell the defendant the approximate term to be served in custody before parole eligibility. L. 1994, c. 157. See also R. 3:21-4j.

**d. Sentencing Options**

The different options available to a judge, as contained in N.J.S.A. 2C:43-2b, are

1. To suspend the imposition of sentence. This sentencing option is different from a suspended sentence, an option not allowable under our Criminal Code. Under our former Criminal Code, when a judge suspended a sentence, the judge would render a sentence, e.g., six months in the county jail, suspended. Typically probation would then be ordered. Under the current Criminal Code, when a judge suspends imposition of sentence, the judge defers sentencing for a period of time, e.g., imposition of sentence suspended for twelve months.
2. To order the defendant to pay a fine or to make restitution;
3. To place the defendant on probation, and in the case of a person convicted of a crime, to serve a term of imprisonment for a term fixed by the court, not to exceed 364 days to be served as a condition of probation, or in the case of a person convicted of a disorderly persons offense, to serve a term of imprisonment for a term fixed by the court, not to exceed 90 days, to be served as a condition of probation;
4. To order the defendant to serve a term of imprisonment;
5. To order the defendant to pay a fine, to make restitution and be placed on probation, or to pay a fine, to make restitution and serve a term of imprisonment;
6. To order that the defendant be released under supervision in the community, or to require the defendant to perform community service;
7. To order that the defendant serve his or her sentence in a halfway house or other residential facility in the community, including agencies that are not operated by the Department of Human Services;
8. To order that the defendant serve a term of imprisonment at night or on weekends, with liberty to work or to participate in training or educational programs;
9. Instead of, or in addition to, any other disposition, the court may suspend the defendant's driver license, registration, or both for up to two years.

Of course a judge may set other conditions, such as special conditions of probation, e.g., defendant to find gainful employment, to support his dependents, etc.

See N.J.S.A. 2C:45-1.

**e. Violations of Probation**

A sentencing option available to the court under the Criminal Code (N.J.S.A. 2C:45-1) is a sentence to a period of probation supervision. When the court places a defendant on probation, it shall attach such reasonable conditions authorized under the Criminal Code as it deems necessary to insure the defendant will lead a law-abiding life or is likely to assist him/her to do so. Those conditions may include finding and maintaining employment, attendance at a drug or alcohol treatment program, reporting to the supervising probation officer as directed, performing community service and paying restitution to victims. The supervising probation office should not perceive the enforcement of the conditions of probation as subject to ad hoc, discretionary implementation. If the probation officer for any reason is unable to enforce the standard or special conditions of probation, the matter must be placed before the court for a judicial determination. These events are listed on the appropriate Criminal Division judge's calendar as a violation of probation (VOP). All VOP's should be scheduled on PROMIS/GAVEL and the outcome entered in the sentencing record, so the change in sentence may be reported to the New Jersey State Police. The court may terminate probation, continue probation (up to a maximum of 5 years), or revoke probation, in which case the court may impose any sentence that could have been imposed at the original sentencing for the offense for which he/she was convicted.

**f. Judgment of Conviction**

Once the sentence is pronounced, a judgment of conviction (JOC) is prepared and signed by the judge who pronounced the sentence. This document is the official court record of the sentence. It contains the crimes charged, the crimes on which the defendant was convicted and the terms of the sentence. It also contains the judge's statement of reasons for the sentence. For the current version of the judgment of conviction refer to the administrative directive section of the Judiciary Infonet site.

For additional information about sentencing, please see the *Sentencing Primer* published by the AOC Criminal Practice Division.

## **C. ANCILLARY CRIMINAL PROCEEDINGS**

### **1. Hearing as to Probable Cause**

The Court Rules require that when a defendant does not waive a hearing as to probable cause prior to indictment, with respect to the offense or offenses charged, the court shall hear the evidence offered by the State within a reasonable time. If the court finds that there is probable cause to believe an offense has been committed and the defendant has committed it, the court binds the defendant over for indictment. If the court does not find that probable cause exists, the defendant is discharged. See R. 3:4-3. The general practice is not to hold this hearing unless it is requested by the defendant. When a probable cause hearing is requested, it is often not held because the prosecutor will present the case to a grand jury for indictment before the scheduled date of the probable cause hearing.

### **2. Rule 104 Hearing**

#### **a. Generally**

When the qualifications of a person to be a witness, (e.g., is a child victim old enough to know he or she must tell the truth, is an adult mentally incompetent, does a witness qualify as an expert) or the admissibility of evidence, (e.g., hearsay evidence), pre-trial identification of a defendant, or the existence of a privilege (e.g., lawyer-client, physician-patient) is alleged, a hearing is held to determine if the evidence is admissible. This type of hearing is called a Rule 104 Hearing and is named after the Evidence Rule that requires it. See N.J.R.E. 104.

#### **b. Common Types of Rule 104 Hearings**

##### **1. Wade Hearing**

The name associated with this hearing is derived from the Supreme Court's decision in United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed. 2d 1149 (1972).

When the prosecution intends to offer proof of an out-of-court identification and/or an in-court identification of the defendant, the defense will often object to

the admission of this evidence and seek to have the court exclude the results of the identification. Very often the defense will allege that the identification is unreliable because it was unduly suggestive. When this occurs, the judge may hold a pre-trial hearing called a Wade hearing. The sole purpose of the hearing is to decide whether to exclude the evidence of the identification. Note that judges are not required to hold a Wade hearing just because the defendant demands it. In State v. Ortiz, 203 N.J. Super. 518, 522 (App. Div. 1985), certif. denied, 102 N.J. 325 (1985) the Appellate Division held that a Wade hearing was not required where the defendant is unable to proffer any pre-trial evidence that police procedures directed at identification were impermissibly suggestive.

## **2. Krol Hearing**

Hearing required by State v. Krol, 68 N.J. 236 (1975). If a defendant is acquitted of a criminal offense because he or she was legally insane at the time the offense was committed, the defendant is not automatically released from custody. The defendant can only be released if the court finds, at a subsequent hearing called a Krol hearing, that the defendant may be released without danger to the community or to himself or herself. Where a defendant is not released, the defendant is committed to a mental health facility and is treated as a person civilly committed. Periodic Krol hearings are required to judge the defendant's mental condition. Review hearings occur at the following intervals: three months from the date of the first hearing, nine months from the date of the first hearing, 12 months from the date of the first hearing, and at least annually thereafter. See R. 3:19-2, N.J.S.A. 2C:4-8, -9 and R. 4:74-7.

## **3. Competency Hearing**

It is possible for a defendant to be legally responsible (sane) at the time of the commission of the offense but yet be incompetent to stand trial. When competency to stand trial is raised, a pre-trial hearing is held. At that hearing, the judge determines whether the defendant understands the proceedings and has the present ability to consult intelligently with counsel in order to prepare a defense to the charges. If the defendant is unable to do so, the defendant is deemed incompetent to stand trial. The defendant is then committed to a mental health facility. See N.J.S.A. 2C:4-4, -6. If the person is judged incompetent to

stand trial, that person cannot be tried unless that person regains his or her competency.

#### **4. Jackson/Denno Hearing**

The name associated with this hearing is derived from the Supreme Court's decision in Jackson v. Denno, 378 U.S. 368 (1964). If the defendant confesses to a crime and thereafter alleges that the confession was involuntary, e.g., coerced, a hearing is held to determine the voluntariness of the confession. If the judge rules that the confession was made voluntarily, the confession is admissible during trial. If the judge rules the confession was coerced, the confession is suppressed.

#### **5. Driver Hearing**

The name associated with this hearing is derived from the New Jersey Supreme Court's decision in State v. Driver, 38 N.J. 255 (1962). If the State plans to introduce sound recordings at trial, and the defendant objects to their introduction, a hearing is held to determine whether the prerequisites for admission of the sound recording have been met. At the hearing the State must show that (1) the recording device was capable of taping the conversation; (2) the operator of the recording device was competent to operate the recording device; (3) the recording device was authentic and correct; and (4) the recording shows no signs of tampering and has not been altered.

#### **6. Miranda Hearing**

In Miranda v. Arizona, 384 U.S. 460 (1966) the Supreme Court held that, prior to a custodial interrogation, defendants must be advised of their rights. Advising defendants of their rights is thus known as giving defendants their Miranda warning.

Prior to the interrogation of a defendant, the police must advise a defendant of his or her rights, e.g., right to remain silent, right to be represented by counsel, right to have counsel appointed for him or her if he or she cannot afford one. If a defendant is properly advised of his or her rights, any confession the defendant makes can be used as evidence in court. Where the defendant alleges that he or she was not advised of his or her rights and seeks to have any statements made

suppressed, a hearing is held. If the defendant is successful any statements made by the defendant cannot be used as evidence in court.

### **7. Sands Hearing**

The name is derived from the New Jersey Supreme Court's decision in State v. Sands, 76 N.J. 127 (1978). If the State intends to use a prior conviction against the defendant at the trial, and there is a question as to whether the conviction is admissible into evidence at trial, a Sands hearing is held. If the judge finds the conviction is admissible, it can be used as evidence during the trial.

### **3. Post-Conviction Relief**

Once a defendant is convicted, he or she has three avenues open to contest the conviction. A defendant may appeal to the Appellate Division of the Superior Court; a defendant may file a petition for post-conviction relief, or may make a motion for a new trial. Post-conviction relief applications are governed by R. 3:22. A post-conviction relief application may be filed if one of the following grounds is alleged

- a.** There was a substantial denial, in the proceedings in which the defendant was convicted, of the defendant's rights under either the U.S. or N.J. Constitutions;
- b.** The court that imposed judgment lacked the jurisdiction to do so;
- c.** The sentence imposed exceeded that authorized by law; or
- d.** A ground exists which could be the basis of a habeas corpus or other common-law or statutory remedy.

Petitions for post-conviction relief are handled by the Criminal Division of the Superior Court, Law Division.

### **4. Municipal Appeals**

The Criminal Division of the Superior Court is also responsible for hearing appeals from convictions entered in Municipal Court. If a verbatim record or sound recording was made, the trial of the appeal is heard de novo (a Latin term which means anew; afresh; a second time). A trial de novo is a trial without a jury, which is heard on the record of the proceedings below, unless the rights of either party would be prejudiced by the condition of the record, or if the rights of the defendant were prejudiced in the Municipal Court. The record can be

supplemented if the Municipal Court erred in excluding evidence offered by the defendant; the record is partially unintelligible or defective, or the state offered rebuttal evidence to discredit supplementary evidence admitted at the trial. If the defendant is convicted after the trial, the court imposes the sentence. If the defendant is acquitted, the defendant is ordered discharged. The most common type of Municipal appeal is from a motor vehicle conviction, such as driving while intoxicated.

## **5. Comprehensive Enforcement Program (CEP)**

The Comprehensive Enforcement Program (CEP) was established in 1995 to increase the collection of court-ordered fines and fees imposed on probationers through a cost-efficient and effective method. The three main goals of the program are collecting money, enforcing orders of the court and making people take responsibility for their actions.

CEP works through the Probation Division, which keeps track of missed court-ordered payments or community service. When an individual fails to pay court-ordered fines or serve community service sentences, he or she is summoned to appear before an enforcement program hearing officer. An individual is eligible for the program when court-ordered payments are over 60 days late. The individual either pays the full amount due or works out a practical new payment schedule which is finalized as a new court order that is reviewed and signed by the designated CEP judge, which in most cases is a criminal division judge. If a probationer fails to appear before the hearing officer, an arrest warrant may be issued.

Compliance with the new payment schedule is monitored by the Probation Division. Hearing officers may add penalties for lack of cooperation or noncompliance. If an individual fails to comply with the new plan, a range of increasingly negative sanctions for noncompliance will be considered by the hearing officer. There are a series of sanctions that hearing officers use before a person is sentenced to county jail, such as driver's license suspension, wage garnishments, extension of probation sentence or referral to the judge for a VOP hearing.

An individual who misses a hearing or fails to comply with the agreement or new sanctions may be issued a county jail sentence that can be converted to participation in a more structured Sheriff's Labor Assistance Program or Enforced Community Service. These are group-supervised, community-service programs where an individual will report in the morning and spend all day doing manual labor. The programs have probationers performing supervised

tasks, such as sorting trash at a recycling center or picking up highway trash. Enrollment in either program does not reduce fines, but serves as a strong incentive for successful completion of Court-ordered payments or community service.

In addition to adult collections, CEP also conducts hearings for juvenile collections, juvenile community service, jury fines, technical violations of probation, Lawyers Fund for Client Protection, Adult and Juvenile Intensive Supervision Program and Municipal Court non-probation cases.

## **6. Sexually Violent Predators**

The New Jersey Sexually Violent Predator Act, N.J.S.A. 30:4-27.24 et. seq. became effective on August 12, 1999. This law modifies the involuntary civil commitment process and establishes a means to involuntarily commit sexually violent predators. A sexually violent predator (SVP) is defined in N.J.S.A. 30:4-27.26 as a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.

Pursuant to N.J.S.A. 30:4-27.27, when it appears that a person may meet the criteria of a SVP, the agency with jurisdiction shall give written notice to the attorney general 90 days, or as soon as practicable, prior to

- a. The anticipated release from total confinement of a person who has been convicted of or adjudicated delinquent for a sexually violent offense;
- b. Any commitment status review hearing of an individual found Not Guilty by Reason of Insanity (NGRI) for a sexually violent offense, at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely; or,
- c. Any hearing of an individual determined to be mentally incompetent to stand trial, if charged with a sexually violent offense, at which the Department of Human Services intends to recommend discharge or believes that discharge may be likely.

N.J.S.A. 30:4-27.28 describes how the involuntary commitment proceeding is initiated and sets forth the requirements for a temporary commitment order.

The Attorney General may initiate a court proceeding pursuant to N.J.S.A. 30:4-27.28 by filing the required submission with the court (usually a Criminal Division judge) in the jurisdiction in which the person whose commitment is sought is located. N.J.S.A. 30:4-27.28f. If the court finds that there is probable cause to believe that the person is a SVP in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing temporary commitment to a secure facility designated for the custody, care and treatment of SVP's pending the final hearing. In no event shall the person be released from confinement prior to the final hearing. N.J.S.A. 30:4-27.28g.

A person who is involuntarily committed shall receive a court hearing with respect to the issue of continuing need for involuntary commitment as a SVP within 20 days from the date of the temporary commitment order. N.J.S.A. 30:4-27.29a. A person subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel. N.J.S.A. 30:4-27.29c. At least ten days prior to a court hearing, the Attorney General shall cause notice of the court hearing to be served upon the person, the persons guardian if any, the persons next of kin, the person's attorney, the agency with jurisdiction having custody of the person in any other individual specified by the court. N.J.S.A. 30:4-27.30a.

Pursuant to N.J.S.A. 30:4-27.31, a person subject to involuntary commitment as a SVP shall have the following rights at a court hearing and any subsequent review hearing

- The right to be represented by counsel or, if indigent, by appointed counsel;
- The right to be present at the court hearing unless the court determines that because of the persons conduct at the hearing the proceeding cannot reasonably continue while the person is present;
- The right to present evidence;
- The right to cross-examine witnesses;
- The right to a hearing *in camera*.

If the court finds by clear and convincing evidence that the person needs continued involuntary commitment as an SVP, it shall issue an order authorizing the involuntary commitment of the person to a facility designated for the custody, care and treatment of sexually violent predators. N.J.S.A. 30:4-27.32a. The court shall also schedule annual review hearings, and may schedule

additional review hearings but, except in extraordinary circumstances, not more often than once every 30 days. N.J.S.A. 30:4-27.32a and N.J.S.A. 30:4-27.35.

If a person has been committed based upon a determination that the person is mentally incompetent to stand trial, the court shall first hear evidence and determine whether the person did commit the act charged before the person can be involuntarily committed pursuant to this law. N.J.S.A. 30:4-27.33. The rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to a defendant at a criminal trial, other than the right to a trial by jury and the right not to be tried while incompetent, shall apply N.J.S.A. 30:4-27.33a. After the conclusion of the hearing on this issue if the court finds beyond a reasonable doubt that the person did commit the act charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this act N.J.S.A. 30:4-27.33c.

## **7. Expungements**

A record of an arrest or conviction can haunt a person forever. Applications for schools, jobs, and military service often ask about criminal records. Many people can address this problem because they are eligible for expungement of their New Jersey criminal records. New Jersey law provides a limited right to expungement. The purpose of New Jersey's expungement law is to give a person who has either one or very few convictions a fresh start. When an expungement is granted, law enforcement agencies are required by law to keep that person's records private.

The New Jersey expungement law states in detail who is eligible for an expungement. An eligible person must prepare and file a petition for expungement. The petition for expungement must be filed in the Superior Court in the county where the arrest or prosecution took place. Copies of the petition are also sent to any criminal justice agency that played any role in the person's arrest or conviction, such as the police, probation division, county jail or prison. A judge then decides whether the person should be granted an expungement order. An expungement order means that, with some exceptions, the criminal proceedings never happened. It also allows the person to fill out school, job, and military applications truthfully without having to reveal that he or she was once arrested or convicted.

However, the law does allow expunged records to be used later in certain cases. Should the person ever again become involved in any criminal proceedings, the records can be used. This

means that if the person is arrested following expungement, his or her past records will be considered in deciding eligibility for the PTI program, release on bail, or probation. If a crime victim files a claim with the Violent Crimes Compensation Board, the expunged records of the person convicted of the crime can be used in connection with the claim. If the criminal activity or arrest results in the person being incarcerated, the Department of Corrections is allowed to use the records in deciding how to classify and assign the prisoner within an institution. Also, following a conviction and a jail sentence, expunged records can be used in deciding eligibility for parole (early release). Further, the expungement order does not bar the retention of material and/or information required for purposes of the PTI registry pursuant to R.3:28(e), and shall not prohibit the filing of reports required under the Controlled Dangerous Substance Registry Act of 1970. Therefore, records will not be removed from and can be placed in these registries.

Many people want to go through the expungement process so that they can have clear records when they apply for jobs. However, the law does allow expunged records to be used when a person applies for a job with a law enforcement agency. This includes jobs with state, county, and local corrections departments, prosecutors, courts, and police. This does not mean that those agencies will reveal the existence of an expunged record on a job applicant. Agencies that are not associated with law enforcement (such as the Real Estate Commission or the Department of Insurance) that require information about a person's criminal record prior to expungement cannot be ordered legally to correct their records after an expungement order is granted. Such agencies are beyond the reach of expungement orders and may continue to publicize such information.

For further detail on expungements see Chapter 52 of the New Jersey Criminal Code and the New Jersey Judiciary pro se expungement package available on the Judiciary Infonet.

## **8. Drug Offender Restraining Order Act**

The Drug Offender Restraining Order Act (DORA) provides that, upon application of a law enforcement officer or a prosecuting attorney, the court shall issue a restraining order prohibiting any person, including a juvenile, charged with or convicted of certain drug offenses, or the unlawful possession or use of an assault firearm, as defined in subsection w. of N.J.S.A. 2C:39-1, from entering any premises, residence, business establishment, location or specified area, including all buildings and all appurtenant land, in which or at which a criminal offense occurred or is alleged to have occurred or is affected by the criminal offense with which the

person is charged. A person, however, may not be barred from entering public rail, bus or air transportation lines, or limited access highways that do not allow pedestrian access.

The court is required to issue a restraining order only upon application by a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense. A law enforcement officer or prosecuting attorney has discretion not to seek a restraining order in the following four circumstances (1) if the defendant is charged with an offense resulting from the stop of a motor vehicle; (2) if the defendant was using public transportation; (3) if the defendant establishes by clear and convincing evidence that the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place; or (4) if the defendant establishes that the issuance of a restraining order would cause undue hardship to innocent persons and would constitute a serious injustice that overrides the need to protect the rights, safety and health of the other persons residing in or having business in the place.

DORA provides for differentiated procedures concerning the issuance of restraining orders, depending on the type of charging document and whether or not the person is a juvenile. The process for a juvenile is handled in Family Court and will not be covered below. When a person is charged with a criminal offense on a warrant and is released before trial either on bail or on personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney, is required to issue the restraining order as a condition of release. When a person is charged with a criminal offense on a summons, the court, upon application of a law enforcement officer or prosecuting attorney, is required to issue the restraining order at the time of the defendant's first appearance.

The court need not issue a restraining order for which application has been made if the defendant establishes, by clear and convincing evidence, that he or she lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such an event, the court shall not issue an order unless the court is clearly convinced that the need to bar that person from the place to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place where the offense or conduct is alleged to have occurred. If the balance of the interests of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place.

The court may also forego the issuance of the restraining order if the defendant establishes by clear and convincing evidence that the issuance of a restraining order would cause undue hardship to innocent persons and would constitute a serious injustice that overrides the need to protect the rights, safety and health of the other persons residing or having business in the place.

DORA requires that any restraining order issued must be drafted with sufficient specificity to enable the defendant to comply with, and a law enforcement agency to enforce, the order. The order must also contain a provision prohibiting the person from entering an area of up to 500 feet surrounding the premises, residence, business establishment, etc.; unless the court rules that a different buffer zone would better effectuate the purposes of the act. The order may also permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours. When appropriate, DORA permits the court to append to the order a map depicting the place the defendant is prohibited from entering.

The court is required to provide notice of the restraining order to the local law enforcement agency where the arrest occurred and to the county prosecutor. In addition, prior to the person's conviction, the local law enforcement agency is permitted to post a copy of the order, or an equivalent notice containing the terms of the order, upon the principal entrances of the place from which the person is barred from entering, or in any other conspicuous location. Any law enforcement agency may also publish a copy of the order, or a similar notice, in a local newspaper, and may also distribute copies to residents or businesses located within the area delineated in the order, to the appropriate administrator of any school or government-owned property, or to any tenant association representing the residents of the affected area.

A pre-trial restraining order is to remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. A post-conviction order is to remain in effect for such period of time as shall be fixed by the court, but not longer than the maximum term of imprisonment or incarceration allowed by law for the underlying offense or offenses. If the order extends beyond any actual term of imprisonment, the court is required to set continued compliance with the order as a required condition of probation, ISP or parole. At the time of sentencing, the court is required to advise the defendant that the restraining order shall be effective for a fixed time period. The court is required to include that time period in the

judgment of conviction. The court is also required to notify the law enforcement agency that made the arrest and the county prosecutor of the effective time period of the restraining order.

All applications to stay or modify an order, including an order originally issued in Municipal Court, are required to be made in Superior Court. The court is required to immediately notify the county prosecutor in writing whenever an application is made to stay or modify an order issued pursuant to DORA. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense is not to become final for ten days in order to permit the appeal of the court's findings by the prosecution.

There are separate procedures for implementing DORA in the Municipal Courts, Criminal Division and Family Division of Superior Court. The full procedures are available on the Judiciary Infonet site.

## **9. Megan's Law**

On October 31, 1994, the New Jersey Legislature enacted the Registration and Community Notification Laws (RCNL), N.J.S.A. 2C:7-1 to N.J.S.A. 2C:7-11, also known as Megan's Law. Megan's Law requires certain convicted sex offenders to register with law enforcement authorities, and it provides for varying levels of community notification based upon the degree of risk posed to the offender's community. Megan's Law also applies retroactively to adults convicted, prior to the enactment of Megan's Law, of a narrow set of offenses when the individual's conduct was characterized by a pattern of repetitive and compulsive behavior.

Megan's Law requires registration by sex offenders with local law enforcement authorities or the State Police. The registrant must provide his or her name, fingerprints, social security number, age, race, sex, and date of birth, height, weight, hair and eye color, address of legal residence, address of current temporary residence, and date and place of employment. The registrant also must provide certain information related to the crime or crimes which required the registration. The law also provides that registrants who change their address must re-register, and persons moving to or returning to New Jersey from another jurisdiction must register, if required by law. Sex offender registration requirements also apply to persons who are required by law in another jurisdiction to register as a sex offender, and either are enrolled on a full-time basis in any public or private educational institution in New Jersey, including any secondary school, trade, or professional institution, institution of higher education or other

post-secondary school, or who are employed or carry on a vocation in New Jersey on either a full-time or part-time basis, consecutive days or an aggregated period exceeding 30 days in a calendar year. An individual who fails to register as required under the law may be charged with a fourth degree crime.

Fifteen years after conviction or release from a correctional facility, whichever is later, a registrant may make application to the Superior Court to terminate the obligation to register. The registrant must provide proof that no offense has been committed within those 15 years and that he or she is not likely to pose a threat to the safety of others. However, under N.J.S.A. 2C:7-2g, a registered sex offender who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in N.J.S.A. 2C:7-2b or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault or sexual assault involving physical force or coercion cannot petition the Superior Court to terminate the registration obligation. The Supreme Court held in In the Matter of Registrant J.G., 169 N.J. 304 (2001) that the Megan's Law registration and community notification orders for juvenile delinquents who commit a sexual offense when under the age of 14 will terminate at age 18, if after a hearing held on motion of the juvenile, the Court determines by clear and convincing evidence that the delinquent is not likely to pose a threat to the safety of others.

The prosecutor in the county in which the registrant resides assigns the registrant a tier using the Registrant Risk Assessment Scale (RRAS).

The RRAS is designed to provide a method of determining what risk of re-offense a registrant poses to the community: high, moderate, or low.

The RRAS consists of four main categories: the seriousness of the registrant's offense, the registrant's offense history, personal characteristics of the registrant, and community support available to the registrant. These four categories provide for a total of 13 separate criteria. These criteria are evaluated and assigned a point score. The combined points from all criteria determines the final score for tiering purposes: Tier 1 is below 37 points; Tier 2 is 37-73 points and Tier 3 is 74-111 points. The tier assignment determines which groups or individuals in the community receive notice. A Tier 1 assignment is designated low risk and law enforcement will be notified of the registrant's presence in the community and provided certain identifying

information about the registrant. A Tier 2, moderate risk, classification normally requires notification to law enforcement, schools and community organizations. A Tier 3, high risk, classification normally requires notification to law enforcement, schools, community organizations, and members of the public likely to encounter the registrant.

After the prosecutor assigns a registrant to a tier, the registrant is then notified by the Prosecutor's Office as to their proposed tier classification and scope of community notification. The registrant has 14 days from the date of the notice to object to the prosecutor's decision as to tier assignment or scope of community notification.

On July 23, 2001, P.L. 2001, c. 167 was enacted. The law, codified at N.J.S.A. 2C:7-12 to -19, provides for the establishment of the Sex Offender Internet Registry.

The judge reviews the prosecutor's proposed tier assignment, scope of notification and/or inclusion on the Sex Offender Internet Registry. If the registrant requests a hearing, the judge hears arguments from the prosecutor and registrant/or counsel. The judge then determines the registrant's tier, scope of notification, and/or inclusion on the Sex Offender Internet Registry. Notification will not proceed until after the judge makes a determination and an order is entered as to the registrant's tier, scope of notification and/or inclusion on the Sex Offender Internet Registry.

Under N.J.S.A. 2C:7-13, the State Police are to develop and maintain the Sex Offender Internet Registry. N.J.S.A. 2C:7-14 provides that the Attorney General is to "strive to ensure the information contained in the Sex Offender Internet Registry is accurate, and that the data is revised and updated as appropriate in a timely and efficient manner." The Website address for the Registry is www.njsp.org.

Tier 1 registrants or Tier 2 registrants whose scope of notification has been determined to be low will not be included on the Sex Offender Internet Registry.

Tier 2 registrants whose scope of notification has been determined to be moderate are included on the Sex Offender Internet Registry. However, if a Tier 2 registrant's sole offense which makes him/her subject to Megan's Law is within one of the three exceptions under N.J.S.A. 2C:7-13(d), the offender will not be included on the Sex Offender Internet Registry. The exceptions are that the sex offense was (1) committed while the offender was a juvenile, (2) an

incest offense or (3) an offense where the victim consented to the offense but was underage. The prosecutor can still try to include the registrant on the Sex Offender Internet Registry despite him/her falling within one of the exceptions by establishing by clear and convincing evidence that, given the particular facts and circumstances of the offense and the characteristics and propensities of the offender, the risk to the general public posed by the offender is substantially similar to that posed by other moderate risk offenders who do not fall under the exceptions. See N.J.S.A. 2C:7-13(e).

N.J.S.A. 2C:7-13 provides that all offenders whose risk of re-offense is high or for whom the Court has ordered notification in accordance with N.J.S.A. 2C:7-8c(3) will be listed on the Sex Offender Internet Registry.

Information regarding Megan's Law cases is sent to the AOC. This information is used by the Megan's Law three-judge Disposition Committee to evaluate the overall results achieved at the judicial review proceedings in order to make recommendations and to advise the Supreme Court regarding the issue of consistency and to prepare the Megan's Law Annual Report. For every case, a data collection instrument and a copy of the court order is sent to the AOC. For every third case, a copy of the entire case file and diskettes from all conferences/hearings, as well as the data collection instrument and copy of the court order, are sent to the AOC for review.

Information does not need to be sent to the AOC for motions to amend the scope of notification or motions to re-tier (due to a change in circumstances) where the RRAS score or tier did not change. Additionally, J.G. motions (offender under 14 years of age applies to terminate Megan's Law registration at age 18) or motions to terminate are also excluded from this requirement.

Additional information about Megan's Law can be obtained from the *Megan's Law Manual* published by the AOC Criminal Practice Division.

## **10. Gun Permits**

The Criminal Division of the Superior Court is responsible for the issuance of permits to carry handguns, retail firearms licenses and appeals from the denial of a firearms identification card/purchasers permit. Revocation hearings on any type of gun permit are also held in the Superior Court.

### **a. Firearm Purchaser Identification Card**

In order to purchase a rifle, shotgun or antique cannon, other than an antique rifle or shotgun, a firearms purchaser identification card must be obtained. Applicants must apply on form STS-33 and follow N.J.S.A. 2C:58-3e and N.J.A.C.13:54-1.4a,b,c,d. The forms are submitted to the chief of police in the municipality in which the applicant resides, or to the State Police station if the applicant's municipality is served by the State Police. Applicants who are denied a firearm purchaser identification card (FPIC) by the chief of police or the State Police are entitled to appeal the decision to the Superior Court. The applicant must file a written notice of appeal (letter) within 30 days of the denial to the Superior Court of the county in which he/she resides, or to the Superior Court of the county in which the application was denied if a non-resident. There is no filing fee for the appeal. The appeal hearing should be held within 30 days of the filing. The Court Rules are silent as to appeals in gun permit matters, therefore it is recommended that the *Gun Permit Manual* March 2004 be referenced. Finally, an application denied by a Superior Court judge may be appealed to the Appellate Division.

### **b. Permit to Purchase a Handgun**

In order to purchase a handgun -- defined as a pistol, revolver, or other firearm originally designed or manufactured to be fired by the use of a single hand -- a permit is required. The application procedure is similar to the FPIC described above (N.J.S.A. 2C:58-3e). The appeal process of a denial by a chief of police or the State Police is the same as above. A permit to purchase a handgun is valid for 90 days from the date of issuance, and may be renewed for an additional 90 days for good cause shown. An application denied by the Superior Court may be appealed to the Appellate Division.

**c. Permit to Carry a Handgun**

In order to carry a handgun, a permit is required. The procedure described above for obtaining an ID card and to purchase a handgun is similar to the procedure to apply to carry a handgun. However, applicants who are out of state residents, are employed by an armored car service or where there is no police chief in the Municipality in which the applicant resides must apply to the State Police. The applicant must submit form SP-642 and comply with the provisions of N.J.S.A. 2C:58-4. There is a \$20 permit fee that must be paid upon issuance of the permit.

Once a completed application is received by the Superior Court, the matter is docketed and scheduled before the assigned gun permit judge. If the armored car service employer had not previously appeared before the judge, or if justifiable need has not been demonstrated, a hearing is required. The judge makes a determination by review of the applicant's current circumstances based upon the statutory criteria cited above. The court shall issue the permit to the applicant but only if it is satisfied that the applicant is a person of good character who is not subject to any of the disabilities set forth in section N.J.S.A. 2C:58-3c, that he or she is thoroughly familiar with the safe handling and use of handguns, and that he or she has a justifiable need to carry a handgun. Justifiable need may be proven by showing that there is an urgent necessity for self-protection, that the applicant is subject to a substantial threat of serious bodily harm, and that the carrying of a handgun is necessary to reduce the threat of unjustifiable serious bodily harm to any person. The judge can impose restrictions to carry a handgun and issue a limited-type permit. Each permit is assigned a number from the Criminal Division logbook, which is recorded in Trenton. The permit is valid for two years. Renewal permits can be issued subject to the same procedures as the original permit was obtained. Change cards can also be issued where an applicant wants to change the present restriction, the employer or the type of weapon. Applicants who are not granted a permit by the chief of police or superintendent of the State Police may appeal to the Superior Court within 30 days of denial. Applicants who are denied a permit by the Superior Court may appeal to the Appellate Division.

**d. Retail Dealer License**

A retailer of firearms and their employees are required to obtain a license to sell. The license to retail firearms is processed by the State Police similar to the procedure

described above. When complete, the application (SP-649), including the license and investigative report, is forwarded to the Superior Court in the county in which the applicant maintains his/her place of business. The judge shall grant a license to an applicant if he or she finds (1) that the applicant meets the standards and qualifications established by the superintendent (2) that the applicant can be permitted to engage in business as a retail dealer of firearms or employee thereof without any danger to the public safety, health and welfare (3) that the applicant is not subject to any of the disabilities which would prevent him/her from obtaining a permit to carry a handgun or a firearms purchaser identification card. The court may issue a license upon review or may conduct a hearing requiring additional testimony.

There is a \$50 fee payable to the superintendent and the license is valid for three years from the date of issuance (N.J.S.A. 2C:58-2). Applicants for renewal licenses must follow the same procedure as for the initial application. Any person denied a retail license by a Superior Court judge may file an appeal with the Appellate Division.

**e. License to Possess and Carry Machine Guns and Assault Firearms**

Any person who desires to purchase, possess and carry a machine gun or assault firearm must apply to the Superior Court in the county in which he/she resides, or conducts his or her business if a non-resident. The application (N.J.S.A. 2C:58-5) should be filed with the Criminal Division Manager's Office along with a \$75 filing fee. The applicant should provide the court with the same material as if he/she were filing an application for a permit to carry a handgun, as the judge cannot issue a license without making a finding that the applicant would qualify for such a license. All applications are forwarded to the county Prosecutor's Office for investigation and recommendation. The court must find that the applicant qualifies for a permit to carry a handgun, and that the public safety and welfare require issuance of the permit. Unless otherwise provided in the court order, the license is valid for one year from the date of issuance (N.J.S.A. 2C:58-5d). The assault firearm license is valid for two years from the date of issuance (N.J.S.A. 2C:58-5g). Licenses may be renewed in the same manner and under the same conditions as applying for the original application. Any person aggrieved by the decision may appeal to the Appellate Division.

**f. Revocation of Permits and Licenses**

Licenses, identification cards and permits are subject to revocation on the application of the county prosecutor, the chief of police, any law enforcement officer or any citizen after notice and hearing of the issue by the court if (1) the applicant breached any of the conditions under which the license was granted and (2) the holder no longer qualifies for the issuance of the license, permit to purchase a handgun or firearms purchase or identification card or poses a danger to the public health safety or welfare.

Additional information about gun permits can be obtained from the Gun Permit Manual published by the AOC Criminal Practice Division.

**11. Division of Youth and Family Services Referrals**

Legislation was signed into law on January 14, 2004 and effective as of April 13, 2004 that, (a) establishes requirements for the collection of information regarding the care of minor children when the sole caretaker is being incarcerated and for referrals to DYFS in certain such situations; and (b) provides for referrals to DYFS in certain instances where an individual is convicted of one or more specifically enumerated offenses, the victim was under age 18 at the time of the offense, and the defendant lives in a household with minor children or is the parent of a minor child. The legislation is codified at N.J.S.A. 2C:44-6.2 through - .4 and N.J.S.A. 9:6-8.10c and -8.10d.

**a. When Person Being Incarcerated Is Sole Caretaker of a Minor**

The law provides that for any person convicted of a crime for which he or she will be incarcerated, the court must order that, as part of the presentence investigation, a determination must be made as to whether the person being incarcerated is the sole caretaker of any minor child and, if so, who will assume responsibility for the child's care and custody during the period the person is incarcerated. The law also provides that in those situations the presentence investigation must include (1) an inquiry and verification that the person who will be responsible for the child's care and custody during the period of the sole caretaker's incarceration has agreed to assume responsibility for the child's care and custody; and (b) a PROMIS/GAVEL network check, juvenile central registry check and domestic violence central registry check on the person who will be responsible for the child's care and custody during the period of

the sole caretaker's incarceration as well as any other adult or juvenile over 12 years of age who is a member of that person's household.

The law further provides that the court shall provide DYFS with the information resulting from these inquiries. Upon receiving this information collected by the court, DYFS must conduct a child abuse record information check to ascertain whether there have been any substantiated incidents of child abuse or neglect against the person who will be responsible for the child's care and custody or any adult or juvenile over 12 years of age who is a member of that person's household. If, based on the information provided by the court and the check of its child abuse records, DYFS determines that the incarcerated person's minor child may be at risk of abuse or neglect or that the child's emotional, physical, health care, and educational needs will not be met during the period of the sole caretaker's incarceration, DYFS must take appropriate action to ensure the safety of the child.

**b. Conviction of Enumerated Offense Where Victim Was Under Age 18**

P. L. 2003, c. 301 also addresses the separate situation where an individual has been convicted of any of a list of specifically enumerated offenses and the victim of the offense was under the age of 18 at the time. If in such situations, the person convicted of the crime is the parent of a minor child or resides in a household where there are other minor children, the court must make a referral to DYFS. The court must provide DYFS with the name and address of the person convicted of the crime, information on the person's criminal history, and the name and address of each minor child of the defendant and/or any minor child who resides in defendant's household.

The Conferences of Criminal Presiding Judges and Conference of Criminal Division Managers in conjunction with DYFS developed a two-part protocol to implement the legislation. The protocol was issued by an Administrative Directive #4-04 available on the Judiciary Infonet site.

## **12. Parole Supervision for Life**

On January 14, 2004, P. L. 2003, c. 267 became effective. The law amended N.J.S.A. 2C:43-6.4 to clarify that lifetime community service for sex offenders is parole supervision, which commences immediately upon the defendant's release from incarceration. The law removed the sentencing option of probation as an authorized disposition for crimes eligible for a sentence of parole supervision for life. The law is applied to offenses that occurred after January 14, 2004.

When a defendant is sentenced for an offense subject to the provisions of N.J.S.A. 2C:43-6.4 and the imposition of sentence is suspended, the Criminal Division is required to notify the Parole Board. On the day of sentence, the Criminal Division must fax a copy of the written documentation of the sentence and parole reporting instruction form to the Parole Supervision for Life Unit. The documents should include the standard cover letter as provided in the Criminal Division protocol for parole supervision for life cases. Within ten days of the sentence, the Criminal Division must mail a copy of the defendant's JOC and PSI, along with the standard letter provided in the protocol, to the Parole Supervision for Life Unit.

For additional information, please refer to the *Criminal Division Parole Supervision for Life Protocol*.

### **D. TREATMENT ASSESSMENT SERVICES FOR THE COURTS**

Given the large number of drug cases in our criminal courts, it is essential that judges get professional assessments on the nature of an offender's addiction when setting bail, considering PTI or sentencing. The Criminal Division Treatment Assessment Services for the Courts (TASC) program conducts these assessments. The TASC Program in New Jersey is based on a national program model initiated in 1972 to break the addiction/crime cycle of non-violent, drug-involved offenders by linking the legal sanctions of the criminal justice system with the therapeutic interventions of drug treatment programs. Since its inception in New Jersey in 1978, to its recommendation by the Supreme Court's Task Force on Drugs in 1990 as a necessary drug assessment service for the Courts, the program has expanded and is now available statewide in all 15 vicinages.

The comprehensive services of TASC provide a needed bridge between the criminal justice system, the offender and the treatment service system. With the advent of drug court initiatives in New Jersey in 1995, substance abuse evaluators from the TASC program have been instrumental in the development and operation of local drug courts. TASC has proven to be an essential cornerstone to the high degree of coordination needed between courts and treatment providers. The service provisions of TASC include:

- Identifying drug-involved offenders
- Treatment referral and placement
- Treatment monitoring
- Drug Court team participation
- Drug and alcohol assessments
- Resource information
- Drug testing
- Substance abuse education
- Treatment matching
- Consultations
- Court appearances
- Status reports

In a typical TASC Program, a trained and certified full-time substance abuse evaluator will receive requests from the judge, criminal division probation officer, attorneys, or another referring agent of the Courts, for a drug evaluation. The TASC evaluator will schedule an immediate intake interview. The defendant will receive drug testing and a thorough bio/psycho/social assessment using the Addiction Severity Index. Next, the TASC evaluator defines the defendant's treatment needs and an appropriate level of care by applying the American Society of Addiction Medicine's patient placement criteria. Then, available treatment resources are identified and contacted. A complete evaluation report is prepared and includes specific treatment recommendations, an appropriate treatment provider, and an anticipated entry date for the defendant. When a defendant is deemed appropriate for substance abuse intervention by the courts, the TASC program can provide regular updates that assist in tracking and monitoring treatment progress and completion as the case moves through the criminal justice process.

The Judiciary recognized the need to address repeat offenders committing new crimes to support undetected drug habits. The TASC program responds to this crucial need by providing highly trained and specialized substance abuse evaluators who perform expert assessments and develop appropriate treatment recommendations for the courts. The TASC Program statewide has the potential of intervening and halting the revolving door process of the addiction/crime cycle by intervening with drug-involved defendants and addressing their substance abuse treatment needs. In addition, TASC program services result in reducing recidivism, decreasing the number of backlogged case dispositions, and lowering expensive incarceration costs.

For more information contact your local Criminal Division TASC Program.

## E. DRUG COURTS

Criminal Division drug courts are a highly specialized team process that function within the existing Superior Court structure to address nonviolent drug-related cases. They are unique in the criminal justice environment because they build a close collaborative relationship between criminal justice and drug treatment professionals. Within a cooperative courtroom atmosphere, the judge heads a team of court staff, attorneys, probation officers, substance abuse evaluators, and treatment counselors all working in concert to support and monitor a participant’s recovery. Drug court programs are rigorous, requiring intensive supervision based on frequent drug testing and Court appearances.

Specifically, drug courts are special courts for nonviolent, drug-involved offenders. These courts:

- target offenders who are most likely to benefit from treatment and do not pose a risk to public safety;
- provide tough and intensive supervision and treatment of offenders soon after arrest.;
- monitor participants’ progress and apply swift sanctions for noncompliance;
- maintain a critical balance of authority, supervision, support, and encouragement;
- integrate alcohol and drug treatment services with justice system case processing;
- offer an alternative to the traditional adversarial court process.

The drug court process introduces a streamlined approach to providing services and supervising nonviolent substance-abusing clients rather than just processing cases through a series of courtroom events. The unique collaborative characteristics of drug court allow for early and intense interventions that support community safety and client recovery.

TRADITIONAL COURT	DRUG COURT
<ul style="list-style-type: none"> <li>• Judge, prosecutor, defense lawyer and Courtroom staff approach a case primarily as a legal matter. The focus is on defendant’s guilt or innocence.</li> <li>• Judge exercises limited role in supervision of defendant.</li> <li>• Relapse, often undetected, may not be readily addressed.</li> </ul>	<ul style="list-style-type: none"> <li>• Court team of judge, prosecutor, defense lawyer, addiction specialists, and probation officers identify appropriate cases for treatment and recovery.</li> <li>• Judge plays central role in monitoring defendant’s progress.</li> <li>• Relapses are quickly detected and graduated sanctions applied.</li> </ul>

Additional information about drug courts and the *Drug Court Manual* are available from the New Jersey Judiciary Infonet site.

#### **IV. COMPUTER SYSTEMS**

Criminal judges and staff utilize a variety of computer systems to assist them in their daily responsibilities. User guides are available for each system identified and can be obtained from your division manager or the AOC Automated Trial Court Services Unit. The following is a summary of those systems.

##### **A. PROMIS/GAVEL**

PROMIS/GAVEL is the statewide management and information system used by the Criminal Division of Superior Court. It captures information concerning defendants who have been charged with indictable offenses and tracks the processing of those defendants from initial arrest through appellate review. This system provides docketing, noticing, calendaring, statistical reporting and case management reporting.

The system is jointly overseen by the Judiciary and the county prosecutors. County Prosecutors' Offices handle the initial entry of all case information (i.e., defendant, arrest and charge data). If the case is remanded or dismissed, the Prosecutor's Office "closes" the case and then notifies the originating Municipality of this decision via system-generated disposition letters. If the case is indicted, the criminal courts assume responsibility for the case and enter court events, motions, final disposition and sentencing. PROMIS/GAVEL allows users to record, update, and inquire about the status of criminal case information.

PROMIS/GAVEL, in addition to serving as the criminal court official docket, provides local and statewide inquiry access to all law enforcement agencies and court personnel. In some counties the Public Defender's Office has limited information access.

For each defendant in a case, the system maintains different types of information, which can be accessed for inquiry and/or reporting purposes. One of PROMIS/GAVEL's most important functions is its ability to generate calendars, statistics and ad hoc reports. PROMIS/GAVEL users can record and inquire about the following types of information: defendant detail information (charges, warrants, arrests, bail, sentence, and scheduled proceedings), prosecutor, judge and defense attorney schedules, witness information etc. In addition, counties can write programs to generate reports from PROMIS/GAVEL for a variety of reasons. For example, if a

county wanted to know how many days it took for defendants to be enrolled into PTI after an application was filed in court year 2002, a report can be run to determine that information.

## **B. PROMIS/GAVEL Public Access**

In order to provide the general public with access to limited criminal court information in PROMIS/GAVEL a public access system was developed. This “inquiry only” system is available to the public via public access terminals located in each Superior Courthouse. The system is accessed through a standard Web browser and information in PROMIS/GAVEL that has been deemed confidential or not relevant to the general public is not displayed. This system is also available to Judiciary personnel via the Judiciary Infonet. An on-line help system is available to all users to assist them with system navigation, field descriptions and explanations of abbreviated information.

For further information on the use of PROMIS/GAVEL, refer to the PROMIS/GAVEL Inquiry Guide.

## **C. Automated Complaint System**

The Automated Complaint System (ACS) is the statewide case management and information system of all criminal and non-traffic matters initiated in the Municipal Court system. The ACS provides statewide inquiries of defendants and warrants. ACS tracks and schedules cases, generates management and statistical reports, court calendars, notices, driver license suspensions, cash receipts journals, disbursement reports, and time payments. ACS electronically sends driver license suspension information directly to the Motor Vehicle Commission (MVC) database. ACS provides disposition information to the State Police on cases involving the State Police.

ACS interfaces with Criminal and Family Superior Courts. Indictable criminal cases are transferred to the county prosecutor through the interface with PROMIS/GAVEL. The prosecutor can remand cases back to ACS through the interface. Dispositions on the Superior Court level are recorded and warrants are recalled in ACS via an interface eliminating a manual process. State Police flags defendants that have been identified through fingerprints in ACS. ACS also interfaces with Criminal and Family systems to propagate the fingerprint identifier. For further information on the use of the ACS, refer to the ACS Inquiry Manual.

#### **D. Automated Traffic System**

The Automated Traffic System (ATS) is the statewide case management and information system for traffic matters initiated in the Municipal Court system. ATS also provides financial processing and the direct exchange of information between MVC and the municipal courts. ATS provides for statewide inquiries of driver's license suspensions, cash receipt journals, disbursement reports, and time payments. For further information on the use of ATS, refer to the *ATS Guide*.

#### **E. County Correction Information System**

The County Correction Information System (CCIS) is the information system that records information about inmates housed in New Jersey county correctional facilities. CCIS centralizes county jail information in a single statewide inmate tracking system. The system allows users such as the Criminal, Probation and Family Divisions as well as municipal, county, state and federal law enforcement agencies to conduct inmate inquiries for both active and discharged inmates. This access enhances the court's ability to manage jail cases to assure that detained pre-trial inmates are disposed with priority and managed efficiently.

For each inmate who entered a county jail, CCIS maintains different types of information that can be accessed for inquiry and/or modification purposes. Users are able to access inmate identification, charges, bail, court events, custody status, detainers, sentences, discharge, date and commitment summary data.

Criminal Division staff access this system to gather information in the preparation of bail review lists, bail reports, PTI applications, presentence reports and scheduling court events.

Additional information regarding the use of CCIS may be found in the CCIS Inquiry Guide.

## **F. Offender Based Correctional Information System**

The Offender Based Correctional Information System (OBCIS) is the New Jersey Department of Corrections main computer system. It was designed to electronically collect basic offender information when an offender enters the state correctional system. In addition, the system tracks the offender from his or her admission into the state correctional system through parole to the offender's maximum expiration date. The primary purposes of OBCIS include the maintenance of an on-line tracking system to determine an offender's location and status, retention of an inmate's historical movement within the Department of Corrections, a collection of data source for policy analysis and budgeting purposes, and collection of data for state and federal criminal and juvenile justice agencies, including the Internal Revenue System (IRS) and the Bureau of Immigration and Customs Enforcement.

## **G. Family Automated Case Tracking System**

The Family Automated Case Tracking System (FACTS) is the statewide case management and information system for the Family Division of Superior Court. The primary goal of the system is to streamline case processing and to provide on-line management, case history, and state inquiries. FACTS can generate management and statistical reports as well as court calendars and notices. FACTS captures all Family Division information from the point of acceptance of a complaint through the dispositional or final judgment process. FACTS docket and indexes all matters of juvenile delinquency, dissolution, non-dissolution, domestic violence, family crisis, abuse and neglect, and guardianship. FACTS generates the complaint forms for non-dissolution and domestic violence. Case management/tracking reports and monthly statistics are available through FACTS for all case types in the Family Part. FACTS contains a variety of on-line summary inquiries at a case and party level.

To aid the courts and law enforcement agencies in dealing with domestic violence and juvenile delinquency matters, the Domestic Violence Central Registry and the Juvenile Central Registry were developed. The registries are inquiry systems that display information in a concise and easily accessible manner. The Domestic Violence Central Registry (DVCR) displays information about all FV (domestic violence restraining orders) and FO (contempt of domestic violence restraining orders) cases for a particular individual. The DVCR is available to the courts, prosecutors and local and state law enforcement. The Juvenile Central Registry (JCR) displays information about all FJ (juvenile delinquency) matters. The JCR is only currently available to the courts. Whenever a case involving domestic violence, a domestic violence

restraining order or juvenile delinquency is entered into FACTS the information is immediately accessible in the registries. For further information refer to the *FACTS Inquiry Guide*.

#### **H. Central Automated Bail System**

The Central Automated Bail System (CABS) is the statewide information system for all bail money received by the Superior Court. Data is entered into CABS when a bail is posted for a defendant. All bail collected must be entered into CABS, including family and juvenile cases. CABS records the posting of bail and the following related functions: Inquiry, Posting, Refund/Discharge, Forfeiture, Reinstatement, Liens, Transfer, and Disbursements. CABS also provides access to on-line journal reports. Daily batch reports are available in the Report Management Distribution System.

A PROMIS/GAVEL and CABS interface is in place to link the related PROMIS/GAVEL case to the bail. Data is brought over from either CCIS or PROMIS/GAVEL. Once a link is established with PROMIS/GAVEL, the link will provide easy access to the PROMIS/GAVEL data from the bail inquiry screen. The links will also provide the CABS user with various lists that will assist in forfeiting and disposing of bail cases in a timely manner. In those matters in which the bail is entered into CABS before the related cases are entered into PROMIS/GAVEL, the users will be able to access a link proposal list and link these matters after their initial entry into CABS. For further information on the use of CABS, refer to the PROMIS/GAVEL CABS Integration System Manual and *CABS Training Guide*.

#### **I. Comprehensive Automated Probation System**

The Comprehensive Automated Probation System (CAPS) is the statewide case management information system for the New Jersey Adult and Juvenile Probation. CAPS provides automation for the Probation Divisions to manage the major functional areas of their caseload: supervision, community service and financial collections/restitution.

CAPS enables probation officers to process defendant's from the time they enter the criminal justice system until the conditions of their probation are satisfied or revoked. All financial collection activities related to a defendant are recorded and monitored in CAPS. Moreover, CAPS provides disbursement of court ordered restitution, fees, fines and penalties. CAPS also manages the financial collection activities for the Adult and Juvenile Intensive Supervision Programs.

## **V. RECORDS RETENTION AND MANAGEMENT**

The Supreme Court, Superior Courts and Municipal Courts, must retain records of their proceedings. Some records are considered permanent; others are on a time schedule for destruction. Directive #3-01 was adopted on January 16, 2001, delineates which records must be kept and for how long. This retention schedule was created in conjunction with the policy statement from the Supreme Court citing what the schedules should be based upon. The policy statement regarding retention and management of court records is as follows:

“The preservation of court records is important both to litigants and the public generally. The Supreme Court believes that a sound approach to the preservation of records in a modern court system must be based on three principles -- retention of an appropriate combination of automated and hard copy case information; a sound program of purging papers which are deemed unnecessary for permanent retention; and a system that begins the purging process by eliminating extraneous papers as early in the process as possible. The retention process must not burden strained resources and budgets with the need to save everything.

Therefore, the Supreme Court directs that retention of court case files be governed by the likely use of the files after disposition and that appropriate retention schedules and purging lists are developed to establish the preservation of court records based on a process that utilizes automated case information and retains hard copy case information only as necessary and permits the elimination of extraneous papers in accordance with the provisions of R.1:32-2.”

There are 38 sections in the Records Retention Schedule. The Criminal Division Records are listed in section 18. Previously, much of the information the Criminal Division compiled was deemed permanent. This means it could not be destroyed and should be maintained in a fashion that would allow it to be available forever. Space and money constraints became more and more pressing over time. The new retention schedule allows records to be destroyed after a certain number of years, freeing space for new records. For further information, see the Law Division – Criminal Retention Schedule.

## **VI. CRIMINAL DIVISION OPERATION STANDARDS**

A number of things have been changed in the Criminal Division since the Criminal Division Operating Standards were approved in 1992. Caseloads have increased, the number of new criminal laws has increased and drug courts become operational in every vicinage. However, the basic principals outlined in the Operating Standards remain the bedrock for the operation of the Criminal Division.

### **A. BACKGROUND**

The Criminal Division Operating Standards arose from a review of overall experience in the Criminal Division during the course of the Speedy Trial Program in the 1980s, as found in the various innovative procedures developed amongst the counties and recommended by the Judicial Conferences of 1980, 1986 and 1990. They were carefully and fully debated by the Conference of Criminal Presiding Judges with representatives from the private bar, the Public Defender and County Prosecutor's Offices, and by the Conference of Division Managers and reflect the consensus, but not unanimity, of both groups. Reservations and qualifications of the standards are included in the commentaries.

A brief review of the background to these standards will be helpful. In 1981, during the initial year of the Statewide Speedy Trial Program, the focus was on assembling, for the first time in many counties, the major components of the adversarial system for a mutual planning process. Furthermore, rules were promulgated which ensured that cases receive management attention soon after indictment, rather than late in the process. Time goals were established by the Supreme Court and numerous experimental projects got underway.

After some initial progress, it soon became apparent that planning and early case management could accomplish only so much within the current administrative structure. The Committee on Efficiency found the Court system to be "unmanageable" in 1982 due to a fragmented organization. The subsequent Management Structure Program reorganized and focused court support resources according to the major divisions of court and established the Conference of Criminal Presiding Judges and also the Office of the Criminal Division Manager.

The overall Speedy Trial Program was reviewed at the Judicial Conference of 1986. Many standards were approved at that conference. Some called for a continued rigorous local planning process searching for and resolving causes of delay. The nature of the planning

process was defined further, providing for broad participatory management and local flexibility within an overall framework for case flow processing. Standards identified specific objectives, which should be accomplished early in the case process and called for central judicial processing (CJP) and remand courts to accomplish this. The report also recognized the responsibility of the prosecutor to screen cases with an eye toward available judicial resources. Other standards called for streamlining PTI, meaningful pre-trial conferencing, offers of judgment, and date-certain trial lists of 5-7 cases per week per judge.

With the advent of the War on Drugs in 1987, management attention turned to face the sudden and tremendous surge of case filings. The whole system strained under mounting backlogs. The Special Committee to Assess Criminal Division Needs studied resource needs. Their report called for a rebalancing of resources by adding more public defenders, and then a further general increase of 17 judicial units (judge, prosecutor, defense, support). They suggested performance standards of 500 dispositions per judicial unit. Finally, they called for the statewide adoption of proven management techniques such as CJP, individual calendars, and differentiated case tracking.

Finally, in 1990, a Statewide Task Force on Drugs and the Courts reported to the Judicial Conference on various case processing strategies. Reiterating the work of ten years of learning under the Speedy Trial Program, its report calls for the system to work harder and smarter. Recommended were: the greater availability of drug assessments; vigorous prosecutorial screening; case tracking; more resources; individual calendars; future and meaningful court event preparation; plea cut-offs; and performance standards.

A ten-year review of the Speedy Trial Program identified a number of standards, which should govern the operation of the Criminal Division statewide. While diversity gave rise to much learning over the decade, there continued to be a need to draw from the experience and add proven procedures to the statewide framework for criminal case processing. The broad differences in productivity from county to county required the implementation of proven systems in all counties.

**B. APPROVED STANDARDS FOR THE OPERATION OF THE NEW JERSEY  
CRIMINAL DIVISION OF SUPERIOR COURT  
APPROVED BY THE NEW JERSEY SUPREME COURT - JUNE 2, 1998**

**I. As a general rule, individual calendars are preferable to master or central calendars and should be used. Indictments should be assigned to judges upon presentment for handling of all matters through final disposition.**

Most counties in New Jersey currently utilize individual calendars. Master calendars seem to work best in situations where an extraordinarily productive judge runs the calendar, however, they rely heavily upon that judge for their momentum. They do not promote the opportunity for individual judges to learn how to effectively run a list. In this respect, the talents and managerial abilities of judges are not utilized, and an important resource is lost to the system. There is a significant view that some judges may simply not be able to manage a calendar, although in many counties all judges are currently assigned individual lists of cases. In any event, it is likely that the emergence of case management teams, as described in standard IV, will further assist judges in calendar management. Some judges may need to work closely with the presiding judge in managing a calendar, and the extent of the presiding judge's involvement should depend on the situation. However, in concert with full case management teams, and after sufficient training, this approach will work for nearly all judges who run a criminal list full-time and have adequate defense resources for that list. Accordingly, the implementation of this standard will have to recognize the need for some flexibility. An individual calendar clearly optimizes the organizational values held by the Judiciary, particularly the need to promote independence, consistency, familiarity, accountability, productivity, and development of human resource potential. The report of the Task Force on Drugs and the Courts in 1990 recommended that "the most effective organization of resources is one that focuses on individual cases assigned to specific courts."

**II. In order to facilitate early case management, each case should be scheduled for a pre-indictment event. On or before that date, the Intake Unit of the Criminal Division should complete the uniform defendant intake report and must be cautious not to offer any legal advice to defendants.**

Traditionally, first appearances have been conducted in Municipal Court and, other than for bail review, the first involvement with a case by the Superior Court occurred subsequent to indictment. This practice began to change in the early 1980s with the advent of CJP and other pre-indictment (PIP) programs. These programs provide an excellent forum for screening, intake, diversion, and early case conferences before indictment.

One of the clearest lessons learned during the last decade, heralded in all major Task Forces which address the criminal system, is that it's important to get a good handle on cases at the start. This includes early notice to the prosecutor and court of indictable charges, expeditious receipt of police and investigative reports, exchange of routine discovery, entry of appearance of defense counsel and early contact with the defendant. This enables the prosecutor to screen cases, and to advise the court regarding which cases will be dismissed or remanded.

For cases, which will continue as indictable charges, the court should move affirmatively to resolve threshold issues such as defense representation and intervention (PTI) eligibility. Then, cases, which are amenable to a fast track pre-indictment plea conference, can be so scheduled. Other cases should be set for indictment, and prepared for post-indictment processing.

This standard recognizes that the particular emphasis of existing pre-indictment programs (PIP) varies somewhat. In some counties, such as Hudson County, the focus is on prosecutor screening and so the hearing occurs right after arrest. In other programs, such as Camden and Passaic, the focus includes case conferencing, and thus the hearing is delayed a bit to accommodate the needs of plea negotiations. Often, selected cases are scheduled for a plea conference. A few counties prefer to await the completion of prosecutor screening in order to conserve resources and handle only those cases, which will be presented for indictment. A key to this process is the presence of an experienced prosecutor and public defender who are able to identify those cases which can be disposed at an early date. Private counsel may elect to represent third or fourth degree offenses at these events at a reduced fee if they are not to be inextricably locked into the case at this phase of the process. Thus, this standard endeavors to find a common ground, calling only for a pre-indictment event and an intake to promote case management, but leaving the timing and the focus of the event up to the individual counties.

The implementation of CJP type programs was supported at the Judicial Conferences in both 1986 and 1990, and was strongly urged by the Chief Justice's Special Committee to Assess Criminal Division Needs in 1989. Of course, the implementation of such a program requires some additional resources at first.

**III. Upon indictment, the court should schedule an event with counsel present to satisfy arraignment requirements and to inform the court regarding the disposition or future procedural needs of the case. If not previously done, such a conference should be preceded by an intake interview by court staff. Future events should be scheduled, not by rote, but according to the differentiated needs of each case. Reasonable adjournments should be granted to avoid meaningless events.**

**Before a case is set for trial, a conference should be held in open court with the defendant present. Only after discovery has been exchanged, and necessary motions decided, a plea cut-off rule should be implemented and the defendant advised of the offer, the sentence authorized by statute and that negotiations will terminate as ordered by the court. Trial lists must be credible, certain, and limited in number. The priority of cases on the trial list should be set by and enforced by the judge only, and not unduly influenced by either party.**

The essence of this standard is that court events must be meaningful, and that the waste of valuable resources for perfunctory or ineffective hearings must stop.

Therefore, the first court event after indictment must be with counsel present. This means that the judge/prosecutor/defense team must be identified beforehand, as soon as possible, and assigned the case. Indigence issues should be resolved prior to this event. It is also quite important that discovery be previously exchanged. An informal pre-arraignment event soon after indictment, or such as described in standard II, can be quite useful in preparing for the first arraignment/status conference. Support staff should gather the required information at these initial interviews, but should avoid giving any legal counsel to unrepresented defendants.

If the case cannot be disposed at this event, then a conference will be scheduled. Regarding adjournments, it is important to emphasize the need to avoid unnecessary court events. In some jurisdictions the waste of time for attorneys, judges, and others during court events, which do not achieve their purpose, often due to the failure to get something done beforehand, is intolerably high. Therefore, conference and trial lists should be reviewed ahead of time by staff to ensure that each case is truly ready for a scheduled court event. If problems can't be resolved by the scheduled date, adjournment should be granted, but only for enough time to get the job done. At the 1990 Judicial Staff College, the Criminal Division Managers and Team Leaders detailed the services, which should be provided to judges in preparing for future court events. These include notating calendars with useful information, correcting errors, ensuring that attorneys are notified, packaging co-defendants or other pending charges, checking on PTI status, checking open warrants, ensuring that motions are resolved, and ensuring that writs are effectuated. When events are not meaningful, precious resources are wasted, and so, great savings can be made by event monitoring. While the judge must still run the calendar, the assistance of a staff coordinator can save everyone a lot of time.

Plea cut-offs have been debated at length in New Jersey. Some people are concerned with the fairness of cut-offs to defendants who may not fully understand the process; others are concerned with forcing unnecessary trials, particularly in smaller counties. The offer of a better plea only prior to motions

being heard as a policy would discredit the process. [However, when fairly applied, plea cut-off is highly effective and is probably the key to the extraordinary efficiency found in several counties. Its fair application first requires (1) that all plea negotiations have been exhausted, (2) that no other action is required, (e.g., the prosecutor has seen witnesses, all necessary motions are resolved), and (3) that the defendant has been fully advised of the effects of the plea cut-off.] Significant training is needed to make the procedure universally effective and fair.

The standard states that the plea cut-off rule should be implemented only after discovery has been exchanged and necessary motions decided. "Necessary" motions are defined as those, which need to have been resolved before effective plea negotiations can occur. This standard recognizes that motions deemed significant in one case may be less significant in another. The standard is designed to allow for a determination of those issues that need to be decided prior to effective plea negotiations, without otherwise delaying the implementation of plea cut-offs.

When an exception to the plea cut-off is requested by either attorney, the matter could be referred to the presiding judge as a policy to develop uniformity of the plea cut-off. Unforeseen changes in circumstances evaluated by the judge may allow for a continuance of a case.

The 1990 Task Force on Drugs and the Courts has recommended a three track (diversion, early plea, serious case) approach for drug cases. Other projects have tested the use of fast track/standard track procedures given differentiated case needs. This approach to calendar management is broadly used and merits statewide implementation, at least insofar as cases amenable to early disposition should be tracked to an early conference and the remainder tracked to indictment.

Finally, the use of trial calls to churn large numbers of cases is widely considered counterproductive to efficiency, and wasteful of the time of all those, including police and lay witnesses, who are affected by trial subpoenas. Task Forces reporting to the Judicial Conference in 1986 and again in 1990 stated that the current consensus recommendation for trial lists calls for no more than 7-10 cases listed per week. More than that leads to uncertainty, churning, and wasted effort. Obviously, this can only occur if parties cooperate to resolve cases before trial call, and if a plea cutoff rule is in place and enforced.

**IV. The role of the Office of the Criminal Division Manager includes four major functions: the preparation of investigative reports; caseload management; records management; and general administrative functions. The organizing principle for the structure of the office should be the judge, and those cases assigned to the individual judge. Staff should then be allocated to judges in a team approach with the report writing and caseload management function primarily located in the teams assigned to each judge.**

At the Judicial Staff College, the Criminal Division managers and Team Leaders identified the following major functions and activities:

**1. Caseflow/Calendar Management**

- Assignments
- Scheduling/Calendar/Notices
- Adjournments/Continuances
- MEANINGFUL EVENT PREPARATION
- Enforcement of Scheduling Orders
- Resolve Attorney Conflicts

**2. Preparation of Reports (Bail, PTI, PSI, Indigence)**

- Investigation
- Interviews
- Writing Reports
- Meeting Deadlines

**3. Records Management**

- Dockets/Logs and Indexes
- Computerization
- Case File Maintenance
- Statistics (Reports and Analysis)
- General Inquiries

**4. Administration**

- Budgeting
- Personnel Management
- Facilities
- Collections
- Training
- Inter-Agency Coordination
- Management Planning
- Jury Coordination
- Interpreters

Some managers reported a supervision function for bail cases, PTI cases, and sentenced offenders. However, these functions are assigned to the Probation Division in most counties.

It was the consensus, as recommended by the Task Force on Drugs and the Courts, that the team approach, with staff assigned to individual courts, was the most productive and efficient structure. It

better develops the talents of staff, and provides for a better quality of administration. Sufficient resources must be available to staff the individual courts in the team structure. Precautions should be made to safeguard the objectivity of the presentence investigation report writers, should such assignment cause report writers to gear their reports to a particular judge's liking.

- V. The establishment of divisional policies involving procedural or organizational matters should result from the full participation, and, if possible, consensus of the judges, prosecutors, defense counsel and other interested agencies involved. While the responsibility of the Judiciary is to provide a simple and stable framework for case processing, communication within and without through a formalized and consistent planning framework is necessary. Local Speedy Trial Delay Reduction Committees are to meet regularly, review recent performance, review older cases, identify and resolve problems, and review developments in other jurisdictions. Judges should meet regularly amongst themselves with the division manager and the presiding judge should meet as needed with court support teams or other individual components of the system.**

It was reported by the 1986 Task Force on Speedy Trial that no set of programs or procedures will work unless each of the three main components participate in the development of goals, are committed to those goals, and cooperate in their achievement. An essential aspect of cooperation and coordination is a mutual respect for the interests and responsibility of each participant. The relative health of the criminal calendars in most counties seems highly dependent on whether the various components are able to accomplish such coordination on administrative issues. Local Speedy Trial Planning Committees should meet at least quarterly. A critical role for the Assignment and Presiding Judge is to ensure that such dialogue occurs regularly, in an environment conducive to problem solving and conflict resolution. It is important that the Criminal Bench meet every week, if just for a formal luncheon. Such meetings should begin with a discussion of issues related to the week's calendars, and then should focus on general problems. An invitation to guests from relevant agencies can establish a useful communication link.

- VI. The administration of justice relies heavily; perhaps more than many institutions, on information, and thus the quality of justice depends on the accuracy and availability of such information. Automated systems such as PROMIS/GAVEL and the County Jail Information System are in place in nearly all counties. Procedures must be in place, which assure the integrity, completeness, and accuracy of this information, and its full utilization by all involved. Duplicative manual systems should be eliminated to save resources and promote reliance on the primary information system.**

The following is taken from the Report of the Adjudication Committee to the 1990 Task Force on Drugs and the Courts:

Volume increases in the caseload, largely due to the influx of drug cases, have sent the court system reeling. Court personnel, trying to keep their heads above water, are sometimes forced to compromise quality in preparing reports. Computer information is often incorrect, or reports are not available. Contributing to this problem is the fact that criminal histories, generated by the Court Disposition Report (CDR) system, are often incomplete, are received long after court events have occurred or need to be deciphered and retyped before being used in court reports. All of these cause problems in the completeness and accuracy of reports judges receive and in the resultant quality of decision-making.

Computerization, while helpful, is often fragmented with one system unable to talk to another. In some systems the inability to create new reports is a problem and problems have also been noted by judges who call from lists that do not contain up-to-date information, causing needless adjournments and meaningless court events.

Commitments need to be made at the highest levels towards computerization. Computer systems need to be able to communicate with one another and be able to transfer data from one to another. This will enable the elimination of duplicative manual systems, currently draining scarce resources. Additionally, computer systems need to be user friendly. Getting information from the system should be as easy as entering it.

Until PROMIS/GAVEL automation is fully capable of producing reports on which the courts can completely rely, manual systems will not be disallowed.