

*Report of the
Supreme Court
Criminal Practice Committee
2000-2002 Term*

TABLE OF CONTENTS

A.	Proposed Rule Amendments Recommended for Adoption	1
1.	<u>State in the Interest of T.M.</u>	1
2.	Trials in Absentia	7
3.	Bail Forfeiture	18
4.	<u>State v. Cerefice</u>	28
5.	<u>R. 3:12-1</u>	33
6.	<u>R. 2:7-2</u>	36
7.	<u>R. 3:25-3</u>	39
B.	Other Recommendations	41
1.	Supplemental Plea Form in No Early Release Act Cases	41
2.	Parole Supervision Term	43
3.	DNA Testing	46
4.	Internet Posting of Sex Offender Information	51
5.	Statewide Sexual Assault Nurse Program	55
6.	Supplemental Plea Form for Theft of a Motor Vehicle or Unlawful Taking of a Motor Vehicle	61
C.	Recommendations for Legislative Change	66
1.	Recodification of the Criminal Code	66
D.	Matters Previously Sent to the Supreme Court	67
1.	<u>Apprendi/Johnson</u> Issues	67
E.	Rule Recommendations and Other Issues Considered and Rejected	71
1.	<u>R. 3:19-1</u>	71
2.	<u>R. 3:21-4</u>	73
3.	<u>State v. Cann</u>	74
4.	Amendment of <u>R. 3:3-1</u> and Implementation of the Drug Offender Restraining order Act of 1999	76
5.	Review of the Municipal Appeals Process	78
6.	Anti-Drug Profiteering Penalty	80
7.	Confidentiality of Citizen Complaint Prior to a Determination of Probable Cause	81

8.	Avenel Reports	82
9.	Discovery Fees	83
10.	Uniformity in Sentencing	84
F.	Other Business	85
1.	<i>No Early Release Act</i> Model Jury Charge	85
2.	Bail Pending Appeal	86
3.	Resentencing of Defendants	88
G.	Matters Held for Future Consideration	90
1.	Setting Forth the Actual <i>No Early Release Act</i> (NERA) Term on Judgment of Conviction	90
2.	Drug Offender Restraining Order (DORO) Act	91
3.	Petition for Post Conviction Relief	92
4.	<u>R. 3:28(f)</u>	94
5.	Regulations of Bounty Hunters	95
6.	<u>State v. Bryan Miller</u>	96
7.	<u>R. 3:5-7</u>	98
8.	Arrest Warrants by Telephone	100
9.	Partial Stipulation of Facts	101

A. Proposed Rule Amendments Recommended for Adoption.

1. State in the Interest of T.M.

In State in the Interest of T.M., 166 N.J. 319 (2001), T.M., a twelve-year old juvenile, who was functioning at the level of a nine-year old, committed an act of criminal sexual contact on a six-year old girl. At the delinquency hearing the prosecutor made a proffer of the “factual basis” for the crime in lieu of live testimony. Defense counsel stated he did not oppose the proffer but indicated his client had no memory of the day the crime occurred. T.M. was sentenced to probation with conditions. Three years later T.M. moved to vacate his guilty plea when his mother learned he would be subject to Megan’s Law. This motion was denied and the Appellate Division affirmed the decision of the motion judge. The Appellate Division acknowledged that the trial court had not inquired of T.M. concerning his guilt but observed this was unnecessary because it characterized the delinquency proceeding as a trial on a set of uncontroverted facts.

The Supreme Court disagreed with the Appellate Division and concluded that the delinquency proceeding resulted in a guilty plea that lacked the procedural safeguards that should have attended it. Id. at 325.

The Court stated that while a trial of a criminal case based on stipulated facts may be a useful mechanism, in some circumstances, the procedure needed to be

reconciled with the provisions of R. 3:9-2 and with due process considerations that ensure use of a technique is voluntary and knowing.

The Supreme Court referred to the Criminal Practice Committee:

The task of developing appropriate rule amendments to guide trial courts in developing a record that assures that a defendant's agreement to a trial on stipulated facts is voluntary and knowing.

[Id. at 319].

The Committee was also instructed to consult and coordinate with the Family Practice Committee regarding the use of trials on stipulated facts in juvenile cases.

The proposed rule responds to the Court's request in State in the Interest of T.M., and therefore, does not apply to: 1) jury trials; 2) guilty pleas pursuant to R.3:9-2; 3) motions; 4) stipulations in non-jury trials that contain conflicting statements summarizing the testimony of two or more witnesses thus requiring the court to make a credibility determination as to which version of the facts the court should accept, State v. Wolden, 153 N.J. Super. 57 (App. Div. 1977); or 5) non-jury trials in which less than all the facts are being stipulated. For this rule to apply where there was a right to a jury trial, the defendant must first properly waive that right in writing pursuant to R. 1:8-1(a) and the court must approve the waiver. See State v. Dunne, 124 N.J. 303 (1991) (discussing the criteria to be used for the exercise of judicial discretion to allow such a waiver).

Because the rule concerns trials and not guilty pleas, it would not provide a basis for waiver of issues for appeal, such as an adverse ruling on a pretrial motion, which are waived by a guilty plea. The availability of stipulated facts as part of a factual basis for a plea under R. 3:9-2 eliminates the need to use an artificial stipulated fact trial as a substitute for a guilty plea. A trial on stipulated facts would also be more likely to be the subject of a motion for a new trial, including one based on newly discovered evidence, or an application for post conviction relief because a guilty plea is not involved. Moreover, in a trial on stipulated facts, if the court acquits, that decision cannot be appealed by the State. State v. Carlson, 344 N.J. Super. 521 (App. Div. 2001).

This rule does not contemplate that any recommendation by the State would limit the court's authority on fact findings or sentencing; instead the defendant must be advised of the maximum sentence possible.

The "applicable constitutional rights" referred to in this rule would usually include the following: 1) the right to confront and cross-examine witnesses who, but for the stipulation, would be called by the State to prove, beyond a reasonable doubt, the facts that are contained in the stipulation; 2) the right to use the compulsory process to obtain the appearance in court of any other witness who, but for the stipulation, would have to be called by defendant's attorney to prove or to dispute

such facts as may be contained in the stipulation; 3) the defendant's right against self-incrimination; and 4) the defendant's right to testify.

As stated above, this rule does not apply to stipulations of less than all of the facts. Partial stipulation of facts, such as a lab report or a map indicating a crime occurred within 1000 feet of a school, are currently used in bench trials and this new rule contemplates that such use will continue.

The Criminal Practice Committee welcomes reports of experiences involving partial stipulations and comments on the need for, and wisdom of, a rule regulating their use. The Committee intends to monitor and review the possibility of further rule revisions as to partial stipulation of facts during the next rule cycle.

The Committee also considered amending R. 3:9-2 as a result of T.M. However, the Committee determined that, as written, R. 3:9-2 encompasses the use of stipulated facts in plea situations and, thus, the rule need not be amended to accommodate the T.M. decision. The Committee is requesting that the Court issue an official commentary with the promulgation of the rule to clarify that the proposed R. 3:17 only applies to bench trials where the parties stipulate to all of the facts and not guilty pleas.

3:17. Bench Trial: Stipulated Facts

After trial by jury has been waived by the defendant pursuant R.1:8-1(a), or if there is no right to jury trial, a court may try an indictment, accusation or complaint on facts stipulated by the parties. A court shall not accept the stipulation unless it first personally addresses the defendant and determines that the decision to try the matter on stipulated facts and the waiver by the defendant of all applicable constitutional rights, the nature of which shall be discussed separately by the court with the defendant, were made knowingly and voluntarily. The stipulation of facts must be in writing and signed by the defendant, defense counsel, and the prosecutor. The court shall also advise the defendant of the maximum sentence possible if the defendant were convicted on the charge being tried.

Note: Adopted _____ to be effective _____.

Proposed Supreme Court Commentary

In State in the Interest of T.M., 166 N.J. 319 (2001) the Court stated that the procedure for a trial on stipulated facts should be reconciled with the provisions of R. 3:9-2. It referred to the Criminal Practice Committee the task of developing appropriate rule amendments. R. 3:17 allows the parties to stipulate to all of the facts to be produced at trial. Thus, it does not apply to stipulations to discrete pieces of evidence, such as a lab report, or a map showing that the crime took place within

1000 feet of a school. R. 3:17 is only intended to govern bench trials when the parties are willing to stipulate to all of the trial facts, but the defendant is unwilling to admit his or her guilt. The rule does not apply to circumstances in which the defendant enters a guilty plea pursuant to R. 3:9-2.

2. **Trial In Absentia**

In State v. Whaley, 168 N.J. 94 (2001) the defendant was indicted on controlled dangerous substances charges and pled not guilty at his arraignment/status conference. At that conference he signed an order that set forth the date for a status conference and advised him of the consequences of failing to appear on that next scheduled date or on the trial date. The order told him one consequence would be that the trial would proceed without him. The defendant appeared at the date set for the status conference but did not appear for any further hearings. At that conference the defendant again signed an order that advised him of the next court event and told him that if he did not appear for this event the trial would proceed in his absence. Subsequent hearings were held without the defendant's presence as defense counsel consented to continue. He was thereafter tried *in absentia*. The defendant was convicted at trial and later arrested in Florida and brought back to New Jersey. At sentencing he moved for a new trial on the grounds that he did not waive his right to appear at trial because he was unaware of the trial date. The trial court denied the defendant's motion and the Appellate Division affirmed the defendant's conviction.

The Supreme Court found that the current R. 3:16(b) requires "...in-court notification to the defendant of the trial date, in order for a trial court to be assured of actual notice to a defendant when it infers that a knowing waiver of the right to be present at trial has occurred." Id. at 102. Because the defendant was not provided

with notice of a trial date, a waiver of his right to be present could not be inferred. Therefore, the Court reversed his conviction. The Court referred to the Criminal Practice Committee reconsideration of the rules governing trials *in absentia*. The Court said that:

The Committee should consider a means by which a defendant may chose to accept continuing Hudson charges without personally appearing in court each time the warning is given, and should also address whether to allow a defendant to do so even before a trial date is set. [Id. at 107].

The Committee determined that there were no standard procedures or forms for notifying defendants of the next scheduled court event or warning them they may be tried *in absentia* if they fail to appear. Some counties had forms including the language of R. 3:9-3(e), while others did not.

The Committee decided to develop a Pretrial Memorandum to be filled out during the Pretrial Conference. This form, in addition to other items, would advise the defendant what the consequences may be if he/she fails to appear. The Pretrial Memorandum form was presented to the Criminal Presiding Judges for their comments. The Committee further agreed that in conjunction with the Pretrial Memorandum, the defendant should sign a one page written acknowledgment indicating that the defendant had been warned that the trial would proceed in his or her absence if he or she was not present for the original, or rescheduled, trial date.

The Committee is proposing amendments to R. 3:9-1 and R. 3:16. The amendment to R. 3:9-1 would require use of a standard pretrial memorandum in a form prescribed by the Administrative Director of the Courts. The amendment to R. 3:16 would require that the defendant sign a written acknowledgment of his/her trial date. The Committee is also recommending that two (2) new forms, Pretrial Memorandum and Written Acknowledgment, be approved for statewide use. The form reviewed and approved by the Presiding Judges would standardize pretrial conference proceedings and assure that subjects to be covered thereat are properly handled. The Criminal Presiding Judges are testing the Pretrial Memorandum Form in one or two counties.

The Committee declined to incorporate the concept of “imputed notice” into the rules because it wanted to avoid the possibility that a defendant could be put in an adversarial position against his attorney. The Committee was also concerned that the courts did not have the resources to implement a reliable “call-in” or electronic notification system to provide notice without repeatedly calling the defendant into court.

3:9-1. Prearraignment Conference; Plea Offer; Arraignment/Status Conference; Pretrial Hearings; Pretrial Conference

(a) ... No Change

(b) ... No Change

(c) ... No Change

(d) ... No Change

(e) Pretrial Conference. If the court determines that discovery is complete; that all motions have been decided or scheduled in accordance with paragraph (d); and that all reasonable efforts to dispose of the case without trial have been made and it appears that further negotiations or an additional status conference will not result in disposition of the case, or progress toward disposition of the case, the judge shall conduct a pretrial conference. The conference shall be conducted in open court with the prosecutor, defense counsel and the defendant present. Unless objected to by a party, the court shall ask the prosecutor to describe, without prejudice, the case including the salient facts and anticipated proofs and shall address the defendant to determine that the defendant understands: (i) the State's final plea offer, if one exists; (ii) the sentencing exposure for the offenses charged, if convicted; (iii) that ordinarily a negotiated plea will not be accepted after the pretrial conference and a trial date has been set; (iv) the nature, meaning and consequences of the fact that a negotiated plea

will not be accepted after the pretrial conference has been conducted and a trial date has been set and (v) that the defendant has a right to reject the plea offer and go to trial and that if the defendant goes to trial the State must prove the case beyond a reasonable doubt. If the case is not otherwise disposed of a pretrial memorandum shall be prepared. The pretrial memorandum, in a form prescribed by the Administrative Director of the Courts, shall be reviewed on the record with counsel and the defendant present and shall be signed by the judge who, in consultation with counsel, shall fix the trial date. No admissions made by the defendant or defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and defendant's attorney. The court shall also inform the defendant of the right to be present at trial, the trial date set, and the consequences of a failure to appear for trial, including the possibility that the trial will take place in defendant's absence.

Note: Source--R.R. 3:5-1. Paragraph (b) deleted and new paragraph (b) adopted July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 29, 1977 to be effective September 6, 1977; paragraph (a) amended and paragraph (b) deleted July 21, 1980 to be effective September 8, 1980; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; first three sentences of former paragraph (a) amended and redesignated paragraph (c), last sentence of former paragraph (a) amended and moved to new paragraph (e), new paragraphs (a), (b), (d) and (e) adopted July 13, 1994 to be effective January 1, 1995[.]; paragraph (e) amended
to be effective _____.

3:16. Presence of the Defendant

(a) Pretrial. The defendant must be present for every scheduled event unless excused by the court for good cause shown.

(b) At trial or post-conviction proceedings. The defendant shall be present at every stage of the trial, including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, unless otherwise provided by Rule. Nothing in this Rule, however, shall prevent a defendant from waiving the right to be present at trial. A waiver may be found either from (a) the defendant's express written or oral waiver placed on the record, or (b) the defendant's conduct evidencing a knowing, voluntary, and unjustified absence after (1) the defendant has received actual notice in court or has signed a written acknowledgment of the trial date, or (2) trial has commenced in defendant's presence. A corporation shall appear by its attorney for all purposes. The defendant's presence is not required at a reduction of sentence under R. 3:21-10 or, except as provided in R. 3:22-10, at a hearing on a petition for post conviction relief.

Note: Source--R.R. 3:5-4(a); amended July 14, 1992 to be effective September 1, 1992; captions added, new paragraph (a) adopted, former text amended and redesignated paragraph (b) July 13, 1994 to be effective January 1, 1995, caption to paragraph (b) amended December 9, 1994 to be effective January 1, 1995[.]; paragraph (b) amended _____ to be effective _____.

PRETRIAL MEMORANDUM
SUPERIOR COURT OF NEW JERSEY _____ COUNTY

Defendant's Name: _____ Judge: _____

Indictment No(s): _____

1. List all indictments, counts, degrees and maximum jail sentence.

Indictment No.	Count	Charges & Degree	Max Jail
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. Does the defendant qualify for extended term? [YES] [NO]
 If yes, discretionary _____
 mandatory _____

3. Does the presumption of imprisonment apply? [YES] [NO]
 If yes, what counts? _____

4. Does a mandatory period of parole ineligibility apply? [YES] [NO]
 If yes, what counts? _____
 85% Law _____ Term _____
 Graves Act _____ Term _____
 School Zone _____ Term _____
 Other _____ Term _____

5. **Maximum sentence** if convicted. _____
 (Including extended term, if applicable)

6. **Maximum parole ineligibility** period. _____

7. Do you understand that if you are found guilty, the Court in its discretion could impose a minimum period of confinement to be served before you become eligible for parole, which could be up to one-half of the total sentence imposed? [YES] [NO]

8. Do you understand that if you are found guilty, the Court could order that any sentence imposed be served consecutively to any sentence on a violation of probation, and/or parole, and/or sentence presently being served? [YES] [NO]

A. Are you presently on probation? [YES] [NO]
 B. Are you presently on parole? [YES] [NO]
 C. Are you presently serving a custodial sentence on another charge? [YES] [NO]

 Defendant's Initials

PRETRIAL MEMORANDUM
SUPERIOR COURT OF NEW JERSEY _____ COUNTY

9. **PLEA OFFER**

Set forth in detail the plea agreement offered including sentencing recommendations.

10. Do you understand that if you reject this plea offer, the Court could impose a more severe sentence than recommended by the plea offer, up to the maximum sentence permitted if you are convicted after trial? [YES] [NO]

11. Do you understand that if you reject this plea offer today, no plea bargain can be accepted by this Court unless specifically authorized by the Criminal Presiding Judge pursuant to R. 3:9-3(g). [YES] [NO]

12. Additional/Supplemental information.

13. **Discovery**

- A. All Pretrial discovery is complete.
- B. The following Pretrial discovery is required.

- C. Pretrial discovery to be completed by

Defendant's Initials

PRETRIAL MEMORANDUM
SUPERIOR COURT OF NEW JERSEY _____ COUNTY

14. **Motions/Hearings**

A. There are no further Pretrial Motions/Hearings.

B. Trial: The following non-dispositive motions can be made and heard immediately prior to trial.

15. **Co-Defendant Status:** _____

16. **Unique Evidential Issues:** _____

_____ NO BRIEF REQUIRED

_____ BRIEF REQUIRED BY

17. **Stipulations:** _____

18. **Estimated trial time:** State's case: _____

Defense case: _____

19. **Interpreter needed?** [YES] [NO]

If yes, what language? _____

Defendant's Initials

PRETRIAL MEMORANDUM
SUPERIOR COURT OF NEW JERSEY _____ COUNTY

20. Defendant and all counsel are hereby directed to return to court on the following date at 9:00 AM ready for trial. There will be no further notices required.

Any problems with witness availability must be brought to the Court's attention within ten (10) days of the signing of this Memorandum, or if discovered thereafter, as promptly as known.

Trial Date: _____

(Assistant Prosecutor)

(Defense Counsel)

(Judge)

Date of Memo: _____

1. I have been advised of my right to be present at the trial of this case. If I fail to appear for trial on the date scheduled for trial, the Court has the right to conduct the trial in my absence. If my case is not reached for trial on that date the judge will schedule a new date for trial. If I am not present on the original trial date, or any rescheduled trial date, the trial will proceed without me and I will be bound by the jury's verdict.

2. I further understand that if I do not appear for trial on the date fixed above or any adjourned trial date thereafter, I will lose any bail that has been posted and a bench warrant will be issued for my arrest.

3. I understand that except in extraordinary circumstances, the filing of this Memorandum ends all plea negotiations, and no further bargaining will take place. Any subsequent plea of guilty will be without a plea recommendation.

(Defendant)

(Defense Counsel)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, _____ COUNTY
INDICTMENT NO. _____

STATE OF NEW JERSEY

V.

I hereby acknowledge that I have been advised that I am to appear for trial on the _____ day of _____, 200____ at 9:00 a.m. (unless the time is otherwise specified herein to be _____) and if I fail to appear on that date, or any rescheduled trial date, the trial will proceed without me and I will be bound by the jury's verdict.

Dated: _____

Defendant's signature

3. Bail Forfeiture.

In late August 2000, Capital Bonding Corporation challenged, in federal district court, the constitutionality of the then recent amendment to R. 1:13-3(e). That amendment implemented a statewide bail preclusion policy, *i.e.* removal of the names of licensed insurance producers and limited insurance representatives from the list of licensed insurance producers or limited insurance representatives authorized to write bail upon failure to satisfy a judgment, or file a motion to vacate the forfeiture.

Capital Bonding argued that the preclusion policy violated both federal and state constitutional provisions. Regarding the State Constitution, Capital Bonding argued that the preclusion policy violated the principle of separation of powers guaranteed under the New Jersey Constitution, because the legislature has already set up a statutory scheme that governs the right of limited insurance agents to write bail bonds in the State. Capital Bonding also argued that the preclusion policy infringed upon the boundaries of the Court's rule-making powers granted to the Supreme Court by the New Jersey Constitution, because the amendments to R. 1:13-3 were substantive, not procedural. They also contended that the rule violated the United States Constitution's due process clause, because Capital Bonding is not entitled to notice and a hearing before being precluded from writing bail bonds. Finally, Capital Bonding argued that

the rule violated the contract clause, because it interferes with the contract created between the State and the insurance representatives by taking away the limited insurance representative's right to sell bonds even if the representative has complied with his or her obligations under the contract. The Attorney General's Office, on the Court's behalf, contested these arguments and urged the District Court to abstain from hearing the case.

In October 2000 the judges assigned to handle bail forfeitures (hereinafter the Bail Forfeiture Judges) met. At that meeting the judges expressed the collective belief that there was a notice of preclusion problem. To remedy this problem they recommended that the notice of preclusion be provided at the time forfeiture is entered, at the time the judgment is entered and by the Clerk of Court prior to preclusion. The notice at the time of forfeiture, as well as the notice at the time of judgment, would be accomplished through an amendment adding this notice to existing forms. The notice by the Clerk of the Superior Court would be accomplished through the Clerk sending a certified letter to the corporate surety.

The Bail Forfeiture Judges did not recommend that the rules be amended. Rather, they recommended that the Court relax the rules to require notice of preclusion. The matter was also referred to this Committee and the Municipal Practice Committee for consideration of a rule amendment.

In the interim, both Committees concurred in the promulgation of a relaxation order by the Supreme Court.

On November 1, 2000 the Chief Justice, on behalf of the Supreme Court, signed an order to be effective January 2, 2001. That order relaxed R. 1:13-3(e), 3:26-6(a) and 7:4-5. The relaxation order provided:

1. Notice of forfeiture must include notice that failure to satisfy a judgment will result in preclusion of a corporate surety company's representatives from writing bail.
2. Notice must be served by ordinary mail on the corporate surety company, the licensed insurance producer and the limited insurance representative.
3. Judgments must include notice that failure to satisfy a judgment will result in preclusion from writing bail.
4. A copy of judgment must be served by ordinary mail on the corporate surety company.
5. Upon receipt of judgment, the Clerk of the Superior Court will serve notice on the corporate surety company that failure to satisfy judgment within 15 days will result in the preclusion of all of the corporate surety company's licensed insurance producers and limited insurance representatives from writing bail until the judgment is satisfied.

The Committee is proposing that Rules 3:26-6 and 1:13-3 be amended. The amendment to R. 3:26-6 would provide notice to sureties when a condition of a recognizance is breached and a forfeiture has been ordered. The notice will also advise the surety that failure to satisfy a judgment will result in the removal of the

names of all of the corporate surety company's licensed insurance producers and limited insurance representatives from the Bail Registry.

The proposed amendment to R. 1:13-3 will require that the Clerk of the Superior Court serve notice on the corporate surety company named on the judgment that failure to satisfy the judgment within fifteen days will result in the removal of the names of the corporate surety company's licensed insurance producers and limited insurance representatives from the Bail Registry. The Municipal Court Committee is recommending amendments to Part VII rules consistent with the procedures set forth in the amendment to Rules 3:26-6 and 1:13-3 and the Court's November 1, 2000 order.

3:26-6. Forfeiture.

(a) Declaration; Notice. Upon breach of a condition of a recognizance, the court on its own motion shall order forfeiture of the bail, and the finance [criminal] division manager shall forthwith send notice of the forfeiture, by ordinary mail as agreed to as part of the conditions of recognizance set forth in the bail recognizance, to county counsel, the defendant, and [the] any surety or corporate surety company, licensed insurance producer or limited insurance representatives whose names appear on the bail recognizance. Notice to any corporate surety company, licensed insurance producer or limited insurance representative shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. The notice shall direct that judgment will be entered as to any outstanding bail absent a written objection seeking to set aside the forfeiture, which must be filed within 45 days of the date of the notice. The notice shall also provide that failure to satisfy a judgment entered pursuant to paragraph (c) will result in the removal of the names of all of the corporate surety company's licensed insurance producers and limited insurance representatives from the Bail Registry. The court shall not enter judgment until the merits of the objection are determined either on the papers filed or, if the court so orders for good cause, at a hearing. In the absence of objection, judgment shall be entered as provided in paragraph (c), but the court may thereafter remit it, in whole or

part, in the interest of justice.

(b) Setting Aside. The court may, either before or after the entry of judgment, direct that an order of [a] forfeiture be set aside if its enforcement is not required in the interest of justice upon such conditions as it imposes.

(c) Enforcement; Remission. [When a forfeiture is not set aside or satisfied, the court shall, upon expiration of the 45 days provided for in paragraph (a), summarily enter a judgment of default for any outstanding bail and execution may issue thereon. After entry of such judgment, the court may remit it in whole or in part in the interest of justice.] If, following the court's decision on an objection pursuant to paragraph (a) of this rule, the forfeiture is not set aside or satisfied in whole or part, or if there is no objection to the forfeiture, the court shall enter judgment for any outstanding bail and, in the absence of satisfaction thereof, execution may issue thereon. Judgments entered pursuant to this rule shall provide that failure to satisfy a judgment will result in removal of the names of all of the corporate surety company's licensed insurance producers and limited insurance representatives from the Bail Registry. A copy of the judgment entered pursuant to this rule is to be served by ordinary mail on any surety or any corporate surety company, licensed insurance producer, and limited insurance representative named in the judgment. Notice to any corporate surety company, licensed insurance producer or limited insurance representative shall be sent to the

address recorded in the Bail Registry. In any contested proceeding, county counsel shall appear on behalf of the government. County counsel shall be responsible for collection of forfeited amounts.

Note: Source—R.R. 3:9-7 (a) (b) (c) (first sentence) (d); paragraphs (a) and (c) amended July 10, 1998 to be effective September 1, 1998 []; paragraphs (a), (b) and (c) amended _____ to be effective _____.

1:13-3. Approval and Filing of Surety Bond; Judgment Against Principal and Surety.

(a) ... No change.

(b) ... No change.

(c) ... No change.

(d) Registry of Licensed Insurance Producers and Limited Insurance Representatives

Authorized to Write Bail. Surety bonds for purposes of bail may be accepted only

from those licensed insurance producers and limited insurance representatives who are

registered by the [insurance] corporate surety company for which they are authorized

to write bail with the Clerk of the Superior Court as required by N.J.S.A. 17:22A-16.

Such registration shall be effected by completing and submitting to the Clerk of the

Superior Court an “Insurance Producer/Limited Representative Registration Form” in

the form prescribed by Appendix XXI to these rules. The [insurance] corporate surety

company shall provide written notice to the Clerk of the Superior Court when any

licensed insurance producer or limited insurance representative authorized to write bail

is terminated.

(e) Removal from Bail Registry. Any licensed insurance producer or limited

insurance representative shall have his or her name removed from [an insurance] a

corporate surety company’s listing in the Bail Registry upon any of the following

occurrences: (1) notice from [an insurance] a corporate surety company of the

individual's termination; (2) notice from the Insurance Commissioner of the suspension or revocation of any individual's license or registration privileges; and (3) revocation or suspension of [an insurance] a corporate surety company's authority to do business in this State or of its certificate of authority to write surety instruments. Further, in the event any [insurance] corporate surety company has failed to satisfy a judgment entered pursuant to R. 3:26-6(c) or R. 7:4-5(c), [or to pay a forfeiture or to file a motion to vacate the forfeiture within forty-five (45) days of the date of the notice sent pursuant to R. 3:26-6,] the Clerk of the Superior Court shall serve notice, by certified mail, return receipt requested, on the corporate surety company whose name appears on the judgment, at the address of the corporate surety company whose name appears on the judgment at the address of the corporate surety company recorded in the Bail Registry. The notice shall provide that failure to satisfy a judgment within fifteen days of the date of the notice will result in the removal of the names of all of [its] the corporate surety company's licensed insurance producers and limited insurance representatives [shall be removed] from the Bail Registry until such time as the judgment [or forfeiture] has been satisfied. In that event, the individual licensed insurance producer or limited insurance representative who acted as bail bondsman shall also have his or her name removed from all listings in the Bail Registry until such time as the judgment [or forfeiture] has been satisfied. The Clerk of the Superior Court

shall then remove from the Bail Registry the names of any licensed insurance producers and limited insurance representatives authorized to write bail for the corporate surety company. Bail bonds from the corporate surety company, licensed insurance producers and limited insurance representatives shall not be accepted during the period that they are removed from the Bail Registry.

Note: Source—R.R. 1:4-8(b), 1:4-9, 3:9-7(c) (second, 2, 4:118-6(a)(b). Paragraph (a) amended July 7, 1971 to be effective September 13, 1971; paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994; paragraph (c) amended June 28, 1996 to be effective September 1, 1996; new sections (d) and (e) added July 5, 2000 to be effective September 5, 2000[.]; paragraphs (d) and (e) amended _____ to be effective _____.

4. **State v. Cerefice**

In State v. Cerefice, 335 N.J. Super. 374 (App. Div. 2000), the defendant was charged with driving while intoxicated (DWI) in violation of N.J.S.A. 39:4-50 and driving out of marked lanes, in violation of N.J.S.A. 34:4-88. Because the defendant was a municipal court judge in the municipality in which the offense arose, a Law Division judge was assigned to hear the case. Defendant was convicted in the Law Division and appealed the conviction.

As a preliminary matter, the Appellate Division considered whether the appeal from the motor vehicle offense convictions should have been filed as a request for trial *de novo* in the Law Division, pursuant to R. 3:23-1, or in the Appellate Division pursuant to R. 2:2-3(a)(1) because the matter was initially heard by a Law Division judge as opposed to a Municipal Court judge. The Cerefice court held that a municipal court matter heard by a Law Division judge sitting as a Municipal Court judge should be appealed to the Appellate Division within the 45 day time limit provided in R. 2:4-1(a).¹

The Cerefice court further concluded that an appeal to the Appellate Division

¹ The time limit for filing appeals set forth in the Part II and Part III rules are different. The time limit to file a Notice of Appeal to the Appellate Division is 45 days after the entry of the final judgment. R. 2:4-1. The time limit to file a Notice of Appeal to the Law Division from a court of limited criminal jurisdiction is 20 days after the entry of the judgment of conviction. R. 3:23-2.

from a conviction entered by a Law Division judge sitting as a Municipal Court judge is not subject to a *de novo* standard of review. State v. Cerefice, 335 N.J. Super. at 383. Rather, the appeal is analyzed under the substantial evidence rule, i.e. whether the evidence adduced at trial supports the conviction. Id. at 383 (citing State v. Johnson, 42 N.J. 146, 157 (1964)). The Cerefice court referred the matter to the Criminal Practice Committee and the Municipal Court Practice Committee for further consideration.

The Criminal Practice and Municipal Practice Committees discussed the matter and established a Joint Subcommittee on Municipal Appeals to review the municipal appeal process and to study that subject generally. The Municipal Appeals Subcommittee reviewed the history of the right for convicted offenders to appeal Municipal Court convictions and recommended amendments to R. 3:23-2 and R. 7:13-1 to incorporate the Cerefice decision but concluded that no other more general changes to the practice were warranted at this time. Continued adherence to the two-tier system of trying non-indictable offenses was recommended. The Criminal Practice Committee adopted the recommendations of the Joint Subcommittee. The Supreme Court Committee on Municipal Court Practice has recommended the amendment to the Part VII rule. The Committees are recommending amendments to both rules to the Court. The Criminal Practice Committee notes that the Part VII amendment may not

be technically needed as Part VII does not apply to matters heard in the Superior Court.

3:23-2. Appeal; How Taken; Time

The defendant, a defendant's legal representative or other person aggrieved by a judgment of conviction (including a judgment imposing a suspended sentence) entered by a court of limited jurisdiction shall appeal therefrom by filing a notice of appeal with the clerk of the court below within 20 days after the entry of judgment. Within 5 days after the filing of the notice of appeal, one copy thereof shall be served upon the prosecuting attorney, as hereinafter defined, and one copy thereof shall be filed with the criminal division manager's office together with the filing fee therefor and an affidavit of timely filing of said notice with the clerk of court below and service upon the prosecuting attorney (giving the prosecuting attorney's name and address). On failure to comply with each of the foregoing requirements, the appeal shall be dismissed by the Superior Court, Law Division without further notice or hearing. However, if the appeal is from a decision of a final judgment of the Superior Court arising out of a municipal matter heard by a Superior Court judge sitting as a Municipal Court judge, the appeal shall be in accordance with R. 2:3-1 and the time limits of R. 2:4-1(a) apply.

Note: Source--R.R. 1:3-1(c), 1:27B(d), 3:10-2, 3:10-5. Amended November 22, 1978 to be effective December 7, 1978; amended July 11, 1979 to be effective September 10, 1979; amended November 5, 1986 to be effective January 1, 1987; amended July 13, 1994 to be effective September 1, 1994; amended July 5, 2000 to be effective September 5, 2000[.]; amended _____ to be effective _____.

7:13-1. Appeals

Appeals from judgments of conviction shall be taken in accordance with R. 3:23 and 3:24, and, in extraordinary cases and in the interest of justice, in accordance with R. 2:2-3(b). Appeals from judgments of conviction and interlocutory orders in municipal court actions heard in the Superior Court [and Law Division, Special Civil Part, pursuant to R. 6:1-2(a)(5),] shall be taken to the Appellate Division pursuant to Rules 2:2-3(a)(1) and 2:2-4, respectively.

Note: Source-R. (1969) 7:8-1. Adopted October 6, 1997 to be effective February 1, 1998[.]; amended _____ to be effective _____.

5. R. 3:12-1

N.J.S.A. 2C:35-7.1(d) was adopted on January 9, 1998, and provides for an affirmative defense if the defendant claims that the distribution, or intent to distribute, or dispense any controlled dangerous substance, was neither for profit nor to a person 17 years of age or younger. That statute requires an amendment to R. 3:12-1 (Notice Under Specific Criminal Code Provisions).

It was suggested that, rather than add this specific statute to the rule, a “catch-all” provision be added to provide that wherever a statute designates an affirmative defense notice is required. This would obviate the need to amend the rule each time a statute is enacted providing an affirmative defense.

The Committee decided to recommend an amendment to R. 3:12-1 to incorporate N.J.S.A. 2C:35-7.1(d) and to revisit amending the rule to add a “catch all” provision if the issue arises in the future.

3:12-1. Notice Under Specific Criminal Code Provisions

A defendant shall serve written notice on the prosecutor if the defendant intends to rely on any of the following sections of the Code of Criminal Justice: Ignorance or Mistake, 2C:2-4(c); Accomplice: Renunciation Terminating Complicity, 2C:2-6(e)(3); Intoxication, 2C:2-8(d); Duress, 2C:2-9(a); Entrapment, 2C:2-12(b); General Principles of Justification, 2C:3-1 to 2C:3-11; Insanity, 2C:4-1; Lack of Requisite State of Mind, 2C:4-2; Criminal Attempt (renunciation of criminal purpose), 2C:5-1(d); Conspiracy (renunciation of criminal purpose), 2C:5-2(e); Murder (affirmative defense, felony murder), 2C:11-3(a)(3); Criminal Restraint, 2C:13-2(b); Theft by Extortion, 2C:20-5; Perjury (retraction), 2C:28-1(d); False Swearing (retraction), 2C:28-2(b); [and] Controlled Dangerous Substances Near or On School Property, 2C:35-7[.] ; and Distributing, Dispensing or Possessing Controlled Substances Within 500 feet of Public Housing Facilities, Parks or Buildings, 2C:35-7.1.

No later than seven days before the arraignment/status conference the defendant shall serve on the prosecutor a notice of intention to claim any of the defenses listed herein; and if the defendant requests or has received discovery pursuant to R. 3:13-3(c), the defendant shall, pursuant to R. 3:13-3(d), furnish the prosecutor with discovery pertaining to such defenses at the time the notice is served.

The prosecutor shall, within 14 days after receipt of such discovery, comply with R. 3:13-3(c) and (g) with respect to any defense for which the prosecutor has received notice.

For good cause shown the court may extend the time of service of any of the foregoing, or make such other orders as the interest of justice requires. If a party fails to comply with this Rule, the court may take such action as the interest of justice requires. The action taken may include refusing to allow the party in default to present witnesses in support or in opposition of that defense at the trial or to allow the granting of an adjournment or delay during trial as the interest of justice demands.

Note: Source--R.R. 3:5-9A. Former Rule 3:12 amended August 28, 1979 to be effective September 1, 1979; main caption amended and former Rules 3:12 and 3:12A amended, combined and redesignated as Rule 3:12-1, July 13, 1994, second paragraph amended December 9, 1994, to be effective January 1, 1995[.]; amended _____ to be effective _____.

6. R. 2:7-2.

In July 2000, the Committee revised R. 3:4-2. At that time, the Committee did not amend R. 2:7-2 to incorporate the changes to R. 3:4-2. The Committee is recommending an amendment to R. 2:7-2(b) and (d) to include a reference to R. 3:4-2(c) instead of R. 3:4-2(b).

2:7-2. Assignment of Counsel on Appeal

(a) ... No Change.

(b) Non-Indictable Offenses. All persons convicted of a non-indictable offense who desire to appeal their conviction and who assert they are indigent, shall complete and file, without fee, with the trial court, the appropriate form prescribed by the Administrative Director of the Courts, which shall be made available to them by the court in which they were convicted. If the court is satisfied that they are indigent and are constitutionally or otherwise entitled by law to counsel, it shall assign counsel to represent them on the appeal pursuant to R. 3:4-2[(b)](c). If the trial court denies an application for assignment of counsel, it shall briefly state its reasons therefor, and the application may be renewed within 20 days thereafter before the appellate court in accordance with R. 2:7-3.

(c) ... No Change

(d) Responsibility of Counsel Assigned by the Trial Court. An attorney filing a notice of appeal pursuant to R. 3:4-2[(b)](c) shall be deemed the attorney of record for the appeal unless the attorney files with the notice of appeal an application for the assignment of counsel on appeal as required by R. 3:4-2[(b)](c).

Note: Source—R.R. 1:2-7(b), 1:12-9(b) (d). Paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended, paragraph (b) caption and test amended, paragraph (c) adopted and former paragraph (c) redesignated paragraph (d) November 5, 1986 to be effective January 1, 1987; paragraphs (b) and (d) amended July 10, 1998 to be effective September 1, 1998 [.] paragraphs (b) and (d) amended to be effective _____.

7. **R. 3:25-3.**

The Committee was asked to consider amending certain language contained in R. 3:25-3 to correct an inadvertent mistake contained in the Order of Adoption. It is recommended that the phrase “dismiss the motion *sua sponte* or on the motion of the defendant” in the first sentence of the rule be changed to the phrase “dismiss the matter *sua sponte* or on the motion of the defendant.” The Committee recommends amending the rule.

3:25-3. Dismissal for Delay

If there is an unreasonable delay in presenting the charge to a grand jury or in filing an accusation against a defendant who has been held to answer upon a complaint, the Assignment Judge, or the Assignment Judge's designee, may dismiss the [motion] matter sua sponte or on motion of the defendant. If there is unreasonable delay in the disposition of an indictment or accusation, the judge to whom the case has been assigned may dismiss the matter *sua sponte* or on motion of the defendant.

Note: Source—R.R. 3:11-3(c); amended July 17, 1975 to be effective September 8, 1975; amended July 13, 1994 to be effective January 1, 1995[.] ; amended _____
_____ to be effective _____.

B. Other Recommendations.

1. Supplemental Plea Form in No Early Release Act Cases.

On June 29, 2001, the Governor signed A-3201 into law as L. 2001, c. 129. The law amended N.J.S.A. 2C:43-7.2, the *No Early Release Act (NERA)*, to specifically enumerate the first and second degree crimes for which defendants must serve at least 85% of the sentence imposed by the court before being eligible for parole.

The Committee is recommending that a new plea form, *Supplemental Plea Form for No Early Release Act (NERA) Cases*, be approved. This form would be utilized for all cases falling under the provisions of the Act where the offense occurred on or after June 29, 2001.

Supplemental Plea Form for *No Early Release Act (NERA)* Cases
(N.J.S.A. 2C: 43-7.2)

The following questions need to be answered only if you are pleading guilty to one of the following first or second crimes that occurred on or after June 29, 2001:

murder, aggravated manslaughter or manslaughter, vehicular homicide, aggravated assault, disarming a law enforcement officer, kidnapping, aggravated sexual assault, sexual assault, robbery, carjacking, aggravated arson by placing another person in danger of death or serious bodily injury, burglary, theft by extortion by obtaining property of another by threatening to inflict bodily injury on, or physically confine or restrain anyone or commit another offense, booby traps in manufacturing or distributing of CDS facilities or strict liability for drug induced deaths.

1. Do you understand that because of your plea of guilty to

(LIST FIRST OR SECOND DEGREE CRIME(S) TO WHICH *NERA* APPLIES)

you will be required to serve 85% of the sentence imposed for that offense(s) before you will be eligible for parole on that offense(s)? [YES] [NO]

2. Do you understand that because you have pled guilty to these charges the court must impose a ____ year term of parole supervision and that term will begin as soon as you complete the sentence of incarceration?

[YES] [NO]

First Degree Term of Parole Supervision - 5 years
Second Degree Term of Parole Supervision - 3 years

3. Do you understand that if you violate the conditions of your parole supervision that your parole may be revoked and you may be subject to return to prison to serve all or any portion of the remaining period of parole supervision, even if you have completed serving the term of imprisonment previously imposed?

[YES] [NO]

DATE: _____

DEFENDANT: _____

DEFENSE ATTORNEY: _____

PROSECUTOR: _____

2. Parole Supervision Term.

The State Parole Board informed the Administrative Office of the Courts that judgment of convictions frequently do not contain the term of parole supervision as required by N.J.S.A. 2C:43-7.2, the *No Early Release Act* (NERA). It was suggested to the Committee that if a check-off box was added to the judgment of conviction this problem could be resolved.

The Committee agreed with this suggestion and is recommending the following language be added to the judgment of conviction.

- 9 The defendant is hereby ordered to serve a ____ year term of parole supervision which term shall begin as soon as defendant completes the sentence of incarceration.

State of New Jersey

v.



New Jersey Superior Court
Law Division - Criminal

DEFENDANT:
(Specify Complete Name)

DATE OF BIRTH	SBI NUMBER
DATE OF ARREST	DATE INDICTMENT/ ACCUSATION FILED
DATE OF ORIGINAL PLEA	ORIGINAL PLEA <input type="checkbox"/> NOT GUILTY <input type="checkbox"/> GUILTY

- JUDGMENT OF CONVICTION
- CHANGE OF JUDGMENT
- ORDER FOR COMMITMENT
- INDICTMENT / ACCUSATION DISMISSED
- JUDGMENT OF ACQUITTAL

ADJUDICATION BY

- | | | | |
|--------------------------------------|-------|--|-------|
| <input type="checkbox"/> GUILTY PLEA | DATE: | <input type="checkbox"/> NON-JURY TRIAL | DATE: |
| <input type="checkbox"/> JURY TRIAL | DATE: | <input type="checkbox"/> Dismissed/Acquitted | DATE: |

ORIGINAL CHARGES

IND / ACC NO.	COUNT	DESCRIPTION	DEGREE	STATUTE

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE

It is, therefore, on _____ **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

- The defendant is hereby sentenced to community supervision for life.
- The defendant is hereby ordered to serve a _____ year term of parole supervision which term shall begin as soon as defendant completes the sentence of incarceration.
- The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- The court finds that the defendant is amenable to sex offender treatment.
- The court finds that the defendant is willing to participate in sex offender treatment.
- The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided.

It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

<input type="checkbox"/> Defendant is to receive credit for time spent in custody (R. 3:21-8).	TOTAL NUMBER OF DAYS	DATE (From/To)
		DATE (From/To)
<input type="checkbox"/> Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2)).	TOTAL NUMBER OF DAYS	DATE (From/To)

Total Custodial Term _____ Institution _____ Total Probation Term _____

<p style="text-align: center;">Total FINE \$ _____</p> <p style="text-align: center;">Total RESTITUTION \$ _____</p>	<p>If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C,</p> <p>1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)</p> <p style="margin-left: 40px;"> <input type="checkbox"/> 1st Degree @ \$3000 <input type="checkbox"/> 4th Degree @ \$750 <input type="checkbox"/> 2nd Degree @ \$2000 <input type="checkbox"/> Disorderly Persons or Petty <input type="checkbox"/> 3rd Degree @ \$1000 <input type="checkbox"/> Disorderly Persons @ \$500 </p> <p style="text-align: right;">Total D.E.D.R. Penalty \$ _____</p> <p><input type="checkbox"/> Court further ORDERS that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.</p> <p>2) A forensic laboratory fee of \$50 per offense is ORDERED. _____ Offenses @ \$50.</p> <p style="text-align: right;">Total Lab Fee \$ _____</p> <p>3) Name of Drugs involved _____</p> <p>4) A mandatory driver's license suspension of _____ months is ORDERED.</p> <p>The suspension shall begin today, _____ and end _____</p> <p>Driver's License Number _____</p> <p>(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)</p> <p>Defendant's Address _____</p> <p>Eye Color _____ Sex _____ Date of Birth _____</p> <p><input type="checkbox"/> The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____ Driver's License Number _____</p> <p><input type="checkbox"/> Defendant's non-resident driving privileges are hereby revoked for _____ months.</p>	
<p>If the offense occurred on or after December 23, 1991, an assessment of \$50 is imposed on each count on which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is \$30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is \$25 if offense is before January 9, 1986.)</p> <p><input type="checkbox"/> Assessment imposed on</p> <p style="margin-left: 20px;">count(s) _____</p> <p style="margin-left: 20px;">is \$ _____ each.</p> <p>Total VCCB Assessment \$ _____</p>		
<p><input type="checkbox"/> Installment payments are due at the rate of</p> <p style="margin-left: 20px;">\$ _____ per _____</p> <p style="margin-left: 20px;">beginning _____</p> <p style="margin-left: 40px;">(DATE)</p>		
<p>If the offense occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a state correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to \$2.00 is ordered for each occasion when a payment is made. (P.L. 1995, c. 9).</p>		
<p>If the offense occurred on or after August 2, 1993, a \$75 Safe Neighborhood Services Fund assessment is ordered for each conviction. P.L. 1993, c. 220</p>		
<p>If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to \$25 per month for the probationary term is ordered. (P.L. 1993, c. 275) Amount per month _____.</p>		
<p>If the crime occurred on or after January 9, 1997, a \$30 Law Enforcement Officers Training and Equipment Fund penalty is ordered.</p>		
<p>If the crime occurred on or after May 4, 2001, and the defendant has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a minor under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor, kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or false imprisonment pursuant to 2C:13-3 if the victim is a minor and the offender is not the parent, or an attempt to commit any of these crimes, a \$800 Statewide Sexual Assault Nurse Examiner Program Penalty is ordered for each of these offenses.</p>		
NAME (Court Clerk or Person preparing this form)	TELEPHONE NUMBER	NAME (Attorney for Defendant at Sentencing)
STATEMENT OF REASONS - Include all applicable aggravating and mitigating factors		
JUDGE (Name)	JUDGE (Signature)	DATE

3. DNA Testing.

L. 2000, c. 118, enacted September 13, 2000, amended N.J.S.A. 53:1-20.20 and -20.29 to expand the list of criminal offenses for which a conviction or adjudication of delinquency requires the taking of a biological sample for DNA testing. When first enacted in 1994, the "DNA Database and Databank Act of 1994" required DNA testing for convictions or adjudications of certain sexual offenses. As a result, questions regarding DNA testing were included on the *Additional Questions for Certain Sexual Offenses* plea form (*Megan's Law Plea Form*). The revision added the following crimes to the current list of statutes requiring DNA testing: murder or manslaughter, certain second degree aggravated assaults, first degree kidnapping, luring or enticing a child, engaging in sexual conduct which would impair or debauch the morals of a child or an attempt to commit any of these crimes.

The Committee was initially split as to whether to revisit the original decision to include this on the *Megan's Law Plea Form* or whether to recommend it be included as a question on the current three page plea form. Some members argued that including it on a plea form was unnecessary as it was a collateral consequence of the plea and would make it more difficult to obtain pleas if defendants knew that they would be required to submit to a blood test for DNA testing.

The Committee decided that there should be a question on a plea form that advises

defendants that the crime they are pleading guilty to requires DNA testing. The Committee, while recognizing that this is a collateral consequence, was of the opinion that defendants should be advised of the requirement of DNA testing. The Committee notes that the current *Plea Form* and the *Megan's Law Plea Form* contain questions that provide defendants with information on other collateral consequences of their plea. See, for example, *Plea Form*, Question 16. The Committee also did not believe that adding a question would make it more difficult to obtain pleas, as this has not proven to be the case with *Megan's Law* cases.

Rather than recommending an amendment to the *Plea Form*, the Committee decided to recommend adoption of a new form, entitled *Additional Questions for Offenses Requiring DNA Testing*. That form would ask the defendant if he/she understands he/she is pleading guilty to a crime requiring DNA testing. Use of a new form would more economically accommodate any further additions to the list of statutes requiring DNA testing because the three-page *Plea Form* would not have to be revised each time a new statute was added. The Committee is also recommending addition of the following language to the Judgment of Conviction to assure that DNA testing is ordered.

Q The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing the sample provided.

ADDITIONAL QUESTION FOR OFFENSES REQUIRING DNA TESTING

This additional question needs to be answered if you are pleading guilty to any of the following offenses:

Murder pursuant to 2C:11-3, manslaughter pursuant to 2C:11-4, aggravated assault of the second degree pursuant to paragraphs (1) or (6) of subsection b of 2C:12-1, kidnapping pursuant to 2C:13-1, luring or enticing a child in violation of 2C:13-6, aggravated sexual assault or sexual assault pursuant to 2C:14-2, aggravated criminal sexual contact or criminal sexual contact pursuant to 2C:14-3, engaging in sexual conduct which would impair or debauch the morals of a child pursuant to 2C:24-4 or any attempt to commit any of these crimes.

DNA TEST

I understand that I am pleading guilty to a crime that requires that a DNA test be performed.

[YES]

Date _____ Defendant _____

Defense Attorney _____ Prosecutor _____

State of New Jersey

v.



New Jersey Superior Court
Law Division - Criminal

DEFENDANT:
(Specify Complete Name)

DATE OF BIRTH	SBI NUMBER
DATE OF ARREST	DATE INDICTMENT/ ACCUSATION FILED
DATE OF ORIGINAL PLEA	ORIGINAL PLEA <input type="checkbox"/> NOT GUILTY <input type="checkbox"/> GUILTY

- JUDGMENT OF CONVICTION
- CHANGE OF JUDGMENT
- ORDER FOR COMMITMENT
- INDICTMENT / ACCUSATION DISMISSED
- JUDGMENT OF ACQUITTAL

ADJUDICATION BY

- | | | | |
|--------------------------------------|-------|--|-------|
| <input type="checkbox"/> GUILTY PLEA | DATE: | <input type="checkbox"/> NON-JURY TRIAL | DATE: |
| <input type="checkbox"/> JURY TRIAL | DATE: | <input type="checkbox"/> Dismissed/Acquitted | DATE: |

ORIGINAL CHARGES

IND / ACC NO.	COUNT	DESCRIPTION	DEGREE	STATUTE

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE

It is, therefore, on _____ **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

- The defendant is hereby sentenced to community supervision for life.
- The defendant is hereby ordered to serve a _____ year term of parole supervision which term shall begin as soon as defendant completes the sentence of incarceration.
- The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- The court finds that the defendant is amenable to sex offender treatment.
- The court finds that the defendant is willing to participate in sex offender treatment.
- The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided.

It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

<input type="checkbox"/> Defendant is to receive credit for time spent in custody (R. 3:21-8).	TOTAL NUMBER OF DAYS	DATE (From/To)
		DATE (From/To)
<input type="checkbox"/> Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2)).	TOTAL NUMBER OF DAYS	DATE (From/To)

Total Custodial Term _____ Institution _____ Total Probation Term _____

<p style="text-align: center;">Total FINE \$ _____</p> <p style="text-align: center;">Total RESTITUTION \$ _____</p>	<p>If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C,</p> <p>1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)</p> <p style="margin-left: 40px;"> <input type="checkbox"/> 1st Degree @ \$3000 <input type="checkbox"/> 4th Degree @ \$750 <input type="checkbox"/> 2nd Degree @ \$2000 <input type="checkbox"/> Disorderly Persons or Petty <input type="checkbox"/> 3rd Degree @ \$1000 <input type="checkbox"/> Disorderly Persons @ \$500 </p> <p style="text-align: right;">Total D.E.D.R. Penalty \$ _____</p> <p><input type="checkbox"/> Court further ORDERS that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.</p> <p>2) A forensic laboratory fee of \$50 per offense is ORDERED. _____ Offenses @ \$50.</p> <p style="text-align: right;">Total Lab Fee \$ _____</p> <p>3) Name of Drugs involved _____</p> <p>4) A mandatory driver's license suspension of _____ months is ORDERED.</p> <p>The suspension shall begin today, _____ and end _____</p> <p>Driver's License Number _____</p> <p>(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)</p> <p>Defendant's Address _____</p> <p>Eye Color _____ Sex _____ Date of Birth _____</p> <p><input type="checkbox"/> The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____ Driver's License Number _____</p> <p><input type="checkbox"/> Defendant's non-resident driving privileges are hereby revoked for _____ months.</p>	
<p>If the offense occurred on or after December 23, 1991, an assessment of \$50 is imposed on each count on which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is \$30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is \$25 if offense is before January 9, 1986.)</p> <p><input type="checkbox"/> Assessment imposed on</p> <p style="margin-left: 20px;">count(s) _____</p> <p style="margin-left: 20px;">is \$ _____ each.</p> <p>Total VCCB Assessment \$ _____</p>		
<p><input type="checkbox"/> Installment payments are due at the rate of</p> <p style="margin-left: 20px;">\$ _____ per _____</p> <p style="margin-left: 20px;">beginning _____</p> <p style="margin-left: 40px;">(DATE)</p>		
<p>If the offense occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a state correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to \$2.00 is ordered for each occasion when a payment is made. (P.L. 1995, c. 9).</p>		
<p>If the offense occurred on or after August 2, 1993, a \$75 Safe Neighborhood Services Fund assessment is ordered for each conviction. P.L. 1993, c. 220</p>		
<p>If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to \$25 per month for the probationary term is ordered. (P.L. 1993, c. 275) Amount per month _____.</p>		
<p>If the crime occurred on or after January 9, 1997, a \$30 Law Enforcement Officers Training and Equipment Fund penalty is ordered.</p>		
<p>If the crime occurred on or after May 4, 2001, and the defendant has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a minor under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor, kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or false imprisonment pursuant to 2C:13-3 if the victim is a minor and the offender is not the parent, or an attempt to commit any of these crimes, a \$800 Statewide Sexual Assault Nurse Examiner Program Penalty is ordered for each of these offenses.</p>		
NAME (Court Clerk or Person preparing this form)	TELEPHONE NUMBER	NAME (Attorney for Defendant at Sentencing)
STATEMENT OF REASONS - Include all applicable aggravating and mitigating factors		
JUDGE (Name)	JUDGE (Signature)	DATE

4. **Internet Posting of Sex Offender Information.**

On July 13, 2001, L. 2001, c. 167 was enacted. That law amended Megan's Law and required that the State Police develop and maintain a system to allow posting of information on certain sex offenders on the Internet.

The law provides for posting on the Internet of information for all high risk (tier 3) registrants. Information regarding registrants whose risk of re-offense is deemed to be moderate (tier 2) is also to be posted on the Internet unless the sole sex offense committed by the registrant was:

(a) An adjudication of delinquency for any sex offense as defined in subsection b. of section 2 of P.L. 1994, c. 133(C.2C:7-2). (Registration of sex offenders).

(b) A conviction or acquittal by reason of insanity for a violation of N.J.S. 2C:14-2 (aggravated sexual assault and sexual assault) or N.J.S. 2C:14-3 (aggravated criminal sexual contact and sexual contact) under circumstances in which the offender was related to the victim by blood or affinity to the third degree or was a foster parent, a guardian, or stood *in loco parentis* within the household; or

(c) A conviction or acquittal by reason of insanity for a violation of N.J.S. 2C:14-2 (aggravated sexual assault and sexual assault) or N.J.S. 2C:14-3 (aggravated criminal sexual contact and sexual contact) in any case in which the victim assented to the commission of the offense but by reason of age was not capable of giving lawful consent.

Information about an offender who falls under one of these exceptions may be made available on the Internet if the prosecutor establishes 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 offenders whose risk of re-offense is moderate and who do not qualify under the three exceptions.

Information regarding registrants whose risk of re-offense is deemed to be low (tier 1), or tier 2 offenders for whom the court has not ordered notification, will not be posted on the Internet.

The statute requires that the Internet Registry include the following information on each registrant: the registrant's name and any aliases the registrant has used or under which the registrant may be or may have been known; any sex offense as defined in Megan's Law for which the registrant was convicted, adjudicated delinquent or acquitted by reason of insanity; the date and location of disposition; a brief description of any such offense, including the victim's gender and an indication of whether the victim was less than 18 years old or less than 13 years old; a general description of the registrant's *modus operandi*, if any; the determination of whether the registrant's risk of re-offense is moderate or high; the registrant's age, race, sex, date of birth, height, weight, hair, eye color and any distinguishing scars or tattoos; a photograph of the registrant and the date on which the photograph was entered into the registry; the make, model, color, year and license plate number of any vehicle the registrant operates; and

the registrant's street address, zip code, municipality and county where he or she resides.

The Committee is recommending that the following question be added to the *Additional Questions for Certain Sexual Offenses Plea Form*.

Do you understand that as a result of your conviction your name, age, race, sex, date of birth, height, weight, eye color, any distinguishing scars or tattoos you have, your photograph, the make, model, color, year and license plate number of any vehicle you operate, the street address, zip code, municipality and county in which you reside and a description of the offense for which you are pleading guilty, may be publicly available on the Internet?

Subsequent to the Committee's initial consideration of this matter, the United States District Court rendered its decision in A.A. v. New Jersey, _____ F. Supp. 2d _____ No. 01-4804 (D.N.J. Dec. 6, 2001).

In A.A. the plaintiffs sought to enjoin implementation of the Internet Registry Act. The District Court granted the injunction in part entering an order enjoining the State from granting unrestricted public access to registry information identifying the house or apartment number, street, zip code, and municipality in which the plaintiffs reside.

Notwithstanding this decision, the Committee still recommends that the *Additional Questions for Certain Sexual Offenses Plea Form* contain notice to the defendant that his or her street address, zip code and municipality may be made

available to the public on the Internet because the injunction may ultimately be lifted.

See Question 5.

5. Statewide Sexual Assault Nurse Program.

On May 4, 2001 L. 2001, c. 81 was enacted. That law established the Sexual Assault Nurse Examiner Program. As a funding mechanism for that law, every person convicted of a sex offense, as defined in N.J.S.A. 2C:7-2, is to be assessed a penalty of \$800.00 for each offense.

The Committee recommends adding the following question to the *Additional Questions for Certain Sexual Offenses Plea Form* to assure defendants are aware that if they plead guilty to one of the offenses covered under the law, they will have to pay an \$800.00 penalty for each offense:

Do you understand that if the crime occurred on or after May 4, 2001 as a result of your guilty plea you will be required to pay a penalty of \$800.00 for each offense for which you are pleading guilty?

The Committee is also recommending amending the judgment of conviction by adding the following language:

If the crime occurred on or after May 4, 2001, and the defendant has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a minor under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor, kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or

false imprisonment pursuant to 2C:13-3 if the victim is a minor and the offender is not the parent, or an attempt to commit any of these crimes, a \$800 Statewide Sexual Assault Nurse Examiner Program Penalty is ordered for each of these offenses.

ADDITIONAL QUESTIONS FOR CERTAIN SEXUAL OFFENSES

These additional questions need to be answered if you are pleading guilty to the offense of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor; kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or false imprisonment pursuant to 2C:13-3 if the victim is a minor and the offender is not the parent, or any attempt to commit any such offense.

1. Registration

- a) Do you understand that you must register with certain Public agencies? [YES] [NO]
- b) Do you understand that if you change residence you must notify the law enforcement agency where you are registered, and must re-register with the chief law enforcement officer of the municipality in which you will reside, or the Superintendent of State Police if the municipality does not have a chief law enforcement officer agency, no less than 10 days before you intend to reside at the new address? [YES] [NO]

2. Address Verification

Do you understand that if you are pleading guilty to aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to 2C:13-1c(2) or any attempt to commit any of these crimes and at sentencing the Court finds that your conduct was characterized by a pattern of repetitive, compulsive behavior you must verify your address with the appropriate law enforcement agency every 90 days or if the court finds your conduct is not characterized by a pattern of repetitive and compulsive behavior, you must verify your address annually? [YES] [NO]

3. Notification

Do you understand that the requirement of registration may result in notification to law enforcement, community organizations, or the public at large, of your release from incarceration or presence in the community?

[YES] [NO]

4. Community Supervision for Life

Do you understand that if you are pleading guilty to the crime of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to 2C:24-4a, luring, or an attempt to commit any such offense, the Court, in addition to any other sentence, will impose a special sentence of community supervision for life?

[YES] [NO]

5. Internet Posting

Do you understand that as a result of your conviction your name, age, race, sex, date of birth, height, weight, eye color, any distinguishing scars or tatoos you have, your photograph, the make, model, color, year and license plate number of any vehicle you operate, the street address, zip code, municipality and county in which you reside and a description of the offense for which you are pleading guilty, may be publicly available on the internet?

[YES] [NO]

6. Statewide Sexual Assault Nurse Examiner Program Penalty

Do you understand that if the crime occurred on or after May 4, 2001 as a result of your guilty plea you will be required to pay a penalty of \$800 for each offense for which you are pleading guilty?

[YES] [NO]

Date _____ Defendant _____

Defense Attorney _____ Prosecutor _____

State of New Jersey

v.



New Jersey Superior Court
Law Division - Criminal

DEFENDANT:
(Specify Complete Name)

DATE OF BIRTH	SBI NUMBER
DATE OF ARREST	DATE INDICTMENT/ ACCUSATION FILED
DATE OF ORIGINAL PLEA	ORIGINAL PLEA <input type="checkbox"/> NOT GUILTY <input type="checkbox"/> GUILTY

- JUDGMENT OF CONVICTION
- CHANGE OF JUDGMENT
- ORDER FOR COMMITMENT
- INDICTMENT / ACCUSATION DISMISSED
- JUDGMENT OF ACQUITTAL

ADJUDICATION BY

- | | | | |
|--------------------------------------|-------|--|-------|
| <input type="checkbox"/> GUILTY PLEA | DATE: | <input type="checkbox"/> NON-JURY TRIAL | DATE: |
| <input type="checkbox"/> JURY TRIAL | DATE: | <input type="checkbox"/> Dismissed/Acquitted | DATE: |

ORIGINAL CHARGES

IND / ACC NO.	COUNT	DESCRIPTION	DEGREE	STATUTE

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE

It is, therefore, on _____ **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

- The defendant is hereby sentenced to community supervision for life.
- The defendant is hereby ordered to serve a _____ year term of parole supervision which term shall begin as soon as defendant completes the sentence of incarceration.
- The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- The court finds that the defendant is amenable to sex offender treatment.
- The court finds that the defendant is willing to participate in sex offender treatment.
- The defendant is hereby ordered to provide a DNA sample and ordered to pay the costs for testing of the sample provided.

It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

<input type="checkbox"/> Defendant is to receive credit for time spent in custody (R. 3:21-8).	TOTAL NUMBER OF DAYS	DATE (From/To)
		DATE (From/To)
<input type="checkbox"/> Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2)).	TOTAL NUMBER OF DAYS	DATE (From/To)

Total Custodial Term _____ Institution _____ Total Probation Term _____

<p style="text-align: center;">Total FINE \$ _____</p> <p style="text-align: center;">Total RESTITUTION \$ _____</p>	<p>If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C,</p> <p>1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)</p> <p style="margin-left: 20px;"> <input type="checkbox"/> 1st Degree @ \$3000 <input type="checkbox"/> 4th Degree @ \$750 <input type="checkbox"/> 2nd Degree @ \$2000 <input type="checkbox"/> Disorderly Persons or Petty <input type="checkbox"/> 3rd Degree @ \$1000 <input type="checkbox"/> Disorderly Persons @ \$500 </p> <p style="text-align: right;">Total D.E.D.R. Penalty \$ _____</p> <p><input type="checkbox"/> Court further ORDERS that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.</p> <p>2) A forensic laboratory fee of \$50 per offense is ORDERED. _____ Offenses @ \$50.</p> <p style="text-align: right;">Total Lab Fee \$ _____</p> <p>3) Name of Drugs involved _____</p> <p>4) A mandatory driver's license suspension of _____ months is ORDERED.</p> <p>The suspension shall begin today, _____ and end _____</p> <p>Driver's License Number _____</p> <p>(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)</p> <p>Defendant's Address _____</p> <p>Eye Color _____ Sex _____ Date of Birth _____</p> <p><input type="checkbox"/> The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____ Driver's License Number _____</p> <p><input type="checkbox"/> Defendant's non-resident driving privileges are hereby revoked for _____ months.</p>	
<p>If the offense occurred on or after December 23, 1991, an assessment of \$50 is imposed on each count on which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is \$30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is \$25 if offense is before January 9, 1986.)</p> <p><input type="checkbox"/> Assessment imposed on</p> <p style="margin-left: 20px;">count(s) _____</p> <p style="margin-left: 20px;">is \$ _____ each.</p> <p>Total VCCB Assessment \$ _____</p>		
<p><input type="checkbox"/> Installment payments are due at the rate of</p> <p style="margin-left: 20px;">\$ _____ per _____</p> <p style="margin-left: 20px;">beginning _____</p> <p style="margin-left: 40px;">(DATE)</p>		
<p>If the offense occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a state correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to \$2.00 is ordered for each occasion when a payment is made. (P.L. 1995, c. 9).</p>		
<p>If the offense occurred on or after August 2, 1993, a \$75 Safe Neighborhood Services Fund assessment is ordered for each conviction. P.L. 1993, c. 220</p>		
<p>If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to \$25 per month for the probationary term is ordered. (P.L. 1993, c. 275) Amount per month _____.</p>		
<p>If the crime occurred on or after January 9, 1997, a \$30 Law Enforcement Officers Training and Equipment Fund penalty is ordered.</p>		
<p>If the crime occurred on or after May 4, 2001, and the defendant has been convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping under 2C:13-1c(2), endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of a minor under 2C:24-4a, endangering the welfare of a child pursuant to 2C:24-4b(4), luring or enticing a child pursuant to 2C:13-6, criminal sexual contact pursuant to 2C:14-3b if the victim is a minor, kidnapping pursuant to 2C:13-1, criminal restraint pursuant to 2C:13-2 or false imprisonment pursuant to 2C:13-3 if the victim is a minor and the offender is not the parent, or an attempt to commit any of these crimes, a \$800 Statewide Sexual Assault Nurse Examiner Program Penalty is ordered for each of these offenses.</p>		
NAME (Court Clerk or Person preparing this form)	TELEPHONE NUMBER	NAME (Attorney for Defendant at Sentencing)
STATEMENT OF REASONS - Include all applicable aggravating and mitigating factors		
JUDGE (Name)	JUDGE (Signature)	DATE

6. Supplemental Plea Form for Theft of a Motor Vehicle or Unlawful Taking of a Motor Vehicle.

The Committee recommends amending the above referenced supplemental plea form to change the reference to “automobile” to “motor vehicle”. That change would be consistent to a revision to N.J.S.A. 2C:20-2.1. See L. 1993, c. 219 § 4. The Committee is also recommending an amendment to the *Judgment of Conviction for Thefts of an Automobile or Unlawful Taking of a Motor Vehicle* as this form has the same problem.

**SUPPLEMENTAL PLEA FORM FOR
THEFT OF A MOTOR VEHICLE
OR
UNLAWFUL TAKING OF A MOTOR VEHICLE
(N.J.S.A. 2C:20-2.1)**

The following questions need to be answered only if you are pleading guilty for violation of N.J.S.A. 2C:20-2 for theft of a motor vehicle and the offense occurred on or after April 2, 1991, or for a violation of N.J.S.A. 2C:20-10 for unlawful taking of a motor vehicle (“Joyriding”) and the offense occurred on or after August 2, 1993.

1. Do you understand that if you plead guilty you will be required to forfeit your driver’s license? [Yes] [No]
- 1st Offense - 1 year license suspension
2nd Offense - 2 year license suspension
3rd or Subsequent Offense - 10 year license suspension

2. Do you understand that if you plead guilty you will be required to pay a mandatory penalty? [Yes] [No]
- The mandatory penalties are as follows:
- | | |
|---------------------------|------------|
| 1st Offense | - \$ 500 |
| 2nd Offense | - \$ 750 |
| 3rd or Subsequent Offense | - \$ 1,000 |
- Total Penalty _____

3. Do you understand that if you plead guilty to more than one theft of a motor vehicle or unlawful taking of a motor vehicle that the license forfeitures and mandatory penalties imposed can be consecutive to each other? [Yes] [No]

DATE: _____
 DEFENSE ATTORNEY: _____
 DEFENDANT: _____
 PROSECUTOR: _____

State of New Jersey

v.



New Jersey Superior Court
Law Division - Criminal

DEFENDANT:
(Specify Complete Name)

DATE OF BIRTH	SBI NUMBER
DATE OF ARREST	DATE INDICTMENT/ ACCUSATION FILED
DATE OF ORIGINAL PLEA	ORIGINAL PLEA <input type="checkbox"/> NOT GUILTY <input type="checkbox"/> GUILTY

- JUDGMENT OF CONVICTION
- CHANGE OF JUDGMENT
- ORDER FOR COMMITMENT
- INDICTMENT / ACCUSATION DISMISSED
- JUDGMENT OF ACQUITTAL

ADJUDICATION BY

- | | | | |
|--------------------------------------|-------|--|-------|
| <input type="checkbox"/> GUILTY PLEA | DATE: | <input type="checkbox"/> NON-JURY TRIAL | DATE: |
| <input type="checkbox"/> JURY TRIAL | DATE: | <input type="checkbox"/> Dismissed/Acquitted | DATE: |

ORIGINAL CHARGES

IND / ACC NO.	COUNT	DESCRIPTION	DEGREE	STATUTE

FINAL CHARGES

COUNT	DESCRIPTION	DEGREE	STATUTE

It is, therefore, on _____ **ORDERED** and **ADJUDGED** that the defendant is sentenced as follows:

- The defendant is hereby sentenced to community supervision for life.
- The court finds that the defendant's conduct was characterized by a pattern of repetitive and compulsive behavior.
- The court finds that the defendant is amenable to sex offender treatment.
- The court finds that the defendant is willing to participate in sex offender treatment.

It is further **ORDERED** that the sheriff deliver the defendant to the appropriate correctional authority.

<input type="checkbox"/> Defendant is to receive credit for time spent in custody (R. 3:21-8).	TOTAL NUMBER OF DAYS	DATE (From/To)
		DATE (From/To)
<input type="checkbox"/> Defendant is to receive gap time credit for time spent in custody (N.J.S.A. 2C:44-5b(2)).	TOTAL NUMBER OF DAYS	DATE (From/To)

Total Custodial Term _____ Institution _____ Total Probation Term _____

<p style="text-align: center;">Total FINE \$ _____</p> <p style="text-align: center;">Total RESTITUTION \$ _____</p> <p>If the offense occurred on or after December 23, 1991, an assessment of \$50 is imposed on each count on which the defendant was convicted unless the box below indicates a higher assessment pursuant to N.J.S.A. 2C:43-3.1. (Assessment is \$30 if offense is on or after January 9, 1986 but before December 23, 1991, unless a higher penalty is noted. Assessment is \$25 if offense is before January 9, 1986.)</p> <p><input type="checkbox"/> Assessment imposed on count(s) _____ is \$ _____ each.</p> <p>Total VCCB Assessment \$ _____</p> <p><input type="checkbox"/> Installment payments are due at the rate of \$ _____ per _____ beginning _____ (DATE)</p>	<p>If any of the offenses occurred on or after July 9, 1987, and is for a violation of Chapter 35 or 36 of Title 2C,</p> <p>1) A mandatory Drug Enforcement and Demand Reduction (D.E.D.R.) penalty is imposed for each count. (Write in # times for each.)</p> <p style="margin-left: 40px;"> <input type="checkbox"/> 1st Degree @ \$3000 <input type="checkbox"/> 4th Degree @ \$750 <input type="checkbox"/> 2nd Degree @ \$2000 <input type="checkbox"/> Disorderly Persons or Petty <input type="checkbox"/> 3rd Degree @ \$1000 <input type="checkbox"/> Disorderly Persons @ \$500 </p> <p style="text-align: right;">Total D.E.D.R. Penalty \$ _____</p> <p><input type="checkbox"/> Court further ORDERS that collection of the D.E.D.R. penalty be suspended upon defendant's entry into a residential drug program for the term of the program.</p> <p>2) A forensic laboratory fee of \$50 per offense is ORDERED. _____ Offenses @ \$50.</p> <p style="text-align: right;">Total Lab Fee \$ _____</p> <p>3) Name of Drugs involved _____</p> <p>4) A mandatory driver's license suspension of _____ months is ORDERED.</p> <p>The suspension shall begin today, _____ and end _____</p> <p>Driver's License Number _____</p> <p>(IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING.)</p> <p>Defendant's Address _____</p> <p>Eye Color _____ Sex _____ Date of Birth _____</p> <p><input type="checkbox"/> The defendant is the holder of an out-of-state driver's license from the following jurisdiction _____. Driver's License Number _____</p> <p><input type="checkbox"/> Defendant's non-resident driving privileges are hereby revoked for _____ months.</p>	
<p>If the offense occurred on or after February 1, 1993 but was before March 13, 1995 and the sentence is to probation or to a state correctional facility, a transaction fee of up to \$1.00 is ordered for each occasion when a payment or installment payment is made. (P.L. 1992, c. 169). If the offense occurred on or after March 13, 1995 and the sentence is to probation, or the sentence otherwise requires payments of financial obligations to the probation division, a transaction fee of up to \$2.00 is ordered for each occasion when a payment is made. (P.L. 1995, c. 9).</p>		
<p>If the offense occurred on or after August 2, 1993, a \$75 Safe Neighborhood Services Fund assessment is ordered for each conviction. P.L. 1993, c. 220</p>		
<p>If the offense occurred on or after January 5, 1994 and the sentence is to probation, a fee of up to \$25 per month for the probationary term is ordered. (P.L. 1993, c. 275) Amount per month _____.</p>		
<p>If the crime occurred on or after January 9, 1997, a \$30 Law Enforcement Officers Training and Equipment Fund penalty is ordered.</p>		
<p>NAME (Court Clerk or Person preparing this form)</p>	<p>TELEPHONE NUMBER</p>	<p>NAME (Attorney for Defendant at Sentencing)</p>
<p>If the offense occurred on or after April 2, 1991 and the conviction or guilty plea is for violation of N.J.S.A. 2C:20-2 for theft of a motor vehicle or If the offense occurred on or after August 2, 1993 and the conviction or guilty plea is for a violation of N.J.S.A. 2C:20-10 for unlawful taking of a motor vehicle ("Joyriding") the following are imposed:</p> <p>1. A mandatory penalty of \$ _____.</p> <p style="margin-left: 40px;"> First Offense \$ 500 Second \$ 750 3rd or Subsequent Offense \$ 1000 </p> <p>2. A mandatory driver's license suspension of _____ years is ORDERED.</p> <p style="margin-left: 40px;"> First Offense 1 year license suspension Second Offense 2 year license suspension 3rd or Subsequent Offense 10 year license suspension </p> <p>The suspension shall begin today, _____ and end _____. Driver's License Number _____.</p> <p>IF THE COURT IS UNABLE TO COLLECT THE LICENSE, PLEASE ALSO COMPLETE THE FOLLOWING:</p> <p>Defendant's Address _____ Eye color _____ Sex _____ Date of Birth _____</p> <p><input type="checkbox"/> Defendant is the holder of an out-of-state driver's license from the following jurisdiction _____. Driver's License Number _____</p> <p><input type="checkbox"/> Defendant's non-resident driving privileges are hereby revoked for _____ Months.</p>		

STATEMENT OF REASONS -- INCLUDE ALL APPLICABLE AGGRAVATING AND MITIGATING FACTORS

[Empty area for the Statement of Reasons]

JUDGE (Name)	JUDGE (Signature)	DATE
--------------	-------------------	------

C. Recommendations for Legislative Change

1. Recodification of the Criminal Code

The Conference of Criminal Presiding Judges expressed concern that various amendments to the Code of Criminal Justice that have occurred over the years have made the Code's sentencing provisions disjointed and difficult to implement. The Conference requested that the Committee consider the possible need for a recodification of the sentencing provisions in the Criminal Code. Judge Davis sent a letter to Judge Stern explaining the concerns of the Presiding Judges.

The Committee agreed with the observation of the Presiding Judges. Amendments to the Code of Criminal Justice since its enactment in 1979 have placed sentencing provisions, which were almost exclusively contained in Chapters 43 and 44 when the Code was enacted, throughout the Code. Some feel that some of the mandatory sentence requirements have also been inconsistent with the Code's classification policies and sentencing based thereon. The Committee is of the opinion that a recodification, the purpose of which would be to make the Code's sentencing provisions easier to understand and implement, is now needed. The Committee decided that it would refer the issue to the Court with the recommendation that the Committee supports a review of the sentencing provisions.

D. Matters Previously Sent to the Supreme Court.

1. Apprendi/Johnson Issues.

In Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed.2d 235 (2000) the United States Supreme Court held that any fact, other than a prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proven beyond a reasonable doubt. In three cases decided in February 2001, the New Jersey Supreme Court considered the extent to which *Apprendi* impacted the *No Early Release Act* (NERA). In State v. Johnson, 166 N.J. 523 (2001) the Court construed NERA to require a jury determination, beyond a reasonable doubt, that the defendant committed a violent crime within the meaning of NERA before a sentencing court could impose the statute's mandatory minimum sentencing structure. The Court also said:

We acknowledge that our Criminal Code contains other provisions that, like NERA, increase mandatory minimum terms based on factual predicates found by the sentencing judge. Any questions concerning the validity of those statutes are not before us. Id. at 544.

The Court also invited the Committee to consider “appropriate procedures, including a NERA jury charge, that will satisfy the requirements of subsection (e) of NERA as thus construed [and] ... to consider whether R. 3:21-4(f) should be amended to require notice by the prosecutor of intent to impose a NERA sentence earlier than fourteen days after a guilty plea or return of the verdict.” Id. at 544-45.

In response to the Court's decision in Johnson, as well as the decisions in State v. Thomas, 166 N.J. 560 (2001) (where none of the NERA factors is an element of the offense charged, there must be additional proof as required by Johnson, of a NERA factor before there can be sentence enhancement under the Act) and State v. Rumblin, 166 N.J. 550 (2001) (principals and accomplices are treated the same for NERA purposes), the Committee considered the application of these decisions to NERA, as well as other parole ineligibility provisions in the Code.

(a) Amendment of R. 3:19-1.

The Committee decided that paragraph (b) of R. 3:19-1 (Several Defendants or Counts; Written Verdict Sheets) should be amended to provide for written verdict sheets for those offenses (*i.e.*, NERA, Graves Act) that require certain enhanced penalties. The Committee also determined that, given the number of NERA cases that judges are currently handling, this rule amendment should be adopted by the Court on an expedited basis rather than wait until the end of the rules cycle. The rule amendment was approved at the Court's Administrative Conference on June 19, 2001.

(b) Rule Relaxation of R. 3:21-4(f)

As stated above the Court asked the Committee to consider the amendment of paragraph (f) of R. 3:21-4 "to require notice by the prosecutor of intent to impose a NERA sentence earlier than fourteen days after a guilty plea or return of the verdict."

The Committee determined that there should be a rule relaxation requiring notice

of charges to be given with the plea offer or at the arraignment/status conference, which ever is earlier, and that the time for notice can be extended for good cause shown. The Court approved the recommendation by Order dated June 19, 2001.

(c) Amendment of Supplemental Plea Form for *No Early Release Act* Cases.

This plea form was first promulgated on October 8, 1998 via Directive #4-98. The Committee decided that the form should be amended to accurately reflect the requirements under the statute as set forth in State v. Johnson and its companion cases State v. Rumblin, 166 N.J. 550 (2001) and State v. Thomas, 166 N.J. 560 (2001). Specifically, the form includes a question regarding the waiving of a jury determination of a violent crime and it is amended to only list the maximum period of parole ineligibility.

The Court approved the amendments and the *Supplemental Plea Form for No Early Release Act* Cases for offenses occurring between June 7, 1997 and June 29, 2001 was promulgated on October 12, 2001 in Directive #15-01.

(d) New Supplemental Plea Form for *Graves Act* Offenses.

The Committee discussed the need to promulgate a supplemental plea form for Graves Act offenses in light of the Court's decision in Johnson that the factors that enhance a sentence are to be decided by a jury. As the Court acknowledged in

Johnson, the “Criminal Code contains other provisions that, like NERA, increase mandatory minimum terms based on factual predicates found by the sentencing judge.

Any questions concerning the validity of those statutes are not before us.” State v. Johnson, 166 N.J. at 544.

In regard to Graves Act offenses, the Committee was confronted with the issue of whether or not it should be pro-active and promulgate a plea form or whether this issue should first be resolved by case law. The Committee determined that a Graves Act plea form should be promulgated as a safeguard in the event that the ruling in Johnson applies to that statute. In reaching this conclusion, the Committee recognized that there is no prejudice to the defendant and there is a greater risk not amend the form and to deal with the consequences if it is determined that Johnson applies to the Graves Act and will apply retroactively to the date Johnson was decided.

The Court approved the Committee’s recommendation for adoption of a new *Supplemental Plea Form for Graves Act Offenses*. The Supplemental Plea Form was promulgated via Directive #15-01 on October 12, 2001.

E. Rule Recommendations and Other Issues Considered and Rejected.

1. R. 3:19-1.

On June 19, 2001 the Supreme Court adopted an amendment to R. 3:19-1 that the Committee had proposed to address the Court’s decisions in State v. Johnson, 166

N.J. 523 (2001); State v. Rumblyn, 166 N.J. 550 (2001) and State v. Thomas, 166 N.J. 560 (2001). See page 68. Supra.

The Committee was asked to consider whether this recent amendment might be misinterpreted. The rule has been revised to add the following sentence to the rule:

A written verdict sheet shall be used in those cases in which the jury must find the factual predicate for an enhanced sentence or the existence of a fact relevant to sentencing unless that factual predicate or fact is an element of the offense.

Concern was expressed that the phrase “unless that factual predicate or fact is an element of the offense” might suggest that a written verdict sheet would not be used in cases where the jury was being asked to consider or distinguish elements of the offense that will affect sentencing. The Committee felt no amendment was necessary given the nature of the rule.

The Committee was of the opinion that deleting the phrase could lead to juries reaching inconsistent verdicts and decided not to recommend any further amendment to the rule.

2. **R. 3:21-4.**

The Committee was asked to consider whether R. 3:21-4(f) should be amended to specifically provide when the State must provide notice that it will seek a sentence pursuant to N.J.S.A. 2C:43-7.2, the *No Early Release Act*, (NERA). When notice must be provided is only an issue in cases where the offense occurred prior to June 29, 2001, the date L. 2001, c. 129, which amended NERA, was signed because notice is now provided by statute for the relevant offense.

The Committee also discussed whether R. 3:21-4(e) should be amended to address notice requirements for enhanced sentences other than NERA, in light of Appendi.

The Committee decided not to recommend an amendment to R. 3:21-4(f) because of the statutory amendment to NERA. Rather, it determined that any remaining issues regarding the application of R. 3:21-4(e)or(f) should be left to development through case law. The Committee proposes to add to the commentary of the rule that the notice requirements of the rule can be relaxed for “good cause shown” in certain “pipeline” cases where the crime occurred before the statute was amended.

3. **State v. Cann.**

In State v. Cann, 342 N.J. Super. 93 (App. Div.) certif. denied, 170 N.J. 208 (2001), the defendant argued, in an application for post-conviction relief, that his trial counsel was ineffective for failing to request a DNA analysis of certain evidence. The trial court concluded that the claims were procedurally barred under R. 3:23-4 and time barred under R. 3:22-12. The Appellate Division agreed that the petition was time barred under R. 3:22-12, nevertheless it considered the defendant's contention that trial counsel was ineffective in failing to request DNA testing.

In order to establish that trial counsel was ineffective, a defendant must establish that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Because a convicted defendant does not have the results of a DNA test he can therefore never establish a reasonable probability of a different result. The Appellate Division concluded that applications for DNA testing are not suited for post-conviction relief proceedings. The Appellate Division further concluded that if a defendant desires a DNA sample for testing purposes, even post-conviction, he must make an application to the trial court.

The Committee was asked to consider whether any special rules or procedures should be drafted to address requests for DNA testing. The consensus of the Committee was that a rule was not necessary at this time.

4. Amendment of R. 3:3-1 and Implementation of the Drug Offender Restraining Order Act of 1999.

The Committee was asked to consider whether the rule governing the issuance of an arrest warrant or summons, R. 3:3-1, should be amended to include offenses covered by the Drug Offender Restraining Order Act (P.L. 1999, c. 334, N.J.S.A. 2C:35-5.4 to -5.8). The Act provides that “when a person is charged with a criminal offense and the person is released from custody before trial on bail or personal recognizance, or is released to the custody of a parent, guardian, custodian or public or private agency, the court, as a condition of release, and except as provided in subsection c. of this section, shall issue an order prohibiting the person from entering any place defined [in N.J.S.A. 2C:35-3.6].” The Act defines a “criminal offense” as certain crimes which involve the manufacturing, distributing, selling or possessing with intent to distribute a controlled dangerous substance or the unlawful possession or use of an assault firearm. Therefore, the Act permits the court to issue a Drug Offender Restraining Order (DORO) to persons charged with third and fourth degree drug offenses. In contrast, R. 3:3-1 provides that warrants shall generally be issued only for first and second degree drug offenses unless a summons is deemed inappropriate. Therefore, a DORO could not technically be issued for third and fourth degree offenses because the orders are issued as a condition of release, and there are no conditions for release on a summons.

The Committee discussed the possibility that a DORO could be issued on a

summons, but recognized that such action would not be in full compliance with the court rules. The discussion further revealed significant concerns with the DORO statute. Specifically, Committee members advised that during the Conference of Criminal Presiding Judges' meeting a discussion involved the problem that the municipal courts are not issuing these orders. Additionally, it appears that the prosecutor's offices are not seeking to have these orders issued.

On January 7, 2002, the Governor signed into law A-4026, with a line item veto changing the appropriated funds to the AOC. The statute otherwise provides that the issuance of such restraining orders is at the discretion of the court. Along with other amendments, the law also specifies the drug offenses subject to the Act and clarifies the court procedures depending upon whether the defendant is charged with a criminal offense on a warrant or a summons.

The Committee decided that no action would be taken on this issue now and that the applications that are being made can be handled on the record under the statute. The Committee suggested that the prosecutors discuss this issue and raise the subject again if problems arise.

5. **Review of the Municipal Appeals Process.**

As previously discussed, in State v. Cerefice, 335 N.J. Super. 374 (App. Div. 2000) the Appellate Division noted that the Committee had previously considered the *de novo* standard of review for municipal appeals and suggested that it may be appropriate for the Committee to reconsider this issue. The Municipal Appeals Subcommittee evaluated the possible abolition of the *de novo* standard of review for municipal appeals, the “vertical representation” of defendants in municipal courts, the Law Division and the Appellate Division, and incorporating the Cerefice decision into the Rules.

Regarding the municipal appeals process, the Subcommittee noted that a defendant convicted of a non-indictable offense in municipal court has the right to two appeals (considering the Law Division as a final judgment appealable as of right to the Appellate Division) and the opportunity to seek certification, whereas a defendant convicted of an indictable offense in the Law Division has only a substantive evidence review in the Appellate Division.

Accepting the Subcommittee’s recommendations, the Committee concluded that it was unnecessary to change the current procedure because the present review process is working well. However, the Subcommittee suggested two areas in need of clarification. First, the Subcommittee suggested that municipal court judges should be advised of both the order entered by the Law Division (R. 3:23 and R. 3:24) and the

reasons for an acquittal. (See R. 1:7-4). Second, the Subcommittee proposed that the Cerefice decision should be incorporated into the Rules.

A discussion of the Cerefice decision and the amendments to R. 3:23-2 and R. 7:13-1 are provided on pages 28-30 of this report.

Because the transcript of an acquittal on a trial *de novo* would rarely be ordered and available to the municipal court, the Committee will examine how best to communicate to the municipal court the reasons for disposition in addition to dispatching the appropriate judgment as required by R. 3:23-8(e).

6. Anti-Drug Profiteering Penalty.

The Anti-Drug Profiteering Act (N.J.S.A. 2C:35A-1 to -8; P.L. 1997, c. 187) establishes monetary penalties for individuals convicted of certain drug offenses and individuals involved in criminal street gang activity. The Committee considered whether the *Supplemental Plea Form for Drug Offenses* should be amended to include the Anti-Drug Profiteering Penalty.

At its May 12, 1999 meeting the Committee decided not to amend the plea forms to include the money laundering penalty. The Committee decided not to recommend an amendment to the plea form to include the drug penalties for the same reasons the money laundering penalties were excluded. In reaching its decision, the Committee considered that a prevailing purpose of the plea form is to ensure that the defendant is advised of all of the possible consequences of a guilty plea. Because the statute requires a prosecutor to make an application to the court before the penalty can be imposed, little danger exists that the defendant would be subject to the penalty without receiving an adequate prior warning. Additionally, the Committee recognized that the criteria in the statute delineating the scope of the Act is specific and the penalty does not apply to typical drug cases. Thus, the Committee reasoned that it would not be cost effective to amend the forms.

7. Confidentiality of Citizen Complaint Prior to a Determination of Probable Cause.

This matter was listed in the 1998-2000 Committee report as a matter held for future consideration. As part of its review of filing of citizen complaints, the Committee considered whether R. 1:38 should be amended to provide that a citizen complaint is to remain confidential to protect the defendant prior to a finding of probable cause.

Some members were concerned that frivolous, unfounded complaints are being made public before a judicial determination is made that probable cause exists. The Committee decided that the rule should not be amended at this time, essentially because courts must act in public session and on the record. In a related matter, as a result of a recommendation during the last rules cycle R. 3:3-1 was amended to eliminate the notice requirement concerning dismissal of citizen complaints. Members of the Committee believed that the amendment to R. 3:3-1 has had a positive impact on the municipal courts by eliminating unnecessary probable cause hearings generated by the interpretation of the former rule which required hearings because complainants had the right to object to the disposition.

8. Avenel Reports.

In a previous rules cycle the Committee considered the issue of delays in preparing Avenel reports. The Committee recommended that the AOC discuss this issue with the appropriate authorities with the suggestion that the Conference of Criminal Presiding Judges also review this issue because of its success in convincing the Executive Branch to reduce the delays in producing reports involving drug lab analysis.

A meeting with representatives from the Adult Diagnostic and Treatment Center and a survey of division managers revealed that the reports are now being completed within five weeks and the quality of the reports remains the same. The Criminal Practice Committee decided that no further action needs to be taken at this time.

9. Discovery Fees.

State v. Green, 327 N.J. Super. 334 (App. Div. 2000) involved the appeal of a municipal court conviction for speeding in a school zone. In the opinion, the Appellate Division commented on the problems experienced by the defendant in obtaining discovery materials. The opinion was referred to the Criminal Practice Committee and the Committee on Municipal Courts to consider whether a uniform rule governing discovery fees should be established. The Criminal Practice Committee learned that the County Prosecutors and Public Defender had worked out differing fee arrangements in every county and that the individual arrangements were working. Thus, the Committee decided not to recommend a rule amendment at this time.

10. Uniformity in Sentencing.

The Committee was asked to consider the issue of disparity in sentencing of co-defendants. It was suggested that the Committee take a position on the existence or non-existence of disparity in sentencing and provide a recommendation to the Court, if one was deemed necessary. The Committee reached a consensus not to refer the matter to the Court at this time as proving the existence or non-existence of disparity would likely require a large expenditure of money to study the issue.

F. Other Business.

1. *No Early Release Act Model Jury Charge.*

In State v. Johnson, 166 N.J. 523 (2001), the Court requested that the Criminal Practice Committee draft a NERA jury charge. The Criminal Practice Committee requested input from the Model Criminal Jury Charge Committee, which drafted a supplemental charge to be given with the final jury instructions. The Criminal Practice Committee reviewed the proposed supplemental charge and discussed whether bifurcation of sentencing issues should be discretionary. The Criminal Practice Committee suggested that bifurcation should be discussed with counsel before the charge is given.

The Model Criminal Jury Charge Committee approved the charge on June 19, 2001.

2. **Bail Pending Appeal.**

The Appellate Division advised the Committee that some motions for bail pending appeal are being made without the parties providing information about the bail, such as, whether the motion involves a continuation of bail or whether it involves a request for new bail. Additionally, the Appellate Division explained that motions for bail pending appeal and certification were being made without notice to the surety. The Appellate Division was concerned that, contrary to the governing law and court rules, bail for defendants has been continued without providing proper notice to the surety and without the filing of a Notice of Appeal.

The Committee discussed the mandates of R. 2:9-4 which governs bail after conviction, and State v. Vendrell, 197 N.J. Super. 232 (App. Div. 1984). Specifically, the Committee considered the requirement in Vendrell that bail ends at sentencing and that “post-conviction bail is a ‘new’ bail, requiring the consent of the surety.” Pressler, Current N.J. Court Rules, Comment on R. 2:9-4 (2001). The Committee sent a memorandum to Judge Davis requesting that the Conference of Criminal Presiding Judges remind the Criminal Division Judges that bail terminates at sentencing and defendants must be incarcerated or granted new bail before they can be released. The memorandum also asked the Conference to explain that bail cannot

be set or continued pending appeal until a Notice of Appeal is filed and notice is given to the surety. Judge Davis sent a memorandum to the Criminal Division Judges on June 14, 2001.

3. Resentencing of Defendants.

When resentenced, a defendant is entitled to receive commutation (good time), minimum custody and work credits earned while incarcerated in a state facility. Periodically, the judiciary has received complaints that inmates who were resentenced were not given credits earned while incarcerated following the prior sentence. The judgment of conviction (JOC) only lists jail credits and gap time credits. It was suggested that the judgment of conviction (JOC) should be amended to resolve this situation.

The Criminal Practice Committee and the Conference of Presiding Judges reviewed the matter. During the discussion it was decided that the JOC should not be amended because there are so few resentencings. Instead, the Committee decided to send a letter to Judge Davis, Chair of the Conference of Criminal Presiding Judges, asking her to remind the judges and division managers that for resentencings the issue of credits earned for time served must be dealt with.

Subsequently, this issue was discussed by the Criminal Presiding Judges at their March 21, 2001 meeting. They agreed that a sentence should be added to the JOC when appropriate. After further consultation with the Criminal Division Managers, specific language for the sentence was agreed upon:

In addition to the jail credits and gap time credits indicated, defendant shall be given credit for time served on this indictment while in the custody in of the Department of Corrections.

Judge Davis sent a memorandum to the Criminal Division Judges on June 14, 2001.

G. Matters Held for Future Consideration.

1. Setting Forth the Actual *No Early Release Act* (NERA) Term on Judgment of Conviction.

The Committee was asked to consider whether the actual 85% parole ineligibility term mandated under NERA should be required to be placed on the judgment of conviction. The current practice is that the judgment of conviction in NERA cases indicates that the offender “must serve 85% of the maximum term”. The judgment of conviction does not indicate the parole ineligibility term in years, months and days. The reason for this is that it is now impossible to create a chart for judges to use that is totally accurate because any such chart must take into account the month of sentence, the number of days in each succeeding month and the additional day that must be added for each leap year that will occur during the term of incarceration imposed.

The matter was not completed this term, therefore, it was carried until the next term, so that technology can be evaluated in terms of developing an accurate chart.

2. Drug Offender Restraining Order (DORO) Act.

As discussed on page 76 of this report, the Drug Offender Restraining Order Act requires the court to issue a restraining order prohibiting certain offenders from entering premises, locations or areas, where the offense occurred. A-4026, which was signed by the Governor on January 7, 2002, contains amendments to the Act. The Committee was asked to consider whether a question addressing DORO needs to be added to the plea form.

This matter was not completed this term, therefore, it was carried until the next term.

3. Petitions for Post-Conviction Relief.

R. 3:22-6(a) provides that indigent defendants are assigned counsel from the Public Defender's Office on first petitions for post-conviction relief (PCR). Assignments on second or subsequent petitions attacking the same conviction are referred to the Public Defender's Office only upon an application and good cause shown. R. 3:22-6(b). The Committee was asked to consider whether the rules addressing post-conviction relief should be amended regarding the assignment of counsel and hearings, whether assignment of counsel on first petitions should remain mandatory or become discretionary, and if it is discretionary, who should exercise discretion with respect to assignments on first and subsequent petitions. A number of meaningful cases are delayed by the number of post conviction relief petitions handled by the Public Defender, and the needed devotion of resources to each case.

Because this issue impacts the Public Defender's Office the most, the Committee asked the Public Defender's Office to review the issue and report to the Committee regarding proposed amendments. The Public Defender's Office expressed the view that New Jersey rules should follow the procedure used in the federal courts where there is no automatic right to counsel. Instead, a defendant makes an application for counsel and the court determines whether counsel should be assigned.

However, beginning on November 14, 2001, the Public Defender's Office instituted a statewide PCR Unit to handle petitions for post-conviction relief. The

Committee decided to have the Public Defender's Office provide a report of the progress of the PCR Unit in a few months, at which time the Committee will revisit whether a rule amendment is necessary.

4. R. 3:28(f).

The Committee discussed the language of R. 3:28(f). The first sentence states that when the criminal division manager and prosecutor reject an application for pretrial intervention (PTI), pretrial review is only available, by leave granted, when the judge reverses the rejection of entry into PTI. The second sentence of the rule states that an order enrolling a defendant into PTI over the prosecutor's objection is final for purposes of appeal. The Committee found that this language was confusing because the rule was not intended to allow a right of review of the prosecutor's rejection of a PTI application which is upheld by the judge. It was only intended to address the prosecutor's right to appeal when the court overrules the refusal of entry into PTI. The Committee agreed that this language should be clarified.

The matter was not completed during this term. The Committee will consider this issue during the next term.

5. Regulations of Bounty Hunters.

The United States Supreme Court decision in Taylor v. Taintor, 83 U.S. 366 (1872) sets forth the foundation for the common law rights of bounty hunters pursuing and arresting fugitives. Most jurisdictions consider bail to be an extension of the defendant's original confinement, in which the bounty hunter, acting on behalf of the surety, may arrest a fugitive with the same authority as a law enforcement official over an escaping prisoner. However, bounty hunters have been long recognized by courts as private actors and, therefore, immune from criminal restraints. The Committee was asked to consider whether there should be a court rule governing bounty hunters.

This matter was not completed by the Committee this term, therefore, it was carried until the next term.

6. State v. Bryan Miller.

In State v. Bryan Miller, the defendant was charged with robbery and aggravated assault, along with other offenses. The jury initially reached a verdict convicting defendant of first degree robbery by purposely inflicting or attempting to inflict serious bodily injury. With respect to the aggravated assault charge, the jury found the defendant not guilty of second degree aggravated assault as defined by N.J.S.A. 2C:12-1b(1), but guilty of the third degree crime defined by N.J.S.A. 2C:12-1b(7). As explained in the verdict sheet, the difference between the two assault crimes was that the second-degree crime required the jury to find that the defendant “did recklessly cause serious bodily injury,” while the third degree crime required the jury to find that the defendant “did recklessly cause significant bodily injury.”

It appeared to the judge and counsel that the robbery and assault verdicts were inconsistent because of the disparity in the nature of the bodily injury found in each. Instead of accepting the verdicts, the judge, with the concurrence of counsel, explained the inconsistency to the jury in order to permit it to clarify its intended result by continuing deliberations. The jury was permitted to return the same verdicts or modify either the robbery or assault verdict. After further deliberations, the jury reached the same robbery verdict, but concluded that the assault had the element of serious bodily injury, rather than significant bodily injury.

The Appellate Division stated:

Although a jury being asked to continue its deliberations when its verdict appears inconsistent is clearly a sanctioned procedure in civil cases, see R. 4:39-2; Mahoney v. Podolnick, 168 N.J. 202, 221-23 (2001), there is no analog rule or reported case in this jurisdiction addressing that procedure in criminal cases.

The Committee was asked to consider the need for a rule addressing how a jury should be asked to continue deliberations when an inconsistent verdict is perceived.

This issue remains under consideration.

7. **R. 3:5-7.**

The Committee was asked to consider the procedures for filing suppression motions for warrantless searches. The rule permits the defendant to file a motion to suppress by alleging that an unlawful search occurred. The prosecutor must then file a brief and affidavit in support of the search. In one county, the prosecution has filed “check-off” briefs or briefs relying on the police report. The defendant responds by brief and counter statement. As a result, the proceeding resembles discovery and some judges have had difficulty determining if a fact issue will be presented at the hearing.

It was suggested that without changing the burden of proof, a subcommittee should review the procedure regarding the filing of suppression motions, including whether hearings should be routinely scheduled if the defense alleges material facts are in dispute, whether briefs should be submitted after the hearing, and whether the motions should be decided sufficiently in advance of trial (*i.e.* before the plea cut-off).

The Subcommittee on Motions to Suppress considered these issues and proposed the following amendment to R. 3:5-7:

(b) Briefs. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall, within ten days thereafter, submit a brief stating the facts and arguments in support of the search to which the movant may reply by brief submitted no later than three days before the hearing. If the search was made without a warrant, the State shall, within 15 days of the filing of the motion, file a brief, including a statement of the facts as it alleges them to be, and the movant shall file a brief and counter statement of facts no later than three days before the hearing. Pursuant to R. 3:10-2(a), the court may change the order and dates for filing, briefing

and hearing any such motion, but any such change shall not alter the burden of proof imposed by law to establish the validity or invalidity of the search.

The Subcommittee suggested this language to give the judge the discretion at the arraignment or status conference to decide the order of briefing and whether to hold a hearing.

The Committee discussed whether there should be an evidentiary hearing on every motion to suppress involving a warrantless search, even when the defendant does not contest the facts. Some members had concerns with the proposed amendments if they remove the hearing requirement. The Committee also considered amending paragraphs (b) and (c) in R. 3:5-7 or incorporating R. 3:10-2(a) into R. 3:5-7. The Committee could not reach a consensus to amend the rule. It agreed to discuss the matter further with the Conference of Criminal Presiding Judges and to consider this issue further during the next term.

8. Arrest Warrants by Telephone.

The Committee was asked to consider whether there should be any rule amendments to permit the issuance of arrest warrants by telephone. The question arose when an Assignment Judge became aware of a practice in his county permitting police officers to obtain arrest warrants by telephone. The current rules do not specifically permit such a practice with regard to arrest warrants, see R. 3:2-3, 3:3-1 and 3:4-1, but do permit the practice with regard to obtaining search warrants. *See R.* 3:5-3(b).

A joint subcommittee comprised of members of the Criminal Practice and Municipal Practice Committees was created. The Committees were not able to complete their work prior to the filing of this report. When the Committees do so, they will file a report with the Court.

9. Partial Stipulation of Facts.

The Committee will monitor the impact of R. 3:17 and the need for a rule considering stipulations as to evidence other than those governed by R. 3:17 in the next cycle. *See* page 4 *supra*.

Respectfully submitted,

Honorable Edwin H. Stern, Chairman
Honorable Lawrence Lawson, Vice-Chairman
Honorable Carmen H. Alvarez
Honorable Leonard N. Arnold
Honorable Eugene H. Austin
Honorable Linda G. Baxter
Prosecutor Jeffrey S. Blitz
Alan Dexter Bowman, Esquire
John M. Cannel, Esquire
Prosecutor John B. Dangler
Honorable Elaine L. Davis
Honorable Frederick P. DeVesa
Honorable Katherine R. Dupuis
Director Kathryn Flicker
Honorable F. Michael Giles
Honorable Donald S. Goldman
Joel Harris, First Assistant Public Defender
Dale Jones, Assistant Public Defender
Honorable Joseph F. Lisa
James P. Lynch, First Assistant Prosecutor
Peter D. Manahan, Esquire
Michael J. Marucci, Deputy Public Defender
Prosecutor E. David Millard
Acting Prosecutor Boris Moczula
Dennis A. Murphy, Esquire
Anne C. Paskow, Assistant Attorney General
Lawrence C. Lustberg, Esquire
Regina Sauter, Assistant Public Defender
Honorable Edward R. Schwartz
Honorable Isaiah Steinberg
Debra L. Stone, Assistant Attorney General
Honorable Randolph M. Subryan
Honorable Harvey Weissbard
Alan L. Zegas, Esquire

AOC Staff: Joseph J. Barraco, Esquire
Vance D. Hagins, Esquire
Melaney S. Payne, Esquire

January 15, 2002