RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 3:28. PRETRIAL INTERVENTION PROGRAMS

(a) Each Assignment Judge shall designate a judge or judges to act on all matters pertaining to pretrial intervention programs in the vicinage in accordance with N.J.S.A. 2C:43-12 and -13.

(b) Where a defendant charged with a penal or criminal offense has been accepted by the program, the designated judge may, on the recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed thirty-six months.

(c) At the conclusion of the period set forth in paragraph (b) or earlier upon motion of the criminal division manager, the designated judge shall make one of the following dispositions:

(1) On recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "matter adjusted-complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the criminal division manager and with the consent of the prosecutor and the defendant, further postpone all proceedings against such defendant on such charges for an additional period of time as long as the aggregate of postponement periods under the rule does not exceed thirty-six months; or

(3) On the written recommendation of the criminal division manager or the prosecutor or on the court's own motion order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the criminal division manager or the prosecutor, such person shall, before submitting such recommendation to the designated judge, provide the defendant or defendant's attorney with a copy of such recommendation, shall advise the defendant of the opportunity to be heard thereon, and the designated judge shall afford the defendant such a hearing.

(4) During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investigative reports, reports made for a court or prosecuting attorney, or statements made by the defendant to program staff shall be admissible in evidence against such defendant.

(5) No statement or other disclosure regarding the charge or charges against the participant made or disclosed by a participant in pretrial intervention to a person designated to provide supervisory treatment shall be disclosed by such person at any time, to the prosecutor, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant, provided that the criminal division

manager shall not be prevented from informing the prosecutor, or the court, on request or otherwise, whether the participant is satisfactorily responding to supervisory treatment.

(d) Where proceedings have been postponed against a defendant for an additional period as provided in paragraph (c)(2), at the conclusion of such period the designated judge may not again postpone proceedings but shall make a disposition in accordance with paragraph (c)(1) or (3). The aggregate of postponement periods under this rule shall in no case exceed thirty-six months.

(e) The Administrative Director of the Courts shall establish and maintain a Pretrial Intervention Registry for the purpose of determining applications, enrollments and the degree of completion thereof by a defendant in a program approved by the Supreme Court in accordance with paragraph (a). The Pretrial Intervention Registry shall contain such information and material as directed by the Supreme Court. No order to expunge or seal records of arrest after dismissal of a complaint, indictment or accusation under paragraph (c) or (d) shall bar the retention of material and information in the Pretrial Intervention Registry for the purposes of determining a defendant's prior applications to, enrollments in and the degree of completion of a Pretrial Intervention Program or for statistical reports required of the Administrative Director of the Courts, by law or the Supreme Court.

(f) When the criminal division manager and prosecutor reject an application for participation in the pretrial intervention program, there shall be no pretrial review by an appellate court if the rejection is upheld by the designated judge or the Assignment Judge. An order enrolling a defendant into the pretrial intervention program over the prosecutor's objection shall be deemed final for purposes of appeal, as of right, and shall be automatically stayed for fifteen days following its entry and thereafter pending appellate review.

(g) Denial of acceptance pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty.

(h) Application for pretrial intervention shall be made at the earliest possible opportunity, including before indictment, but in any event no later than twenty-eight days after indictment. The criminal division manager shall complete the evaluation and make a recommendation within twenty-five days of the filing of the application. The prosecutor shall complete a review of the application and inform the court and defendant within fourteen days of the receipt of the criminal division manager's recommendation.

An appeal by the defendant shall be made on motion to the Presiding Judge of the Criminal Division or to the judge to whom the case has been assigned within ten days after the rejection and shall be made returnable at the next status conference or at such time as the judge determines will promote an expeditious disposition of the case.

Where application is made pre-indictment, the prosecutor may withhold action on the application until the matter has been presented to the grand jury.

Note: Adopted October 7, 1970, effective immediately. Paragraphs (a)(b)(c)(d) amended June 29, 1973, to be effective September 10, 1973; caption and paragraphs (a)(b)(c)(d) amended April 1, 1974 effective immediately; paragraph (e) adopted January 10, 1979 to be effective January 15, 1979; paragraphs (a)(b)(c)(d) amended August 28, 1979 to be effective September 1, 1979; paragraphs (f) and (g) adopted October 25, 1982 to be effective December 1, 1982; paragraphs (a) (b) (c) (d) and (f) amended and paragraph (h) added July 13, 1994, to be effective January 1, 1995; paragraph (f) amended June 28, 1996 to be effective September 1, 1996; paragraph (f) amended July 12, 2002 to be effective September 3, 2002; paragraph (c)(4) amended June 15, 2007 to be effective September 1, 2007.

GUIDELINES FOR OPERATION OF PRETRIAL INTERVENTION IN NEW JERSEY

(As Amended Effective September 1, 2016)

SUPREME COURT OF NEW JERSEY

ORDERED that the attached revised guidelines governing pretrial intervention programs are approved for implementation as applicable in counties where such programs have been authorized by the Supreme Court pursuant to R. 3:28; and FURTHER ORDERED that the guidelines approved by the order of January 10, 1979 are hereby superceded.

For the Court,
Robert N. Wilentz C.J.
Dated: July 13, 1994

Guideline 1

The purposes of pretrial intervention are:

(a) To provide defendants with opportunities to avoid ordinary prosecution by receiving early rehabilitative services, when such services can reasonably be expected to deter future criminal behavior by the defendant, and when there is an apparent causal connection between the offense charged and the rehabilitative need, without which cause both the alleged offense and the need to prosecute might not have occurred.

(b) To provide an alternative to prosecution for defendants who might be harmed by the imposition of criminal sanctions as presently administered, when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct.

(c) To provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses.

(d) To assist in the relief of presently overburdened criminal calendars in order to focus expenditure of criminal justice resources on matters involving serious criminality and severe correctional problems.

(e) To deter future criminal or disorderly behavior by a defendant/participant in pretrial intervention.

Official Comment

Guideline 1(a) states a rehabilitative model on which PTI programs in New Jersey are based. The rehabilitative model emphasizes that social, cultural and economic conditions often result in a defendant's choice of environmental compulsion to commit crime. PTI seeks to solve personal problems which tend to result from the conditions that appear to cause crime.

Guideline 1(b) recognizes that diversion in appropriate circumstances can serve as sufficient sanction to deter future criminal conduct.

Guideline 1(c) provides for the use of PTI as a mechanism for minimizing penetration into the criminal process for broad categories of offenders accused of "victimless crimes," without relinquishing criminal justice control over such persons while statutes proscriptive of such behavior remain in force.

Guideline 1(d) provides for removing from ordinary prosecution those who can be deterred from criminal behavior by short term rehabilitative work or supervision. It is to be emphasized that the potential for rehabilitation must be considered in light of the time periods embodied in Rule 3:28(b), (c), (d).

The deterrence of criminal behavior in many cases requires intensive work: counseling, psychotherapy, drug-abuse prevention and control, employment placement. Programs in these cases should be measured against available treatment facilities and the time constraints of PTI. For other defendants, however, no more than a supervised pretrial probationary period may be necessary when no extensive need for rehabilitative services can be discerned.

Guideline 1(e) acknowledges that pre-conviction rehabilitation can be in the public interest when it results in the deterrence of future misconduct.

Guideline 2

Eligibility for PTI is broad enough to include all defendants who demonstrate sufficient effort to effect necessary behavioral change and show that future criminal behavior will not occur. Any defendant accused of crime shall be eligible for admission into a PTI program. When the application indicates factors which would ordinarily lead to exclusion under the guidelines established hereinafter, the applicant nevertheless shall have the opportunity to present to the criminal division manager, and through the criminal division manager to the prosecutor, any facts or materials demonstrating the defendant's amenability to the rehabilitative process, showing compelling reasons justifying the

defendant's admission, and establishing that a decision against enrollment would be arbitrary and unreasonable.

Official Comment

Guideline 2 provides that each applicant for a PTI program is entitled to full and fair consideration of his or her application. When the application indicates factors that cause either the criminal division manager to reject the application or the prosecutor to deny consent to an enrollment, a statement particularizing the reasons for the rejection or the withholding of consent by the prosecutor must be furnished to the defendant. If the defendant wishes to challenge a rejection by the criminal division manager, or the prosecutor's denial of consent to enrollment, the defendant may do so in accordance with the procedures set forth in guidelines 6 and 8. It is the duty of the applicant to allege and present any facts and materials to the criminal division manager for reconsideration either by the criminal division manager or prosecutor, if the prosecutor has denied consent, showing compelling reasons justifying admission, and establishing that a decision against enrollment would be arbitrary and unreasonable. The presentation of this material should be done concurrently with the filing of a motion under guideline 8 for review of a decision by a criminal division manager not to recommend or of a prosecutor not to consent to enrollment.

Guideline 3

In evaluating a defendant's application for participation in a pretrial intervention program, consideration shall be given to the criteria set forth in N.J.S.A. 2C:43-12(e). In addition thereto, the following factors shall also be considered together with other relevant circumstances:

(a) Age. Pretrial intervention is designed to deal only with adult defendants who, in accordance with New Jersey law, are those persons above the age of 18. Also included are those juveniles between the ages of 14 and 18 who are treated as adults under R. 5:22-1 or 5:22-1.

(b) Residence. New Jersey's PTI program is designed to deal with the problem of crime in New Jersey. Only those defendants are ineligible who reside such distances from New Jersey as to bar effective counseling or supervisory procedures.

(c) Jurisdiction. Only defendants charged with criminal or penal offenses in the criminal or municipal courts of the State of New Jersey may be enrolled pursuant to R. 3:28.

(d) Minor Violations. Defendants should not be eligible for enrollment if the likely disposition would result in a suspended sentence without probation or a fine. Those charged with ordinance, health code and other similar violations are not eligible.

(e) Prior Record of Convictions. While the pretrial intervention program is not limited to "first offenders", defendants who have been previously convicted of a criminal offense should ordinarily be excluded. Such defendants who have at any prior time been convicted of a first or second degree crime or who irrespective of the degree of the crime have completed a term of probation, incarceration or parole within five years prior to the date of application for diversion shall ordinarily not be considered for enrollment in PTI except on joint application by the defendant and the prosecutor. Defendants charged with more than one offense may be considered for enrollment.

(f) Parolees and Probationers. Defendants who, at the time of arrest, are probationers or parolees should be considered for enrollment under R. 3:28 only after consultation with the Chief Probation Officer or District Parole Supervisor whose departments supervise the defendants, and only after they have agreed that revocation of probation or parole need not be recommended or after the appropriate authority has made the decision not to revoke probation or parole.

(g) Defendants Previously Diverted. Supervisory treatment may occur only once with respect to any defendant who has previously been enrolled in a program of pretrial intervention or conditionally discharged pursuant to N.J.S.A. 24:21-27 or N.J.S.A. 2C:36A-1. All applications for enrollment in a PTI program must proceed in accordance with the rules of the Supreme Court and these guidelines after reference to the Pretrial Intervention Registry established pursuant to R. 3:28(e) and N.J.S.A. 2C:43-21(a). No order to expunge or seal records of arrest after dismissal of a complaint, indictment or accusation under paragraph (c) or (d) shall bar the retention of material and information in the Pretrial Intervention Registry for the purposes of determining a defendant's prior applications to, enrollments in, and the degree of completion of a Pretrial Intervention Program or for statistical reports required of the Administrative Director of the Courts, by law or the Supreme Court.

(h) Eligibility Under N.J.S.A. 24:21-27 or N.J.S.A. 2C:36A-1. The statutes set forth the criteria for eligibility and guidelines for exclusion. Defendants eligible for pretrial intervention or conditional discharge pursuant to N.J.S.A. 2C:36A-1 or § 27 of the Controlled Dangerous Substances Act may be placed under the supervision of a pretrial intervention program.

(i) Assessment of the Nature of the Offense. Any defendant charged with crime is eligible for enrollment in a PTI program, but the nature of the offense is a factor to be considered in reviewing the application. If the crime was (1) part of organized criminal activity; or (2) part of a continuing criminal business or enterprise; or (3) deliberately committed with violence or threat of violence against another person; or (4) a breach of the public trust where admission to a PTI program would deprecate the seriousness of defendant's crime, the defendant's application should generally be rejected. A defendant charged with a first or second degree offense or sale or dispensing of Schedule I or II narcotic drugs as defined in L.1970, c. 226 (N.J.S.A. 24:21-1 et seq.) by persons not drug dependent, should ordinarily not be considered for enrollment in a PTI program except on joint application by the defendant and the prosecutor. However, in such cases, the

applicant shall have the opportunity to present to the criminal division manager, and through the criminal division manager to the prosecutor, any facts or materials demonstrating the applicant's amenability to the rehabilitative process, showing compelling reasons justifying the applicant's admission and establishing that a decision against enrollment would be arbitrary and unreasonable.

(j) Co-defendants. The impact of diversion on the prosecution of co-defendants is a factor to be considered.

(k) Restitution and Community Service. A restitution or community service requirement, or both, may be included as part of an individual's service plan when such a requirement promises to aid the rehabilitation of the offender. Any such requirement and its terms shall be judicially determined at the time of enrollment following recommendation by the criminal division manager and consent by the Prosecutor. Evidence of the restitution condition is not admissible against defendant in any subsequent civil or criminal proceeding. Admission to the program shall not be denied solely on the basis of anticipated inability to meet a restitution requirement. Where appropriate to further rehabilitation, symbolic or partial restitution may be included in the service.

Official Comment

Guideline 3, in its introductory statement, requires that the statutory criteria of N.J.S.A. 2C:43-12(e) be considered in the evaluation of a defendant's application for pretrial intervention. That statutory provision requires consideration of those criteria "among others." Accordingly, the original criteria of this guideline have also been retained as explanatory of and supplemental to the statutory criteria. For convenience in reference, the statutory criteria are as follows:

(1) The nature of the offense;

(2) The facts of the case;

(3) The motivation and age of the defendant;

(4) The desire of the complainant or victim to forego prosecution;

(5) The existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;

(6) The likelihood that the applicant's crime is related to a condition or situation that would be conducive to change through his participation in supervisory treatment;

(7) The needs and interests of the victim and society;

(8) The extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior;

(9) The applicant's record of criminal and penal violations and the extent to which he may present a substantial danger to others;

(10) Whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior;

(11) Consideration of whether or not prosecution would exacerbate the social problem that led to the applicant's criminal act;

(12) The history of the use of physical violence toward others;

(13) Any involvement of the applicant with organized crime;

(14) Whether or not the crime is of such a nature that the value of supervisory treatment would be outweighed by the public need for prosecution;

(15) Whether or not the applicant's involvement with other people in the crime charged or in other crime is such that the interest of the State would be best served by processing his case through traditional criminal justice system procedures;

(16) Whether or not applicant's participation in pretrial intervention will adversely affect the prosecution of co-defendants; and

(17) Whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment program.

Guideline 3(a) indicates that the services of PTI programs may, in appropriate instances and at the request of juvenile authorities and programs, be made available to juvenile defendants when the need for inter-program cooperative work is indicated.

Under Guideline 3(b), residents of other States, charged with offenses in New Jersey counties in which there exist pretrial intervention programs may, with the approval of the prosecuting attorney, the designated judge, and Administrative Office of the Courts, be permitted to participate in such out-of-state program while enrolled pursuant to R. 3:28.

Regardless of the New Jersey jurisdiction in which the complaint, indictment or accusation has been filed, defendants or participants may, with the agreement of the PTI coordinators involved, be transferred for participation among the various county or vicinage programs.

Guideline 3(c) establishes jurisdictional requirements. However, defendants charged in other States or in the Federal Courts, may in appropriate instances and with the permission of the Administrative Office of the Court, be permitted to participate in the counseling or supervision regimes of the county or vicinage PTI programs on request of the Federal Authorities or a PTI program in another State.

Guideline 3(d) sets forth the policy that those charged with minor violations should not be admitted to a PTI program. It is felt that while no per se exclusion of non-indictable offenses is appropriate, the PTI process is not appropriate for such cases which do not involve a potential sentence of consequence. Rodriguez v. Rosenblatt, 58 N.J. 281, 277 A.2d 216 (1971).[1](Of course all defendants charged with an indictable offense are eligible for PTI.)

Guideline 3(e) makes it clear that a prior criminal record may be indicative of a behavioral pattern not conducive to short term rehabilitation. Therefore, pretrial intervention should ordinarily be limited to persons who have not previously been convicted of a crime and hence a rebuttable presumption against enrollment is created by the fact of a prior conviction. An even heavier onus is placed upon defendants whose prior conviction is of a first or second degree crime or who have completed a term of imprisonment, probation or parole within the five-year period immediately preceding the application for diversion. As to those defendants, admission to the program is ordinarily dependent upon the prosecutor joining in the PTI application.

Guideline 3(f) sets forth a policy permitting probationers and parolees to enter PTI programs. Since the parolee/probationer is under the supervision of the District Parole Supervisor or Chief Probation Officer, consultation should be sought prior to recommending enrollment of the defendant into a PTI program.

Guideline 3(g) creates a bar against admission into a PTI program for those defendants who have previously been diverted under N.J.S.A. 2C:43-12 et seq. or conditionally discharged pursuant to N.J.S.A. 24:21-27 or N.J.S.A. 2C:36A-1. The Pretrial Intervention Registry established pursuant to N.J.S.A. 2C:43-21(a) and R. 3:28 serves as the means of identifying defendants previously diverted through a PTI program. This registry is designed to complement the Controlled Dangerous Substance Registry Act of 1970, pursuant to N.J.S.A. 26:2G-17 et seq.

Guideline 3(h) deems it appropriate that PTI programs may assume the supervision of N.J.S.A. 24:21-27 or N.J.S.A. 2C:36A-1 cases.

Guideline 3(i) recognizes that consistent with State v. Leonardis, 71 N.J. 85, 363 A.2d321 (1976) and 73 N.J. 360, 375 A.2d 607 (1977), there must be a balance struck between a defendant's amenability to correction, responsiveness to rehabilitation and the nature of the offense. It is to be emphasized that while all persons are eligible for pretrial intervention programs, those charged with offenses encompassed within certain enumerated categories must bear the burden of presenting compelling facts and materials justifying admission. First and second degree crimes (and their Title 2A cognates) and the sale or dispensing of Schedule I and II narcotics by persons not drug dependent are specific categories of offenses that establish a rebuttable presumption against admission of defendants into a PTI program. This presumption reflects the public policy of PTI. PTI programs should ordinarily reject applications by defendants who fall within these categories unless the prosecutor has affirmatively joined in the application. A heavy burden rests with the defendant to present to the criminal division manager at the time of application (a) proof that the prosecutor has joined in the application and (b) any material

that would otherwise rebut the presumption against enrollment. When a defendant charged with a first or second degree crime or the sale or dispensing of Schedule I or II narcotics has been rejected because the prosecutor refuses to consent to the filing of the application, or because in the sound discretion of the criminal division manager the defendant has not rebutted the presumption against admission, the burden lies with the defendant upon appeal to the court to show that the prosecutor or criminal division manager abused such discretion. When an application is rejected because the defendant is charged with a crime of the first or second degree or sale or dispensing of Schedule I or II narcotics, and the prosecutor refuses to join affirmatively in the filing of an application or later refuses to consent to enrollment, such refusal should create a rebuttable presumption against enrollment.

Guideline 3(k) recognizes that the use of restitution and community service may play an integral role in rehabilitation. Requiring either is strongly consonant with the individual approach defined in State v. Leonardis, 71 N.J. 85, 363 A.2d 321 (1976) and 73 N.J. 360, 375 A.2d 607 (1977), which emphasized the needs of the offender. In determining the restitution requirement and its terms including ability of the offender to pay, the Court should rely on the procedures outlined in State in Interest of DGW, 70 N.J. 488, 361 A.2d 513 (1976) and State v. Harris, 70 N.J. 586 (1976).

Full restitution need not be completed during participation in the program. In determining whether a restitution requirement has been fulfilled, the designated judge shall consider good-faith efforts by the defendant. In appropriate cases, at the conclusion of participation, a civil judgment by confession may be entered by the court. However, restitution should never be used in PTI for the sole purpose of collecting monies for victims.

Guideline 4

Enrollment in PTI programs should be conditioned upon neither informal admission nor entry of a plea of guilty. Enrollment of defendants who maintain their innocence should be permitted unless the defendant's attitude would render pretrial intervention ineffective.

Official Comment

A PTI program is presented to defendants as an opportunity to earn a dismissal of charges for social reasons and reasons of present and future behavior, legal guilt or innocence notwithstanding. This stance produces a relation of trust between counselor and defendant. Within the context of pretrial intervention when and whether guilt should be admitted is a decision for counselors. Counselors should be free to handle each case individually according to their best judgment.

Neither admission of guilt nor acknowledgment of responsibility is required. Steps to bar participation solely on such grounds would be an unwarranted discrimination.

Nevertheless, many guilty defendants blame their behavior on society, family, friends or circumstance, and avoid recognition of the extent of their own role and responsibility. While such an attitude continues, it is unlikely that behavioral change can occur as a result of short-term rehabilitative work. An understanding and acceptance of responsibility for behavior achieved through counseling, can and often does, result in the beginnings of the defendant's ability to control his/her acts and is an indication that rehabilitation may, in large measure, have been achieved.

Guideline 5

Effective operation of pretrial intervention programs requires that a relationship of confidence and trust be initiated and maintained between participating defendants and staff. No information, therefore, obtained as a result of a defendant's application to or participation in a pretrial intervention program should be used, in any subsequent proceeding, against his or her advantage.

Official Comment

That a relationship based on trust is necessary for the rehabilitation/attitude change process to operate cannot seriously be doubted, and the policy reflected in the admissibility and defendant protection provisions of R. 3:28 and R. 1:38 recognizes such a need. The priority of the maintenance of the counselor-participant relation over the need for disclosures resulting from this relationship is the same, of course, as the priority for the maintenance of, for example, the confidentiality of lawyer-client, physician/psychologist-patient communications. (Counselors should feel free to shroud their association in an air of confidentiality. Use of information gathered in this process would most likely be barred from future proceedings "as contrary to basic standards of due process and fundamental fairness." See In the Interest of J.P.B., 143 N.J. Super. 96, 362 A.2d 1183 (App.Div.1976). Of course, defendants who give false information on PTI applications may subject themselves to charges of perjury or false swearing in instances where supporting affidavits may be required by the criminal division manager. Affidavits relating to the facts and circumstances of the underlying offense shall not be required.)

The essential PTI format is to give participating defendants a true second chance to accomplish rehabilitation or to show otherwise that criminal conduct is not likely to occur in the future; and if the defendant fails in this effort, to return him or her to that stage of ordinary prosecution at which proceedings had been stopped under R. 3:28, and to the extent possible, enable prosecution to take place as if such defendants had not participated in the PTI program so that defendants will not be prejudiced by an unsuccessful attempt to earn a R. 3:28 dismissal.

Guideline 6

Application for PTI should be made as soon as possible after commencement of proceedings, but, where an indictable offense is charged, not later than 28 days after indictment. All applications for PTI should be processed in the order of their filing. However, where the application is filed after an indictment has been returned, the PTI Program should complete its evaluation and make its recommendation thereon within 25 days after filing. The prosecutor should complete a review and advise the defendant within 14 days thereafter. An appeal by defendant to the trial court shall be brought within 10 days after the rejection notice and should be determined either before or at the pretrial conference.

Official Comment

To relieve defendants from the anxiety of facing prosecution, to apply appropriate rehabilitative measures at an early date, and to effect savings in criminal justice resources, PTI programs should endeavor to divert qualified defendants from the ordinary course of prosecution as soon as possible after the filing of a complaint. The court must advise defendant of the opportunity to be considered for PTI at the first appearance before the court. See R. 3:4-2. While a PTI application should be made before indictment, there are nevertheless problems involved in securing public defender counsel before arraignment. Thus, while pre-indictment filing is encouraged, the application may be made no later than 28 days after indictment, but not thereafter. This time requirement should permit all defendants sufficient opportunity to make a voluntary and informed choice concerning enrollment in a PTI program.

The time requirements set forth in the guidelines for evaluation, recommendation and review are intended to enable complete processing of a defendant's application before the pretrial conference. See R. 3:9-1(f). Early filing as encouraged by this guideline, will afford PTI programs and prosecutors the opportunity to manage their resources better by providing them sufficient time to make informed evaluations. The time limits for processing applications are designed to facilitate speedy trials and are realistic in view of the limited scope of review following rejection.

Guideline 7

Where application is made in an indictable offense, the prosecutor may withhold action on the application until the matter has been presented to the grand jury.

Official Comment

Guideline 7 recognizes that at times it may be in the public interest to have a particular defendant screened out of the criminal justice system, either by administrative decision or grand jury action, rather than diverted into a PTI program. Thus, the prosecutor is given the discretion to choose an appropriate route and the court will not be burdened by

hearing challenges if no indictment is to be returned. However, the option of delaying action until the grand jury has voted on the case should be considered only in rare instances. Generally, expeditious handling of PTI applications is in consonance with the purpose of diversion. Of course, if the prosecutor consents to the application, enrollment into a PTI program should not be delayed and the defendant should generally be enrolled before indictment.

Guideline 8

The decisions and reasons therefor made by the designated judges (or Assignment Judges), prosecutors and criminal division managers in granting or denying defendants' applications for PTI enrollment, in recommending and ordering termination from the program or dismissal of charges, in all cases must be reduced to writing and disclosed to defendant.

A defendant may be accepted into a PTI program by the designated judge (or the Assignment Judge) on recommendation of the criminal division manager, and with the consent of the prosecuting attorney and the defendant. Applications that are recommended for enrollment by the criminal division manager and consented to by the prosecutor must be presented to the designated judge (or Assignment Judge) authorized to enter orders. If a defendant desires to challenge the decision of a criminal division manager not to recommend enrollment or of a prosecutor refusing to consent to enrollment into a PTI program, a motion must be filed before the designated judge (or the Assignment Judge) authorized to enter orders under R. 3:28. The challenge is to be based upon alleged arbitrary or capricious action, and the defendant has the burden of showing that the criminal division manager or prosecutor abused discretion in processing the application. No direct appeal can be filed to the Appellate Division challenging the actions of the criminal division manager or the prosecutor. The decision of the criminal division manager or prosecutor may be challenged at a hearing on defendant's motion before the designated judge (or Assignment Judge) and, thereafter, defendant or prosecutor can seek leave to appeal from the court's decision denying or permitting enrollment.

A defendant shall also be entitled to a hearing challenging a criminal division manager or prosecutor's recommendation (following an initial or subsequent adjournment under Rule 3:28) that the prosecution of defendant proceed in the normal course. The decision of the court shall be appealable by the defendant or the prosecutor as in the case of any interlocutory order.

A defendant aggrieved by the decision of the designated judge or assignment judge respecting the joint decision of the criminal division manager and prosecutor to deny an application for participation in a pretrial intervention program may not seek appellate review thereof until after entry of judgment of conviction. A defendant may then seek such review even if the judgment was entered following a plea of guilty. However, a prosecutor whose denial of consent has been reversed by the designated judge or assignment judge may seek leave to appeal pursuant to R. 2:2.

Note: Guidelines 2, 3, 6 and 8 and Comments to Guidelines 2, 3, 5 and 6 amended July 13, 1994 to be effective January 1, 1995; Guidelines 3(g) and (h) and Comments to Guidelines 3(g) and (h) amended June 28, 1996 to be effective September 1, 1996; Guideline 3(a) amended July 19, 2012 to be effective September 4, 2012; Comment to Guideline 6 amended August 1, 2016 to be effective September 1, 2016.