

## SUPREME COURT OF NEW JERSEY


It is ORDERED that the attached amendments to the following Rules Governing the Courts of the State of New Jersey are adopted to be effective January 1, 2017:

Rule 3:4-2

Rule 3:26-1

Rule 3:26-2

For the Court,



Chief Justice

Dated: December 6, 2016

### 3:4-2. First Appearance After Filing Complaint

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

(1) If the defendant remains in custody, the first appearance shall occur within 48 hours of a defendant's commitment to the county jail, and shall be before a judge with authority to set conditions of release for the offenses charged. However, if a motion for pretrial detention is filed at or prior to the first appearance for a person charged with homicide, the judge designated to preside over the centralized first appearance may conduct that proceeding in accordance with this Rule, except that conditions of pretrial release shall not be set.

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

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

(f) ... no change

Note: Source – R.R. 3:2-3(b), 8:4-2 (second sentence). Amended July 7, 1971 effective September 13, 1971; amended April 1, 1974 effective immediately; text of former Rule 3:4-2 amended and redesignated paragraphs (a) and (b) and text of former Rules 3:27-1 and -2 amended and incorporated into Rule 3:4-2, July 13, 1994 to be effective January 1, 1995; paragraphs (a) and (b) amended June 28, 1996 to be effective

September 1, 1996; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; caption amended, paragraphs (a) and (b) deleted, new paragraphs (a), (b), (c), and (d) adopted July 5, 2000 to be effective September 5, 2000; new paragraph (e) adopted July 21, 2011 to be effective September 1, 2011; paragraph (a) amended, new paragraph (b) added, former paragraphs (b), (c), and (e) amended and redesignated as paragraphs (c), (d), and (f), and former paragraph (d) redesignated as paragraph (e) April 12, 2016 to be effective September 1, 2016; paragraphs (a) and (b) amended, subparagraph (c)(1) amended, new subparagraphs (c)(1)(A) and (c)(1)(B) adopted, subparagraphs (c)(9) and (c)(10) amended, new subparagraph (c)(11) adopted, subparagraphs (d)(3) and (d)(4) amended, and new subparagraph (d)(5) adopted August 30, 2016 to be effective January 1, 2017; paragraph (a) amended December 6, 2016 to be effective January 1, 2017.

### 3:26-1. Right to Pretrial Release Before Conviction

#### (a) Persons Entitled; Standards for Fixing.

(1) Persons Charged on a Complaint-Warrant. Except when the prosecutor files a motion for pretrial detention pursuant to N.J.S.A. 2A:162-18 and 19 and R. 3:4A, all persons for whom a complaint-warrant or a complaint-warrant on indictment is issued for an initial charge involving an indictable offense or disorderly persons offense shall be released before conviction on either personal recognizance, the execution of an unsecured appearance bond, or the least restrictive non-monetary conditions that, in the judgment of the court, will reasonably assure their presence in court when required, the protection of the safety of any other person or the community, and that the defendant will not obstruct or attempt to obstruct the criminal justice process. In addition to these non-monetary conditions, monetary conditions may be set for a defendant but only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court when required. The court shall consider all the circumstances, the Pretrial Services Program's risk assessment and recommendations and any information that may have been provided by a prosecutor or the defendant on conditions of release before making any pretrial release decision. If the court enters a release order containing conditions contrary to those recommended by the Pretrial Services Program obtained using a risk assessment instrument then the court shall set forth its reasons for not accepting those recommendations. The court shall make a pretrial release determination no later than 48 hours after a defendant's commitment to the county jail.

When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having

any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.

(2) Persons Charged on a Complaint-Summons. A defendant who is charged on a complaint-summons shall be released from custody. If the defendant later fails to appear in court when required and the court issues a bench warrant for the defendant's arrest, the court shall at that time either (A) order that the defendant be released on personal recognizance upon arrest or (B) set monetary bail.

(b) ... no change

(c) ... no change

(d) Extradition Proceedings. Where a person has been arrested in any extradition proceeding pursuant to the Uniform Criminal Extradition Law, N.J.S.A. 2A:160-6 et seq., the court may set monetary bail or bond [conditions of pretrial release] except where that person is charged with a crime punishable by death or life imprisonment. The court may also commit the person to the county jail as provided by the Uniform Criminal Extradition Law, N.J.S.A. 2A:160-6 et seq.

(e) ... no change

Note: Source-R.R. 3:9-1(a)(b)(c)(d); paragraph (a) amended September 28, 1982 to be effective immediately; paragraphs (a), (b), (c) and (d) amended July 13, 1994 to be effective January 1, 1995; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; new paragraph (b) adopted, and former paragraphs (b), (c), and (d) redesignated as paragraphs (c), (d), and (e) June 15, 2007 to be effective September 1, 2007; new paragraph (c) adopted and former paragraphs (c), (d), and (e) redesignated as paragraphs (d), (e), and (f) July 9, 2008 to be effective September 1, 2008; paragraph (a) amended and new paragraph (g) adopted July 9, 2013

to be effective September 1, 2013; caption amended, text of paragraph (a) amended and redesignated as paragraph (a)(1) with caption added, new paragraph (a)(2) adopted, paragraphs (b) and (c) amended, former paragraphs (d) and (e) deleted; former paragraph (f) amended and redesignated as paragraph (d), former paragraph (g) amended and redesignated as paragraph (e) August 30, 2016 to be effective January 1, 2017; paragraph (a)(1) amended November 14, 2016 to be effective January 1, 2017; paragraphs (a)(1), (a)(2), and (d) amended December 6, 2016 to be effective January 1, 2017.

3:26-2. Authority to Set Conditions of Pretrial Release

(a) Authority to Set Conditions of Pretrial Release. A Superior Court judge may set conditions of pretrial release for a person charged with any offense and may set monetary bail or take any action in accordance with the Uniform Criminal Extradition Law, N.J.S.A. 2A:160-6 et seq., for any person arrested in any extradition proceeding. Conditions of pretrial release for any offense except homicide or a person arrested in any extradition proceeding may be set by any other judge provided that judge is setting conditions of pretrial release as part of a first appearance pursuant to Rule 3:4-2(b).

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

Note: Source-R.R. 3:9-3(a) (b) (c); amended July 24, 1978 to be effective September 11, 1978; amended May 21, 1979 to be effective June 1, 1979; amended August 28, 1979 to be effective September 1, 1979; amended July 26, 1984 to be effective September 10, 1984; caption amended, former text amended and redesignated paragraph (a) and new paragraphs (b), (c) and (d) adopted July 13, 1994 to be effective January 1, 1995; paragraph (b) amended January 5, 1998 to be effective February 1, 1998; paragraph (d) amended July 9, 2013 to be effective September 1, 2013; paragraph (a) amended July 27, 2015 to be effective September 1, 2015; caption amended, paragraphs (a) and (b) caption and text amended, former paragraphs (c) and (d) deleted, and new paragraphs (c), (d), and (e) adopted August 30, 2016 to be effective January 1, 2017; paragraphs (b) and (d)(1) amended November 14, 2016 to be effective January 1, 2017; paragraph (a) amended December 6, 2016 to be effective January 1, 2017.