

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO RULE 1:38-3 AND RULE 1:38-11 FOR THE TEMPORARY SEALING OF A COMPLAINT-WARRANT -- PUBLICATION FOR COMMENT

The Supreme Court invites written comments on proposed amendments to Rules 1:38-3 and 1:38-11 that would allow a prosecutor to apply to a Superior Court judge for a Complaint-Warrant (CDR-2) to be temporarily sealed, with the seal to expire upon defendant's arrest or after ten days, whichever occurs first. The proposed amendments are attached to this notice.

The Advisory Committee on Public Access to Court Records recommended these amendments because of the automated processes that occur upon issuance of the complaint in the Judiciary's computerized system. The concern is that these processes could disclose investigatory information before law enforcement has effectuated an arrest of the defendant. Requests for a temporary seal could arise in complex, multi-defendant investigations, such as narcotics, organized crime, and gang-related cases, where there are concerns about the risk of harm to any person, the risk of harm to the law enforcement investigation, as well as the overall risk that defendants may flee should information about pending arrests be disclosed prematurely.

Comments on the proposed rule amendments may be sent in writing by June 1, 2018 to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Temporary Sealing of Complaint-Warrants
Hughes Justice Complex; P.O. Box 037
Trenton, New Jersey 08625-0037

Comments on the proposed amendments may also be submitted via Internet e-mail to the following address: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address (and those submitting comments by e-mail should include their name and e-mail address). Comments are subject to public disclosure upon receipt.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 1, 2018

1:38-3. Court Records Excluded from Public Access

The following court records are excluded from public access:

(a) ... no change

(b) ... no change

(c) Records of Criminal and Municipal Court Proceedings.

(1) ... no change

(2) ... no change

(3) ... no change

(4) ... no change

(5) ... no change

(6) ... no change

(7) ... no change

(8) ... no change

(9) ... no change

(10) ... no change

(11) ... no change

(12) Names and addresses of victims or alleged victims of domestic violence or sexual offenses[.];

(13) Complaint-Warrants sealed pursuant to R. 1:38-11(e).

(d) ... no change

(e) ... no change

(f) ... no change

Note: New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009; subparagraph (b)(1) amended December 9, 2009 to be effective immediately; paragraphs (e) and (f) amended January 5, 2010 to be effective immediately; subparagraph (c)(11) amended, subparagraph (c)(12) adopted, and subparagraph (d)(10) amended February 16, 2010 to be effective immediately; subparagraph (d)(1) amended June 23, 2010 to be effective July 1, 2010; paragraph (e) amended October 26, 2010 to be effective immediately; paragraph (e) amended February 28, 2013 to be effective immediately; subparagraph (d)(12) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (f)(2) and (f)(5) amended, and new subparagraph

(f)(9) added December 9, 2014 to be effective immediately; subparagraph (d)(2) amended July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended May 30, 2017 to be effective immediately; paragraph (a) and subparagraphs (d)(1) and (d)(13) amended July 28, 2017 to be effective September 1, 2017[.]; new subparagraph (c)(13) adopted _____ to be effective _____.

1:38-11. Sealing of Court Records

- (a) Information in a court record may be sealed by court order for good cause as defined in [this section] subparagraph (b) or subparagraph (e)(2) for the temporary sealing of a Complaint-Warrant (CDR-2). The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.
- (b) Good cause to seal a record except as provided in subparagraph (e)(2) shall exist when:
 - (1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
 - (2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.
- (c) The provisions of this rule do not apply to actions required to be sealed pursuant to the New Jersey False Claims Act (N.J.S.A. 2A:32C-5(c)) and 2A:32C-5(f).
- (d) Documents or other materials not exempt from public access under Rule 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.
- (e) Temporary Seal of Complaint-Warrant (CDR-2).

(1) Application for Temporary Seal of Complaint-Warrant (CDR-2) by Prosecutor. Upon submission of a Complaint-Warrant (CDR-2) on an initial charge in the Judiciary's computerized system used to generate complaints, a prosecutor may request a Superior Court judge to temporarily seal the Complaint-Warrant. For purposes of subparagraph (e), the Complaint-Warrant (CDR-2) includes information contained within and attached to the Complaint-Warrant (CDR-2).

(2) Good Cause for a Temporary Seal of Complaint-Warrant (CDR-2). The application requesting a temporary seal of the Complaint-Warrant (CDR-2) shall contain the facts and circumstances that are alleged to establish good cause for the temporary seal. In determining whether good cause exists to temporarily seal the Complaint-Warrant (CDR-2), among the factors a Superior Court judge should consider are:

- (A) the risk of physical harm to any person(s);
- (B) the risk of harm to the law enforcement investigation, such as destruction of evidence or witness tampering; and
- (C) the risk of defendant's flight.

The availability of reasonable alternative means to address the concerns in the above factors should be considered in determining whether to seal the Complaint-Warrant (CDR-2).

(3) Period of Temporary Seal. Extension. Upon a finding of good cause, a Superior Court judge shall grant a request for the temporary sealing of the Complaint-Warrant (CDR-2) for a period of no more than ten calendar days following issuance of the warrant or until the warrant has been executed, whichever occurs first. Any order for a temporary seal of a Complaint-Warrant (CDR-2) shall certify that for good cause shown the Complaint-Warrant (CDR-2) is sealed and state the date that the sealing shall expire. If the defendant has not yet been arrested the prosecutor may apply to the court to extend the temporary seal for an additional ten days.

(4) Confidentiality. The Complaint-Warrant (CDR-2) and the sealing order shall be kept confidential pursuant to R. 1:38-3(c)(13) until the expiration of the sealing period or the execution of the Complaint-Warrant, except it shall not be kept confidential from law enforcement as needed to perform their official duties.

Note: New Rule 1:38-11 adopted July 16, 2009 to be effective September 1, 2009; new paragraph (c) adopted January 5, 2010 to be effective immediately; new paragraph (d) adopted June 23, 2010 to be effective July 1, 2010; paragraph (c) amended December 8, 2010 to be effective immediately[.]; paragraph (a), (b) amended, and new paragraph (e) adopted _____ to be effective _____.