

Criminal Defense

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Our office represents people charged with criminal and disorderly persons offenses. We provide representation throughout New Jersey. Criminal charges can cost you. If convicted of a criminal offense, you face prison, high fines, Probation over 18 months and other penalties. Dont give up! Our Law Office can provide experienced attorney representation for criminal matters. Our website njlaws.com provides information on criminal offenses we can be retained to represent people.

According to the NJ Judiciary Website

<http://www.judiciary.state.nj.us/criminal/crproc.htm#indictment>, the Criminal Division of Superior Court manages criminal complaints from the time they are lodged to their resolution or disposition. The accused, or defendant is charged with an offense as a result of a formal complaint issued by a law enforcement agent or a citizen who believes an offense has been committed against their person or property. It can also result from an indictment by a panel of

citizens gathered to consider evidence, called a grand jury. Arrests can occur at the scene of a crime or based on warrants or sworn statements ordering a court appearance. All arrests must be based on probable cause, or reasonable grounds to believe that an offense has been committed, and the defendant may have committed the offense. Complaints state the reasons for the charge, and refer to offenses listed in the New Jersey Code of Criminal Justice (Title 2C) that includes all of the laws against criminal behavior.

Criminal offenses are heard, or considered in Superior Court, and are more serious than non-criminal charges heard in municipal courts where the offense occurred. Defendants found guilty, or convicted of crimes face more serious consequences, with punishments spanning probation supervision and fines to the loss of liberty through confinement for a year or more. Crimes are classified by degree. Degrees range from first to fourth degree offenses. A First degree crime carries the potential penalty of 10-20 years in prison. A Second degree crime carries a potential penalty of 5-10 years. Defendants who are convicted of first and second degree crimes face a presumptive term of incarceration. It is assumed that they will be sentenced to serve time in prison. A Third degree crime may result in 3-5 years if convicted, while Fourth degree crimes carry a potential penalty of up to 18 months in jail. There is a presumption of non-custodial sentences on 3rd and 4th degree offenses.

Complaints heard in municipal courts are disorderly persons offenses or petty disorderly persons violations, which carry less restrictive punishments upon conviction. Disorderly persons offenses may be sentenced to up to 6 months in a county jail. Petty disorderly convictions may render up to 30 days in jail.

First Appearance

Once a complaint is issued, defendants are either arrested or issued a summons or notice to appear in municipal or Superior Court on a first appearance. If they fail to appear, a warrant may

be issued for the accuseds arrest by a judge if there is proof of service, or evidence that the accused received the summons or notice and failed to appear. At the first court appearance, defendants are advised of their rights. Their bail is reviewed.

Right To Counsel

At their first appearance defendants are advised of their right to counsel. This means that they are entitled to have an attorney represent them and answer the charges.

In making indigence determinations, Criminal Division staff consider defendants ability to post bail, the amount of bail posted, the willingness of friends and family members to pay for an attorney, and any factor related to a defendants claim of impoverishment. They review tax returns, credit and wage records and any other relevant information regarding the ability of defendants to hire their own attorneys.

Pre-Indictment Events Following the filing of a complaint and the first court appearance, the prosecutors office in each county determines whether to pursue a criminal complaint.

Prosecutors determine if cases have merit and sufficient evidence to pursue a conviction. In most counties, the prosecutors Case Screening Unit reviews police reports and interviews victims and witnesses to determine if the original charges will be prosecuted. If there is insufficient evidence, the charges are downgraded to disorderly persons offenses and remanded or sent to the municipal courts for a hearing or dismissed. In some counties, prosecutors pre-screen potential Superior Court filings before a complaint is signed.

The Grand Jury

If a criminal case has not been, downgraded, diverted or dismissed, the prosecutor will present the case to a grand jury for an indictment. The grand jury is composed of a group of citizens who

have been selected from voter registration, drivers license and tax lists. The grand jury considers evidence presented by the county prosecutor and determines if there is sufficient evidence to formally charge defendants and require them to respond to the charge(s). An indictment is not a finding of guilt. Generally, neither the accused nor their attorneys are present. Witnesses normally testify regarding the crime. After considering evidence, if a majority of the 23 jurors vote to indict defendants, they must face further criminal proceedings. The return of an indictment is called a true bill. If a majority finds the evidence to be insufficient to indict, the grand jury enters a no bill and the charge(s) are dismissed. The jury may, however, decide to charge defendants with a less serious offense, to be downgraded or remanded to the municipal court. The accused must appear in municipal court to face a disorderly persons or petty disorderly persons charge.

The Indictment Process The grand jury will consider evidence presented by the county prosecutor and determine if there is sufficient evidence to formally charge the defendant and oblige him to respond to the charge(s). The indictment is not a finding of guilt or a conviction. The finding is a true bill that triggers further proceedings in the Criminal Superior Court. If a majority finds the evidence to be insufficient to indict, the grand jury enters a no bill and the charge(s) are dismissed. The jury may, however, decide to charge the defendant with a less serious offense, to be heard in municipal court. In this instance, the offense has been downgraded or remanded. The accused must appear in municipal court to face a disorderly persons or petty disorderly persons charge.

The Pre-Arraignment Conference and The Arraignment

Within twenty-one days of the return of an indictment, a pre-arraignment conference is held. This pre-arraignment conference is scheduled by Criminal Division Staff. Defendants may wish to apply for public defender representation at this point if they are not yet represented. Prior to

this conference, discovery or evidence is available to defense counsel. This exchange of evidence provides the defense with an opportunity to review the evidence the prosecution intends to use against the accused prior to the conference. After reviewing the discovery provided prior to the pre arraignment conference, defendants may decide to apply for Pretrial Intervention, or to enter plea bargain negotiations. Defendants may also indicate their intention to plead guilty to the charge for which they were indicted.

Arrestment/Status Conference Standards

A formal arraignment occurs no later than 50 days after an indictment. Upon notification by the Criminal Division, defendants must appear and face formal notification of their charges. They may plead guilty at this point, either to the charges listed in the indictment, or to revised charges resulting from plea negotiations. If plea negotiations are ongoing, the parties may review the status of the plea offer. Defendants may also opt to apply for the Pretrial Intervention program at this juncture, or be admitted into the program if they have not applied prior to arraignment. If a guilty plea is entered at the formal arraignment, Criminal Division judges order a presentence investigation to be conducted by Criminal Division case supervisors. Sentencing will follow the presentence investigation, generally 4 to 6 weeks after convictions. Status Conferences and the Pretrial Conference

Defendants who have pleaded not guilty at this point may continue plea negotiations or preparation for trial. Pretrial case resolutions may occur at a status conference, where a defendant may decide to enter a guilty plea with or without a negotiated plea bargain.

At Pretrial Conferences, defendants may enter a guilty plea to the charges. At the Pretrial Conference, there is a plea cutoff date, after which no further plea negotiations can occur. If no agreement to plead guilty is reached, the matter will proceed to trial. Criminal Division staff track conferences to ensure that cases are moving without undue delays. The Administrative

Office of the Courts evaluates statistics entered by Criminal Division staff in each criminal court to stay abreast of overall case movements statewide. The Criminal Practice Division assists local court staff to address backlogs if they should occur.

Conclusion It is well established that the prosecution of a defendant is a criminal proceeding. In such a proceeding the burden of proof is upon the state to establish all elements of the offense beyond a reasonable doubt. Defense counsel must subpoena its necessary witnesses and prepare for trial. Never attempt to represent yourself if you are facing serious charges. Criminal offenses carry substantial penalties which will effect you for the rest of your life. The space limits of this article do not allow detailed explanation of the extensive caselaw on criminal offenses. Other defenses are explained in greater details in other articles on njlaws.com.

COURT RULE 3:7. INDICTMENT AND ACCUSATION

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3:7-1. Entitling of Papers

The indictment and all subsequent papers in connection therewith shall be entitled in the Superior Court.

Note: Source-R.R. 3:4-1(b).

3:7-2. Use of Indictment or Accusation

A crime punishable by death shall be prosecuted by indictment. Every other crime shall be prosecuted by indictment unless the defendant, after having been advised of the right to indictment, shall waive the right in a signed writing, in which case the defendant may be tried on

accusation. Such accusation shall be prepared by the prosecuting attorney and entitled and proceeded upon in the Superior Court. Nothing herein contained, however, shall be construed as limiting the criminal jurisdiction of a municipal court over indictable offenses provided by law and these rules.

Note: Source-R.R. 3:4-2(a)(b). Amended August 28, 1979 to be effective September 1, 1979; amended July 13, 1994 to be effective September 1, 1994.

3:7-3. Nature and Contents of Indictment or Accusation

(a) Nature and Contents Generally. The indictment or accusation shall be a written statement of the essential facts constituting the crime charged, need not contain a formal commencement and shall be signed by the prosecuting attorney. The indictment shall be endorsed as a true bill by the foreperson and conclude: against the peace of this State, the government and dignity of the same. Allegations made in one count of the indictment or accusation may be incorporated by reference in another count. It may be alleged in a single count either that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. An indictment or accusation or any count thereof charging the violation of a statute or statutes shall state the official or customary citation thereof, but error in the citation or its omission shall not be ground for dismissal of the indictment or accusation or for reversal of a conviction if the error or omission did not prejudicially mislead the defendant. Surplusage in the indictment or accusation may be stricken by the court on defendants motion.

(b) Indictment for Murder or Manslaughter. Every indictment for murder shall specify whether the act is murder as defined by N.J.S.A. 2C:11-3(a)(1), (2) or (3) and whether the defendant is alleged: (1) to have committed the act by his or her own conduct or (2) to have procured the commission of the offense by payment or promise of payment, of anything of pecuniary value or (3) to be the leader of a drug trafficking network, as defined in N.J.S.A.2C:35-3, and who, in

furtherance of a conspiracy enumerated in N.J.S.A. 2C:35-3, commanded or by threat or promise solicited the commission of the offense. In every indictment for aggravated manslaughter or manslaughter, it is sufficient to charge that the defendant committed aggravated manslaughter or manslaughter contrary to N.J.S.A. 2C:11-4.

Note: Source-R.R. 3:4-3(a)(b)(c), 3:4-4. Paragraphs (a) and (b) amended August 28, 1979 to be effective September 1, 1979; paragraph (b) amended September 28, 1982 to be effective immediately; paragraph (b) amended July 13, 1993 to be effective immediately; paragraphs (a) and (b) amended July 13, 1994 to be effective September 1, 1994.

3:7-4. Amendment of Indictment or Accusation

The court may amend the indictment or accusation to correct an error in form or the description of the crime intended to be charged or to charge a lesser included offense provided that the amendment does not charge another or different offense from that alleged and the defendant will not be prejudiced thereby in his or her defense on the merits. Such amendment may be made on such terms as to postponing the trial, to be had before the same or another jury, as the interest of justice requires.

Note: Source-R.R. 3:4-5. Amended August 28, 1979 to be effective September 1, 1979; amended July 13, 1994 to be effective September 1, 1994.

3:7-5. Bill of Particulars

A bill of particulars shall be ordered by the court if the indictment or accusation is not sufficiently specific to enable the defendant to prepare a defense. The defendant shall move therefore pursuant to Rule 3:10-2. The application shall point out clearly the particulars sought by the defense. The prosecutor shall furnish the bill of particulars within 10 days after the order

of the court. Further particulars may be ordered when a demand therefor is promptly made. A bill of particulars may be amended at any time, subject to such conditions as the interest of justice requires. Any particulars that have been furnished to the defendant pursuant to R. 3:13-3 and 4 shall not be subject to an application pursuant to this rule.

Note: Source-R.R. 3:4-6; amended June 29, 1990, to be effective September 4, 1990; amended July 13, 1994 and December 9, 1994, to be effective January 1, 1995.

3:7-6. Joinder of Offenses

Two or more offenses may be charged in the same indictment or accusation in a separate count for each offense if the offenses charged are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan. Relief from prejudicial joinder shall be afforded as provided by R. 3:15-2.

Note: Source-R.R. 3:4-7; amended August 28, 1979 to be effective September 1, 1979.

3:7-7. Joinder of Defendants

Two or more defendants may be charged in the same indictment or accusation if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. The disposition of the indictment or accusation as to one or more of several defendants joined in the same indictment or accusation shall not affect the right of the State to proceed against the other defendants. Relief from prejudicial joinder shall be afforded as provided by R. 3:15-2.

Note: Source-R.R. 3:4-8.

3:7-8. Issuance of Warrant or Summons Upon Indictment or Accusation

Upon the return of an indictment or the filing of an accusation a summons or warrant shall be issued in accordance with R. 3:3-1 by the criminal division manager as designee of the deputy clerk of the Superior Court in the manner provided by law for each defendant named in the indictment or accusation who is not under bail. The criminal division manager as designee of the deputy clerk of the Superior Court, upon request, shall issue more than one warrant or summons for the same defendant. If the defendant fails to appear in response to a summons, a warrant shall issue.

If a summons is issued upon indictment to a defendant who has not been previously held to answer a complaint, the defendant shall undergo all post-arrest identification procedures that are required by law upon arrest, on the return date of the summons, or upon written request of the appropriate law enforcement agency.

Note: Source-R.R. 3:4-9. Amended July 22, 1983 to be effective September 12, 1983; amended July 13, 1994 to be effective January 1, 1995.

3:7-9. Form of Warrant and Summons

The warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty, shall describe the offense charged in the indictment or accusation and shall command that the defendant be arrested and brought before the court. Conditions of pretrial release shall be fixed by the court and endorsed thereon, and in such case the sheriff or warden may take any bail. The summons shall be in the same form as the warrant except that it shall be directed to the defendant

and require the defendant to appear to plead before the court at a stated time and place. The summons shall also state that if the defendant fails to so appear, a warrant for defendants arrest shall issue.

Note: Source-R.R. 3:4-10(a)(b); amended July 13, 1994 to be effective January 1, 1995.

3:7-10. Execution of Service; Return

- (a) Execution of Warrant. The warrant shall be executed in accordance with R. 3:3-3.
- (b) Summons to an Individual. The summons shall be served upon an individual in accordance with R. 4:4-4.
- (c) Summons to a Corporation. Service of a summons upon a defendant corporation, municipal or otherwise, shall be made in accordance with R. 4:4-4. If the defendant corporation does not appear, the court shall order the clerk to enter an appearance for said corporation and endorse the plea of not guilty on the indictment or accusation, and further proceedings may then be had thereon in the same manner as if the corporation had appeared and so pleaded. A plea to an indictment or accusation by a defendant corporation shall be made by an attorney of this State.
- (d) Service Upon a Corporation by Publication. If the summons directed to a corporation is returned not served and it appears to the satisfaction of the court that the summons could not be served, the court shall by order direct the corporation to cause its appearance and plea to be entered by a day certain. A copy of such order shall within 5 days after the date thereof be published in a newspaper in this State once, at least 2 weeks preceding the day certain so specified. If the defendant corporation does not appear within the time specified by the order, the court, if satisfied that publication has been duly made, shall direct the clerk to enter an appearance and a plea of not guilty for the defendant corporation, and thereupon further proceedings may be had on the indictment or accusation as provided by these rules.
- (e) Return. The officer executing a warrant shall make prompt return thereof to the court, and at

the request of the prosecuting attorney any unexecuted warrant shall be returned and cancelled. The officer serving a summons shall make return thereof on or before the return day. At the request of the prosecuting attorney made at any time while the indictment or accusation is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the sheriff or other authorized officer for execution or service.

Note: Source-R.R. 3:4-11, 3:4-12(a)(b), 3:4-13. Paragraph (d) amended July 7, 1971 to be effective September 13, 1971.

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