

**REPORT AND RECOMMENDATIONS
RELATING TO MUNICIPAL COURTS**

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INTRODUCTION

In 1989, the New Jersey Law Revision Commission filed a Report and Recommendations on the Organization of the Courts. That Report began a revision of the parts of Title 2A concerning the courts and administration of civil justice. In 1991, the Commission continued the revision by issuing reports on statutes relating to the Tax Court and Surrogates. This Report and Recommendations on the Municipal Courts is the next step in the revision of Title 2A.

The Report modernizes and clarifies the law on municipal courts. It simplifies language and deletes unnecessary material. The substantive changes which are proposed codify current practice and implement some of the recommendations of the Supreme Court Task Force Report on the Municipal Courts.

2B:12-1. Establishment of municipal courts

a. Every municipality with a population of 100 or more at the latest census shall establish a municipal court. Other municipalities may establish municipal courts.

b. Two or more municipalities, by ordinance, may enter into an agreement establishing a single joint municipal court and providing for its administration. A copy of the agreement shall be filed with the Administrative Director of the Courts. As used in this chapter, the phrase "municipal court" includes a joint municipal court.

c. Two or more municipalities, by ordinance or resolution, may provide jointly for courtrooms, chambers, equipment, supplies and employees for their municipal courts and agree to appoint the same persons as judges and administrators without establishing a joint municipal court. Where municipal courts share facilities in this manner, the identities of the individual courts shall continue to be expressed in the captions of orders and process.

d. An agreement pursuant to subsection (b) or (c) may be terminated as provided in the agreement. If the agreement makes no provision for termination, it may be terminated by any party with reasonable notice and terms as determined by the Vicinage Assignment Judge.

Source: 2A:8-1, 2A:8-3, 2A:8-18.2.

COMMENT

Subsection (a) continues that part of 2A:8-1 allowing municipalities to establish municipal courts. In addition, it requires each municipality with more than 100 residents to establish a court. That obligation may be met by establishing an individual court or a joint court. See subsection (b). Only a few municipalities do not have a municipal court. Subsection (b) continues the substance of 2A:8-3 relating to joint courts. The last sentence of subsection (b) has the effect of providing that a joint municipal court functions in the same way as an individual municipal court. This definition obviates the repetition in present law of phrases making particular powers applicable to joint as well as individual courts.

Subsection (c) is based on 2A:8-18.2. This subsection gives municipalities the explicit option of sharing facilities, an option which carries many of the advantages of a joint court but which retains local control over judicial appointment. See Supreme Court Task Force on the Improvement of Municipal Courts (1985) [hereafter Task Force Report]. Subsection (d) provides for the dissolution of agreements for joint courts or shared facilities. While 2A:8-18.2 includes such a provision for shared facilities, there is no parallel provision for joint courts. Because of the range of agreements covered by this subsection and the differences in the severity of problems caused by their termination, a flexible approach was taken as to the amount of notice required and the terms of dissolution.

2B:12-2. Name of court

The name of a municipal court of a single municipality shall be the "Municipal Court of (insert name of municipality)." The name of a joint municipal court shall be specified in the ordinances establishing the court.

Source: 2A:8-1.

COMMENT

This section does not substantively change the source section concerning the naming of municipal courts established by single municipalities. This section removes the restrictions on the names of joint municipal courts.

2B:12-3. Place of court

Courtrooms and sessions of a municipal court need not be in the municipality for which the court has jurisdiction. If the same person is serving as judge of more than one municipal court, sessions of the respective courts may be combined.

Source: 2A:8-18.1.

COMMENT

While this section is based on 2A:8-18.1, the requirement that the court meet in the municipality or in an "adjacent" municipality is abandoned as unnecessary. It can be expected that municipalities will choose to provide locations for court sessions that are convenient to litigants. The second sentence allows combined court sessions for situations such as where the judge of one municipal court is hearing a case as acting judge of another municipal court, or where municipalities have elected to provide jointly for court facilities. See 2B:12-1(c).

2B:12-4. Judge of municipal court; term of office; appointment

a. Each judge of a municipal court shall serve for a term of 3 years from the date of appointment and until a successor is appointed and qualified. Any appointment to fill a vacancy not caused by the expiration of term shall be made for the unexpired term only. However, if a municipality requires by ordinance that the judge of the municipal court devote full time to judicial duties or limit law practice to non-litigated matters, the first appointment after the establishment of that requirement shall be for a full term of 3 years.

b. In municipalities governed by a mayor-council form of government, the municipal court judge shall be appointed by the mayor with the advice and consent

of council. Each judge of a municipal court of two or more municipalities shall be nominated and appointed by the Governor with the advice and consent of the Senate. In all other municipalities, the municipal judge shall be appointed by the governing body of the municipality.

Source: 2A:8-5.

COMMENT

This section is a substantial re-enactment of the source provision. The provision in the source section which allowed the council in mayor-council municipalities to appoint the judge when the mayor failed to act was deleted as unnecessary. Since section 2B:12-6 provides for the appointment of acting judges by the vicinage assignment judge, the acting judge would be available to serve until the mayor and council act. The provision in subsection (b) that judges of joint municipal courts be appointed by the Governor is required by the Constitution. N.J. Const., Art. 6, ¶6, Å1. The Commission takes no position as to whether the current three-year term is the appropriate one for municipal court judges. The Commission considered a recommendation of the Supreme Court Task Force on the Improvement of the Municipal Courts that full time municipal court judges be granted tenure, see, Task Force Report, pos. 3.2, but was unable to reach a consensus on the issue. While some of the commissioners supported tenure, others thought tenure inappropriate without changes in the method of appointment which would assure a greater degree of review of potential a judge's qualifications.

2B:12-5. Additional municipal judges

a. With the written consent of the Vicinage Assignment Judge, a municipality may:

- (1) increase the number of judgeships of the municipal court, or
- (2) appoint one or more temporary municipal judges.

b. A temporary judge is an additional judge of the municipal court appointed to meet a special need of limited duration. The procedure for appointment of temporary municipal judges shall be the same as that for other municipal judges, but each term of a temporary judge shall not exceed one year.

Source: 2A:8-5a, 2A:8-5b, 2A:8-5.2.

COMMENT

This section continues the source sections with little change. The designations of the various categories of judges have been clarified. What is called an "additional judge" in 2A:8-5a is not a separate class of judge and so is dealt with in this section as an increase in the number of judgeships. "Acting judges" in 2A:8-5.2 are called "temporary judges" in subsection (b). The latter designation better comports with the fact that they have the full power of judges of the municipal court and serve for a term. The phrase "acting judge" is used in 2B:12-5 for a person who is available to act for a municipal judge temporarily unable to hold court. This class of judge is not given a title in current law. See 2A:8-10.

This section changes the term for a temporary judge. The source statute provided for a one year term in every case. Subsection (b) gives a municipality the option to set a term up to one year, fitting the length of the term to the situation requiring the appointment of the temporary judge. This section also makes a slight change in the role of an assignment judge. Presently, an assignment judge must request the appointment of temporary judges but need only approve an increase in the

number of ordinary judges. Since this distinction is unjustified, subsection (b) requires the assignment judge to approve either change.

2B:12-6. Designation of acting judges

Subject to the Rules of Court, the Vicinage Assignment Judge may appoint acting judges of each of the municipal courts in the vicinage to serve as judge temporarily when the judge of that court is unable to hold the municipal court. A person appointed as acting judge shall be a judge of another municipal court or an attorney-at-law. A copy of the appointment of an acting judge for a municipal court shall be sent to the judge of that court.

Source: 2A:8-10.

COMMENT

This section differs significantly from the source section by giving the assignment judge the power to select acting judges. The source statute provides that judges of the municipal courts designate acting judges for their courts, but assignment judges now exercise much of this power without authority by issuing orders that assign municipal court judges temporarily to other municipal courts. As that system of cross-assignments appears to work efficiently, this section provides a statutory basis for it in a form which preserves the individual identity of separate municipal courts as legislative courts with limited geographic jurisdiction. Nomenclature is also changed from that of the source statute. See comment to 2B:12-4.

2B:12-7. Qualifications of judges; compensation

a. Every judge, temporary judge, or acting judge of a municipal court shall be a resident of this State and an attorney-at-law admitted to practice in this State for at least five years.

b. In lieu of any other fees, judges of municipal courts shall be paid annual salaries set by ordinance or resolution of the municipalities establishing the court. The total salary paid to a full-time judge shall not exceed the salary of a Judge of the Superior Court.

c. A municipality, by ordinance, may require that a municipal judge devote full time to judicial duties or limit law practice to non-litigated matters.

Source: 2A:8-7; 2A:8-9.

COMMENT

Subsection (a) both simplifies and extends its source section. The provision of the source section allowing certain non-lawyers to continue as municipal court judges is deleted as the last of its beneficiaries has retired. The requirements are extended to temporary and acting judges. The source section does not define the qualifications necessary for these positions. The subsection adds a qualification for appointment: five-years admission to the practice of law. That requirement reflects the recommendation of the Task Force Report. See Task Force Report, pos. 3.1.

Subsection (b) continues the substance of its source, 2A:8-9. The second sentence of the subsection reflects the recommendation of the Task Force Report. See Task Force Report, pos. 3.5.

Subsection (c) explicitly provides for the common practice of municipalities with busy courts, the establishment of full-time judgeships or the imposition of limitations on the practice of law by judges.

2B:12-8. Chief judge

Where there is more than one judge of a municipal court, the municipality may designate one of the judges as the chief judge of the court. The chief judge shall designate the time and place of court and assign cases among the judges.

Source: 2A:8-19.

COMMENT

This section continues the substance of its source insofar as that provision concerns the designation and powers of the chief judge of a municipal court. The other parts of 2A:8-19 appear self-evident or procedural. The designation "presiding judge" in the source section has been changed to "chief judge" to avoid confusion with the position of presiding judge of the municipal courts of a vicinage.

2B:12-9. Presiding judge – Municipal Court

If the Chief Justice designates a Superior Court Judge or a judge of one of the municipal courts in a vicinage to serve as Presiding Judge – Municipal Courts for that vicinage, that judge may exercise powers delegated by the Chief Justice or established by the Rules of Court.

If the Presiding Judge is a municipal court judge, the Presiding Judge shall be paid by the State for the time devoted to duties as Presiding Judge. Total compensation for all judicial duties shall not exceed the salary of a Superior Court Judge.

Source: New.

COMMENT

While this section is new, it embodies a recommendation of the Task Force Report. See Task Force Report, pos. 1.1. See also Rokos v. Dept. of Treasury, 236 N.J. Super. 174 (App. Div. 1989). As part of pilot projects, four vicinages now have presiding judges.

2B:12-10. Municipal court administrator and personnel

a. A municipality shall provide for an administrator and other necessary employees for the municipal court and for their compensation. With approval of the Supreme Court, an employee of the municipality, in addition to other duties, may be designated to serve as administrator of the municipal court.

b. The judge of a municipal court may designate in writing an acting administrator or deputy administrator to serve temporarily for an absent administrator or deputy administrator until the administrator or deputy administrator returns or a new administrator or deputy administrator is appointed. The acting administrator or acting deputy administrator shall be paid at a rate established by the judge but not exceeding that established for the administrator or deputy administrator.

c. A person employed as the administrator of a municipal court who (1) has held that office continuously for five years or more and who is certified as a municipal court administrator as provided by section 2B:12-10.1 or (2) on the effective date of this section has tenure granted under prior law or under Title 11A of the New Jersey Statutes shall hold office during good behavior and may not be removed except for good cause. Any other person employed as the administrator of a municipal court shall serve at the pleasure of the municipality.

Source: 2A:8-13; 2A:8-13.1; 2A:8-13.2; 2A:8-13.3.

COMMENT

Subsections (a) and (b) continue the substance of its sources, 2A:8-13 and 2A:8-13.2. The power of approval of dual office holding is given to the Supreme Court. See R. 1-17-1.

Subsection (c) extends the policy of its sources, 2A:8-13.1 and 2A:8-13.3. Each source section allows a class of municipalities to grant tenure to administrators who have served for ten years. Subsection (c) gives tenure to any administrator who has served for five years and who has completed the requirements for certification.

2B:12-10.1. Certification of municipal court administrators

a. The Supreme Court may appoint a Municipal Court Administrator Certification Board. That board shall:

- 1) design examinations for certification of municipal court administrators;
- 2) establish courses satisfying training requirements in subjects closely related to the duties of a municipal court administrator; and
- 3) establish procedures and fees for certification.

b. A person shall be certified as a Municipal Court Administrator if the person:

- 1) has a high school diploma;
- 2) has a combination of two years of either full-time government employment performing duties related to those of a municipal court administrator or higher education;
- 3) completes the training required by the board;
- 4) passes the examination held by the board; and
- 5) pays any required certification fee.

c. A person who is a municipal court administrator and has been serving in that position for five years on the effective date of this section shall be certified as a municipal court administrator if the person passes the examination held by the board and pays any required certification fee. A person who is a municipal court administrator and has been serving in that position for three years on the effective date of this section shall be certified as a municipal court administrator if the person completes the training required by the board, passes the examination held by the board and pays any required certification fee.

d. A municipal court administrator certificate may be revoked or suspended by the board for dishonest practices or failure to perform, or neglect of, duties of a municipal court administrator.

Source: New.

COMMENT

This section establishes a mechanism for the certification of municipal court administrators. The approach of certification as a basis for tenure has been adopted for other municipal officials. E.g., N.J.S. 40A:9-30.2 (county purchasing officials); N.J.S. 40A:9-133 (municipal clerks); N.J.S. 40A:9-140.8 (municipal finance officers); and N.J.S. 40A:9-145 (tax collectors). Since municipal court administrators are judicial officers, authority to establish a certification program is placed in the judicial branch.

2B:12-11. Bond or insurance

Before assuming the duties of office, a judge or administrator of a municipal court, or a person employed by the court who handles money shall be covered by a bond or insurance against loss or misappropriation of funds payable to the municipality, county and the State in an amount and with terms set by the municipality.

Source: 2A:8-14.

COMMENT

This section continues the policy of its source but applies to other court officials who handle money in addition to judges and administrators. The section also allows municipalities to use insurance rather than bonds.

2B:12-12. Powers of administrator

Any process, order, warrant, or judgment issued by a municipal court may be signed by the judge or be attested in the judge's name and signed by the administrator. The municipal court administrator shall have the authority granted by law and Rules of Court to administrators and clerks of courts of record.

Source: 2A:8-15.

COMMENT

This section is substantially identical to its source.

2B:12-13. Officers empowered to execute process

Any law enforcement officer or any other person authorized by law may act in the service, execution, and return of process, orders, warrants, and judgments issued by any municipal court.

Source: 2A:8-16.

COMMENT

This section is substantially identical to its source.

2B:12-14. Courtrooms and equipment

Suitable courtrooms, chambers, offices, equipment and supplies for the municipal court, its administrator's office and its violations bureau shall be provided by the municipality.

Source: 2A:8-18.

COMMENT

This section is similar to its source section. In form, it is patterned on the Commission's recommended 2B:6-1(a).

2B:12-15. Territorial jurisdiction

A municipal court of a single municipality shall have jurisdiction over cases arising within the territory of that municipality. A joint municipal court shall have jurisdiction over cases arising within the territory of any of the municipalities which the court serves. The territory of a municipality includes any premises or property located partly in and partly outside the municipality.

Source: 2A:8-20.

COMMENT

This section is substantively identical to its source. Sections 2B:12-16 and 17 establish the kinds of offenses which the municipal courts may hear. This section establishes which of those offenses are within the territorial jurisdiction of a particular municipal court.

2B:12-16. Jurisdiction of specified offenses

A municipal court has jurisdiction over the following cases within the territorial jurisdiction of the court:

- a. Violations of municipal ordinances;
 - b. Violations of the motor vehicle and traffic laws;
 - c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;
 - d. Violations of the fish and game laws;
 - e. Proceedings to collect a penalty where jurisdiction is granted by statute;
- and
- f. Any other proceedings where jurisdiction is granted by statute.

Source: 2A:8-21.

COMMENT

This section makes no substantive change from its source. While certain subsections of 2A:8-21 were deleted, any offenses covered by those subsections are sufficiently covered by subsection (d) of this section. A new subsection (f) is added to refer to the jurisdiction granted by 2C:25-14 and the diverse proceedings conducted under the Penalty Enforcement Law for which the jurisdiction is assigned to the municipal courts by the statutes establishing the penalties.

In general, the municipal courts are given jurisdiction over all penal and quasi-criminal offenses not involving so serious a penalty that indictment and trial by jury are required. However, if because of changes in either statutory or constitutional law certain of the categories in this section come to include cases requiring jury trial, those matters, too, would be within municipal court jurisdiction. The grant of jurisdiction to municipal courts does not require that certain matters be heard only in those courts or deny jurisdiction over the same matters to the Superior Court. As a result, there may be instances where the Rules of Court provide that certain matters be heard only in the Superior Court.

2B:12-17. Jurisdiction of specified offenses where indictment and trial by jury are waived

A municipal court has jurisdiction over the following crimes occurring within the territorial jurisdiction of the court, where the person charged waives indictment and trial by jury in writing and the county prosecutor consents in writing:

- a. Crimes of the fourth degree defined in chapters 17, 18, 20 and 21 of the New Jersey Criminal Code; or
- b. Crimes where the imprisonment that may be imposed does not exceed one year.

Source: 2A:8-22.

COMMENT

This section continues the principle that the municipal courts have jurisdiction over certain less serious indictable offenses. The major part of the work of municipal courts concerns non-indictable offenses; that jurisdiction is provided by 2B:12-16. Indictable offenses constitute less than 3/10 of one percent of the total municipal court caseload.

Like its source, the section limits the jurisdiction over Criminal Code crimes to those in particular chapters on crimes against property. However, the section places a further limit based on the degree of the crime in lieu of the limit in 2A:8-22 based on the value of the property stolen or damaged. The standard based on value is difficult to apply in regard to certain crimes and has the capacity to produce anomalous results. Subsection (b) is unchanged in substance from its source; it provides jurisdiction over a few crimes (or misdemeanors) defined outside the Criminal Code which allow jail terms of more than six months but not more than one year. Offenses with penalties of six months or less are included in 2B:12-16(d) and do not require waivers by the parties. See N.J.S. 2C:1-4(c). The limitation found in the source section concerning judges who are not attorneys was deleted as no longer required. See comment to 2B:12-6.

2B:12-18. Authority of municipal court judge to commit; notice to county prosecutor

- a. A municipal court has authority to conduct proceedings in a criminal case within its territorial jurisdiction prior to indictment subject to the Rules of Court.
- b. A municipal court shall not discharge a person charged with an indictable offense without first giving the county prosecutor notice and an opportunity to be heard in the case.

Source: 2A:8-23.

COMMENT

The source for this section gives a municipal court judge "the authority of a committing judge or magistrate." That authority, the authority of a justice of the peace in criminal matters, is the power to conduct certain of the early stages of criminal cases. The exact extent of this authority is not clear. State v. Kruise, 32 N.J.L. 313 (Sup. Ct. 1867) holds that the power to issue an arrest warrant is included within a committing magistrate's authority, but the power to set bail is not. However, in practice, municipal courts exercise this authority. A complaint may be filed in a municipal court, and that court may issue search and arrest warrants and summonses. R. 3:4-1(b) and (c) and R. 3:5-1. The first appearance of a criminal defendant in court normally takes place in municipal court, R. 3:4-2, and in most cases, bail is set. See R. 3:26-2. Probable cause hearings may also be held in municipal court. R. 3:4-3.

This section adopts a different approach from that of its source. It allows a municipal court jurisdiction for any proceeding occurring before indictment. Thus, although the section provides a clearer guide as to municipal court authority, it also grants some flexibility for the municipal court to conduct any kind of pre-indictment proceeding, either existing or newly-created, which may be assigned to the municipal courts by court rule.

Subsection (b) is essentially unchanged from its source.

2B:12-19. Municipal housing court; jurisdiction

A municipality in a county of the first class may establish, as a part of its municipal court, a full-time municipal housing court. Municipal housing courts shall have jurisdiction over actions for eviction involving property in the municipality which are transferred to the municipal housing court by the Special Civil Part of the Superior Court; and shall have concurrent jurisdiction to appoint receivers pursuant to section 6 of P.L. 1966, c. 168 (C. 2A:42-79) and to enforce the provisions of P.L. 1971, c. 224 (C. 2A:42-85 et seq.).

Source: 2A:8-24.1.

COMMENT

This section continues the substance of its source.

2B:12-20. Officials authorized to act for court

a. An administrator or deputy administrator of a municipal court, authorized by the judge of that court, may exercise the power of the municipal court to administer oaths for complaints filed with the municipal court and to issue warrants and summonses.

b. A police officer in charge of a police station, other than an officer who participated in the arrest of the defendant, may exercise the power of the municipal court to administer oaths for complaints filed with the municipal court. Any police officer may exercise the power of the municipal court to issue summonses.

c. The authority of the municipal court to set conditions of pre-trial release may be exercised by an administrator or deputy administrator of a municipal court, who is authorized by the judge of that court, or by any police officer in charge of a police station other than an officer who participated in the arrest of the defendant. The authority may be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or by the municipal court.

d. A person charged with a non-indictable offense shall be released on summons or personal recognizance within 12 hours after arrest unless a judge has set the conditions for pretrial release and the conditions remain unmet.

e. A person acting for a municipal court by authority of this section shall immediately file the complaint, warrant, summons or recognizance which was the subject of the action with the municipal court.

Source: 2A:8-27; 2A:8-28.

COMMENT

The purpose of this section is to continue the practice under 2A:8-27 but to provide a clearer statutory basis for that practice. Subsections (a) and (b) of this section control the exercise of the power of the court to administer oaths and to issue process. While 2A:8-27 gives this power both to administrators and to police officers, only administrators now exercise the power to administer oaths and issue warrants. Subsection (a) limits this power to administrators. Subsection (b) gives police officers the power to issue summonses.

Subsection (c) regulates the authority of officers to set conditions of pre-trial release. That power is now exercised in non-indictable cases both by administrators and police officers; subsection (c) follows the source statute and continues that practice. As now provided by N.J.S. 2A:161A-8, when an officer sets conditions for pre-trial release, the officer is required to follow a bail schedule promulgated by the Administrative Office of the Courts. Subsection (c) makes reference to that bail schedule. The section also adds one limitation. Where a person charged with a non-indictable offense is not released within eight hours as a result of conditions set by an officer, a judge must review the case. This limitation is in accord with the policy that release on recognizance or low bail is normally appropriate for non-indictable offenses. See N.J.S. 2C:6-1.

Current practice restricts the exercise of authority both to issue process, see R. 3:3-1(a) and State v. Ross, 189 N.J. Super. 67 (App. Div. 1983), and to release on bail, recognizance, or summons. R. 3:4-1 (b), (c), and (d); R. 3:3-26-2; R. 7:5-3. This section reflects these restrictions. Subsection (d) adds a restriction: conditions for release set by someone other than a judge must be re-examined by a judge within 12 hours if the defendant has not been released.

The last paragraph of the source statute, which allowed Port Authority Police to administer oaths for uniform traffic tickets, was deleted. Oaths are no longer required for these tickets.

2B:12-21. Periodic service of imprisonment

A court may order that a sentence of imprisonment be served periodically on particular days, rather than consecutively. The person imprisoned shall be given credit for each day or fraction of a day to the nearest hour actually served.

Source: 2A:8-30.1.

COMMENT

This section continues the substance of its source. The limitation to sentences of 30 days or less was removed to make the section consistent with N.J.S. 2C:43-2(b)(7) which allows night or weekend service of sentences imposed under the Criminal Code without restriction. The only role for the section would be to provide a similar power to order service of the sentence on nights or weekends for sentences for minor violations which are not governed by the Criminal Code. It is not clear whether, even in the absence of this section, a court would find that weekend service was permissible for a disorderly persons offense but not for a traffic offense. This section is retained in

the Municipal Court Chapter because almost all jail sentences for violations are imposed in municipal courts. This section is not so limited and would allow a Superior Court judge the same power to impose a weekend sentence.

2B:12-22. Default in payment of fine; community service

a. A person sentenced by a municipal court to pay a fine who defaults in payment may be ordered to perform community service in lieu of incarceration or other modification of the sentence with the person's consent.

b. The municipal official in charge of the community service program shall report to the municipal court any failure of a person subject to a court work order to report for work or to perform the assigned work. Upon receipt of the report, the court may revoke its community service order and impose any sentence consistent with the original sentence.

Source: 2A:8-31.1, 2A:8-31.2.

COMMENT

This section continues the substance of its sources, 2A:8-31.1 for subsection (a) and 2A:8-31.2 for subsection (b). Although the Criminal Code provides specifically for the use of jail in lieu of a fine when the person fined is unable to pay, N.J.S. 2C:46-2, there is nothing inappropriate in the use of another kind of punitive sentence such as community service. Cf. State v. De Bonis 58 N.J. 182, 198-200 (1971). Community service may be made part of any sentence. N.J.S. 2C:43-2 (b)(5). The requirement of the defendant's consent to imposition of a community service order and the penalty for violation of the order are consistent with the Criminal Code's approach to probation. See N.J.S. 2C:45-1(d) and 2C:45-3(b). The reference to indigency in the source section was deleted to allow the use of community service in lieu of jail whenever a fine was not paid. While this section is consistent with the Criminal Code, it is necessary because the Code's application to sentencing of minor penal violations is unclear. See N.J.S. 2C:1-5.

The section eliminates the reference to restitution. The Criminal Code distinguishes the enforcement of restitution from that of fines. Other punitive sanctions may not be substituted; the restitution is to be collected by enforcement of the judgment. N.J.S. 2C:46-2. The deletion makes this section consistent with the approach taken by the Code and avoids ambiguity in cases involving Criminal Code sentencing.

2B:12-23. Costs charged to complainant in certain cases

In cases where the judge of a municipal court dismisses the complaint or acquits the defendant, and finds that the charge was false and not made in good faith, the judge may order that the complaining witness pay the costs of court established by law.

Source: 2A:8-32.

COMMENT

This section continues the substance of its source.

2B:12-24. Records and standards for municipal courts

The Supreme Court may prescribe records to be maintained and reports to be filed by the municipal court and may promulgate standards for facilities and staff of municipal courts.

Source: New.

COMMENT

While this section is new, it codifies existing practice. The Administrative Office of the Courts enforces standards to assure that each municipal court is able to conduct judicial business appropriately.

2B:12-25. Docketing Judgment

A judgment of a municipal court assessing a penalty may be docketed in the Superior Court by the party recovering the judgment.

A judgment docketed in the Superior Court shall operate, from the time of the docketing, as though the judgment were obtained in an action originally commenced in the Superior Court.

After a judgment has been docketed in the Superior Court, the municipal court shall not issue an execution or hold proceedings in the case except that the municipal court may grant a new trial or may process an appeal.

If a new trial is granted or an appeal taken after a judgment is docketed, the Superior Court shall not issue an execution on the judgment pending the final determination of the proceedings.

Source: 2A:8-42; 2A:8-43; 2A:8-48; 2A:8-51; 2A:8-52; 2A:8-53.

COMMENT

This section continues the substance of the source sections. While few civil cases are heard in municipal courts, the procedure established by this section functions to enforce fines, penalties and restitution. See N.J.S. 2C:46-2.

2B:12-26. Prosecutor

A municipality shall employ an attorney-at-law as municipal prosecutor. In representation of the state, the prosecutor shall act under the supervision of the Attorney General and the county prosecutor.

Source: New.

COMMENT

Almost all municipalities now have municipal prosecutors. This section requires every municipality to appoint a prosecutor. This requirement is consistent with the recommendations of the Task Force Report. See Task Force Report, pos. 3.11. However, unlike the Task Force recommendation, this section does not require that the prosecutor appear in every case. The prosecutor decides whether to appear based on experience and caselaw. This section also prohibits the municipal prosecutor from acting contrary to the responsibilities of the county prosecutor. This principle is derived from the role of the county prosecutor as the chief law enforcement officer of

the county. Cf. N.J.S. 2A:8-23. This section specifies that the municipal prosecutor who is representing the state is subordinate to the county prosecutor.

2B:12-27. Defense of indigents

A municipality shall employ attorneys-at-law on a full-time, part-time or per-case basis to provide for the representation of persons entitled by law to appointment of counsel.

Source: New.

COMMENT

While the Public Defender's Office is authorized to represent persons charged with non-indictable offenses in municipal court, it has never been given sufficient appropriation to allow it to do so. State in re Contempt of Spann, 183 N.J. Super. 62 (App.Div. 1982); N.J.S. 2A:158A-5.2. As a result, municipal courts have been required to provide for representation of indigents charged with offenses which may result in imprisonment or other types of punishment. Rodriguez v. Rosenblatt, 58 N.J. 281 (1971). Some municipalities provide representation through local public defender's offices or other systems of paid counsel. This section codifies that procedure. Some municipalities rely on appointment of counsel without compensation. That method is now permissible; State in interest of Antini, 53 N.J. 488 (1969); State v. Monaghan, 184 N.J. Super. 340 (App. Div. 1982); this section requires compensation to appointed counsel to improve the quality of representation and reduce the burden on attorneys.

Section	Disposition	Comment
2A:8-1	2B:12-1; 2B:12-2	
2A:8-2	deleted	executed
2A:8-3	2B:12-1	
2A:8-4	2B:1-1	
2A:8-5	2B:12-4	
2A:8-5a	2B:12-5	
2A:8-5b	2B:12-5	
2A:8-5c	deleted	unnecessary
2A:8-5.1	deleted	executed
2A:8-5.2	2B:12-5	
2A:8-7	2B:12-7(a)	
2A:8-8	deleted	see note
2A:8-9	2B:12-7(b)	
2A:8-10	2B:12-6	
2A:8-11	deleted	anachronistic
2A:8-12	deleted	see 2B:9-1
2A:8-13	2B:12-10	
2A:8-13.1	2B:12-10	
2A:8-13.2	2B:12-10	
2A:8-13.3	2B:12-10	
2A:8-14	2B:12-11	
2A:8-15	2B:12-12	
2A:8-16	2B:12-13	
2A:8-17	deleted	unnecessary
2A:8-18	2B:12-14	
2A:8-18.1	2B:12-3	
2A:8-18.2	2B:12-1(c)	
2A:8-19	2B:12-8	
2A:8-20	2B:12-15	
2A:8-21	2B:12-16	
2A:8-22	2B:12-17	
2A:8-23	2B:12-18	
2A:8-24	deleted	see note
2A:8-24.1	2B:12-19	
2A:8-25	deleted	anachronistic
2A:8-26	deleted	see note to 2A:8-24
2A:8-27	2B:12-20	
2A:8-28	2B:12-20	
2A:8-29	deleted	unnecessary
2A:8-30	deleted	unnecessary
2A:8-30.1	2B:12-21	
2A:8-31	deleted	unnecessary
2A:8-31.1	2B:12-22	
2A:8-31.2	2B:12-22	
2A:8-32	2B:12-23	
2A:8-34	deleted	unnecessary
2A:8-35	deleted	unnecessary
2A:8-36	deleted	unnecessary
2A:8-37	deleted	unnecessary
2A:8-38	deleted	unnecessary
2A:8-39	deleted	unnecessary

2A:8-40	deleted	unnecessary
2A:8-41	deleted	see 2B:9-1
2A:8-42	2B:12-25	
2A:8-43	2B:12-25	
2A:8-44	deleted	unnecessary
2A:8-45	deleted	unnecessary
2A:8-46	deleted	unnecessary
2A:8-47	deleted	unnecessary
2A:8-48	2B:12-25	
2A:8-49	deleted	unnecessary
2A:8-50	deleted	unnecessary
2A:8-51	2B:12-25	
2A:8-52	2B:12-25	
2A:8-53	2B:12-25	
2A:8-54	deleted	unnecessary
2A:8-55	deleted	unnecessary

Note to 2A:8-8

This section is unnecessary given the more comprehensive regulation of practice of law by municipal court judges in Court Rule 1:15-1

Note to 2A:8-17

This section gave general civil jurisdiction to municipal courts for cases involving less than \$100. This jurisdiction is not now used.