

**NEW JERSEY  
GRAND JURY MANUAL  
FOURTH EDITION**

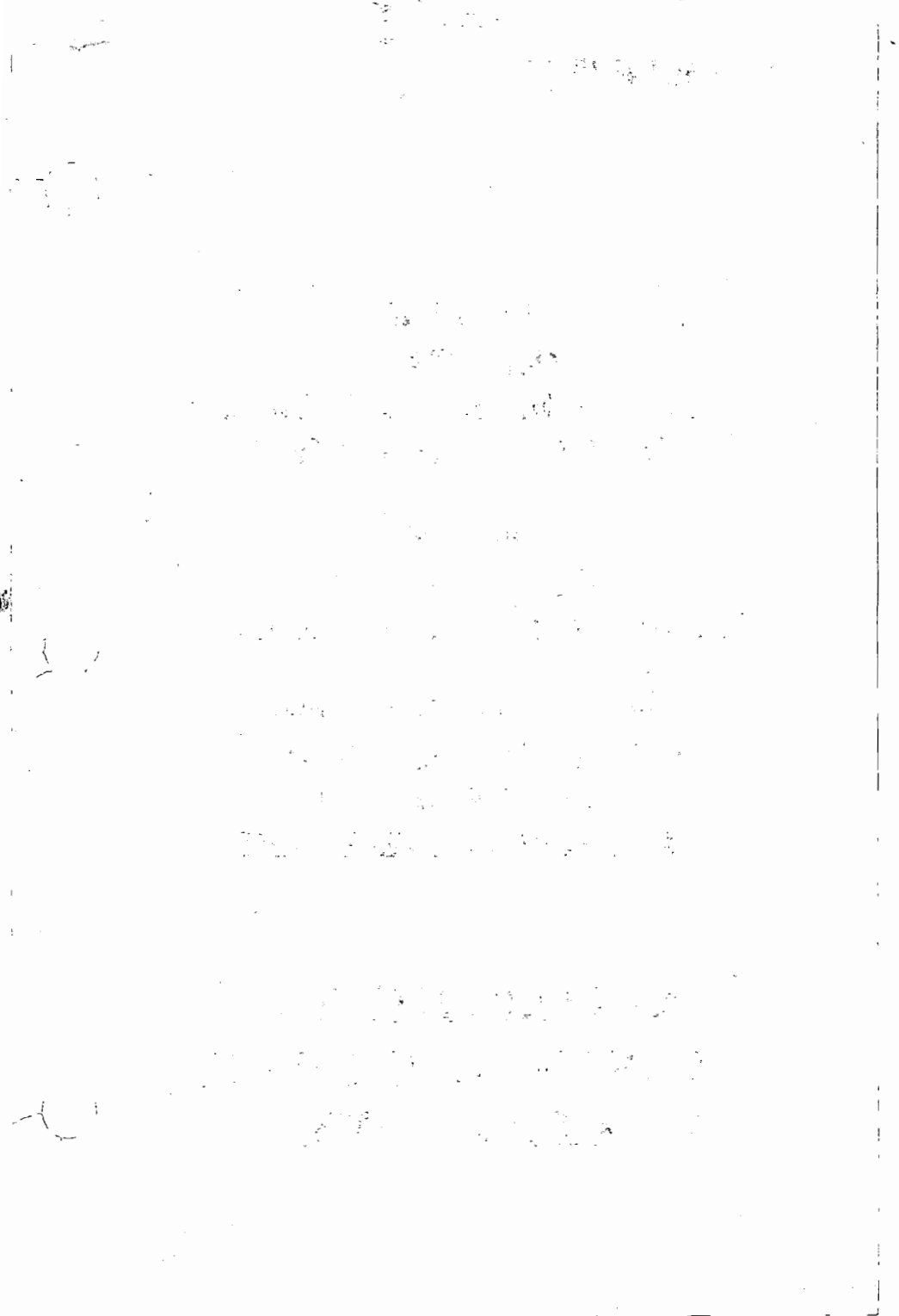
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## **FORWARD**

The Division of Criminal Justice of the Department of Law and Public Safety and The County Prosecutors Association of New Jersey respectfully submit this Fourth edition of the New Jersey Grand Jury Manual to all the Assistant Prosecutors and Deputy Attorneys General of the State

The first edition of this Manual was published in 1977. Since then it has been updated and revised in 1983, 1987 and by this, the 1993 Fourth edition.

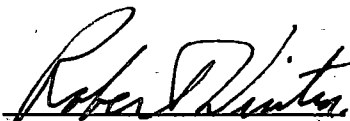
As the law relating to the grand jury evolves in New Jersey, it grows ever more diverse, complex and adversarial. Given the development of the law in this area, the purpose of the Manual becomes ever more necessary. From its inception, the Grand Jury Manual has been intended to provide guidance and assistance to prosecutors presenting matters to a grand jury in order to encourage standardization and uniformity. At several points throughout the Manual, the authors recommend a particular practice or procedure. The word "recommend" was not lightly selected. It is precisely that, a suggestion. The Manual cannot mandate the policies and practices discussed herein be followed. Nor does it vest enforcement rights in any person claiming non-compliance or deviation from the recommended policies and practices.

The format of the Fourth edition has changed in order to make this volume more portable. The hope is that when a book becomes easier to carry, people will carry it.

Once again, suggested indictment forms are included in the Manual. These forms have all been reviewed, revised and updated through June, 1993. In addition to 2C crimes, forms for environmental and tax violations have been included.

The County Prosecutors Association Committee which created the Fourth Edition was chaired by Assistant Attorney General Michael Bozza, Division of Criminal Justice. The Committee consisted of the following: Assistant Prosecutors

William F. Lamb, Middlesex County; William F. Gradisher, Passaic County; Marcia A. Crowe, Hunterdon County; Keith Harvest, Essex County; and, Nancy K. Lotstein, Gloucester County; all members provided their experience, expertise and efforts to this edition. The Committee wishes to thank the following members of the Division of Criminal Justice for their invaluable assistance in creating and producing this Fourth Edition within time limitations that seemed impossible when first considered: Deputy Attorneys General John-Robin M. Quelch, John A. Matthews III, James W. Glassen, James E. Jones Jr., Karen Fiorelli, John J. Smith, Jr., Summer Intern Thomas J. Pyle, Jr., secretaries Gail Fischer, Barbara Grabitz and Michelle Zoltanski; and Assistant Prosecutor Patricia B. Quelch, Monmouth County, for her invaluable assistance in editing the successive drafts. Without their expertise and untiring efforts, this Manual would not have become a reality.



Robert T. Winter  
Assistant Attorney General  
Director of Criminal Justice



Ronald S. Fava, Prosecutor  
President of the County  
Prosecutor's Association of  
New Jersey

## **CASE PREPARATION**

After a criminal complaint or investigation is referred to the Prosecutor's Office, its future course in the criminal process must be decided. It is essential for the prosecutor to have all relevant information in order to reach the proper determination in the screening process.

### **CASE SCREENING AND ADMINISTRATIVE DISPOSITIONS**

Certain cases may be susceptible to disposition prior to grand jury presentation by early plea negotiations, referral to municipal courts, resort to pre-trial intervention programs or by administrative dismissal pursuant to R. 3:25-1. In some counties, these alternative are considered first through a Central Judicial Processing (CJP) Program. Additionally, if the defendant has charges pending in other counties, R. 3:25A-1 permits a single, consolidated disposition of all charges pending in different counties against the same defendant. However, this procedure requires the consent of the defendant and the prosecutors of all counties from which charges are to be transferred.

County Prosecutors should establish a screening procedure in which a prosecutor immediately reviews the complaint and supporting police reports in every case referred to the Prosecutor's Office. The prosecutor should determine whether the case ought to be referred to the grand jury, recommended for diversion, amended and remanded to the Municipal Court or administratively dismissed. Criminal proceedings should be terminated if there is no reasonable likelihood that the admissible evidence would be sufficient to obtain a conviction and sustain it on appeal, or when society would benefit more by another form of disposition.

Among the factors which a prosecutor may properly consider in exercising discretion are the following:

- a. The prosecutor's reasonable doubt that the accused is in fact guilty,
- b. The insufficiency of admissible evidence to support a *prima facie* case,
- c. The seriousness of the offense,
- d. The extent of harm caused by the offense,
- e. The possible deterrent value of prosecution,
- f. The excessive cost of prosecution in relation to the seriousness of the offense,
- g. The value of further proceedings in fostering the community's sense of confidence in the criminal justice system,
- h. The attitude of the victim,
- i. The possible improper motives of the complainant,
- j. Any danger to the victim or to others which might arise if the case is administratively dismissed,
- k. The reluctance of the victim or others to testify,
- l. The attitude of the defendant,
- m. The defendant's past criminal conduct,

- n. Cooperation of the defendant in the apprehension or conviction of others,
- o. The impact of further proceedings upon the defendant and those close to him, especially the likelihood and seriousness of financial hardship or family disruption,
- p. The availability of alternatives, including pre-trial diversion and conditional discharge,
- q. Any provisions for restitution,
- r. Any mitigating circumstances,
- s. The availability and a likelihood of prosecution by another jurisdiction,
- t. The prolonged non-enforcement of a statute with community acquiescence,
- u. The disproportion of the authorized punishment in relation to the particular offense,
- v. The age of the case,
- w. Defendant's conduct was within customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense,
- x. Defendant's conduct did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an

extent too trivial to warrant the condemnation of conviction, or

- y. Defendant's conduct presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the conduct constituting the offense.

Many of the matters referred to the prosecutor will, however, be presented to the grand jury for its determination as to whether an indictment should be returned. Therefore, it is most important that the prosecutor implement appropriate procedures to ensure that he has a complete file prior to presentation of the matter to the grand jury.

In many County Prosecutor's Offices, detectives or investigators are assigned the task of "working the case up for grand jury," and they, therefore, have the responsibility for the completeness of the file. After the case is "worked up" by an investigator or detective, it should be reviewed by a prosecutor to determine whether the matter is ready for grand jury presentation. In short, it is the responsibility of the prosecutor in every case to ensure the investigative file is complete.

The following segment of the Manual deals with the suggested preparation of files for grand jury presentation.

***CHECKLIST OF MATERIALS WHICH GENERALLY SHOULD BE IN AN INVESTIGATIVE FILE PRIOR TO GRAND JURY PRESENTATION:***

1. Complaint
2. Police reports (including incident, arrest and investigative reports)
3. Statements of witnesses

4. Criminal histories (State and Federal)
5. Certified or exemplified copies of judgments of conviction
6. Scientific reports related to:
  - (a) Firearms, drugs, or other laboratory reports
  - (b) Handwriting exemplars
  - (c) Fingerprint analysis
7. Search warrants, affidavits and inventory returns
8. Business records or official certifications
9. Medical reports
10. Photographs or other types of demonstrative evidence and an indication of the witnesses necessary to identify same
11. Statements made by the defendant(s) and police reports concerning the circumstances surrounding the making of those statements, including *Miranda* cards
12. Reports and documents (photographs, transcripts, etc.) concerning any pretrial identification made of the defendant(s)
13. Evidence report (a complete inventory including the location of all evidence and the persons involved in the chain of custody)

14. A list of potential witnesses, including their dates of birth, sex, residence, business, telephone numbers and criminal histories (if any)
15. A summary of the case prepared by a Prosecutor's Office detective or investigator
16. Pre-indictment motions, briefs, orders and transcripts of any hearings related thereto
17. Preliminary (probable cause) hearing transcript
18. Legal analysis by reviewing assistant prosecutor
19. Correspondence section (kept in chronological order).

### ***SUGGESTED PROCEDURES FOR PREPARATION OF GRAND JURY FILES***

1. A checklist should be kept in or on the file.
2. The grand jury investigator should check with the local police departments and other agencies to make sure he has all reports and witnesses' statements. (This procedure should be continuously updated. It may include having the actual police file brought to the Prosecutor's Office for examination and comparison with the items on file in the Prosecutor's Office.) It is suggested that a case transmittal form be utilized to ensure that the necessary items in each case are forwarded to the Prosecutor's Office by the local police department for grand jury presentation.

3. The files should be properly docketed with notations as to the bail, plea, defense counsel's name, and other items including whether there are co-defendants or additional charges pending against the defendant. One file should contain all items involved in a single case. Therefore, if there are co-defendants involved in a transaction, their files should be consolidated. If there are juveniles charged as co-defendants, both the adult and juvenile files should be cross-referenced to reflect that fact. All charges which may be the subject of the mandatory joinder rule under *State v. Gregory*, 65 N.J. 510 (1975), should also be consolidated into one case file.

In reviewing the file, the prosecutor should make a complete legal analysis of the operative facts and the relevant statutes, and determine the charges which should be included in the grand jury presentation. The grand jury investigator should prepare a list of witnesses, as well as other documents or exhibits that should be presented to the grand jury.

Whenever possible, the prosecutor presenting the matter to the grand jury should speak personally with witnesses prior to their testimony, and review with them their previous statements and reports.

## **GRAND JURY ORIENTATION**

Those persons selected for grand jury service generally have little or no understanding of the grand jury's role in the criminal justice system or its day to day functions. Accordingly, orientation of a new grand jury panel is the prosecutor's first responsibility. On the day the grand jurors are sworn in, they should be addressed by the prosecutor who will be presenting most of the cases to them.<sup>1</sup> At this time, the jurors should be given a brief outline of the criminal justice system. They should be informed that in most cases, the first step in a criminal prosecution is the filing of a complaint in a municipal court by which a defendant is charged with the commission of a specific offense. The complaint is signed by either the alleged victim or a police officer. The succeeding steps after the filing of a complaint should then be detailed, tracing a case through the municipality, the County Prosecutor's Office, the grand jury and the trial court.

The grand jurors should receive an explanation of how cases will be submitted to them, and how they will receive testimony, deliberate and act. They should be advised that in presenting a case it is not the practice, nor is it necessary, for the prosecutor to bring before them all available witnesses. Rather, what is required is the testimony of those witnesses who can provide the legal evidence sufficient to establish a *prima facie* case, *i.e.*, evidence which, if unexplained or uncontradicted, would carry the case to a trial jury and justify the conviction of the accused. It should be explained to the grand jurors that as an independent body, the grand jury has the right to request

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<sup>1</sup> Before addressing the Grand Jury, the prosecutor should familiarize himself with the Judge's legal charge to the Grand Jury. A written copy of the Judge's charge must be provided to each juror. R. 3:6-3(b)

additional witnesses or other evidence be produced before it.

During orientation, it is advisable to inform the grand jury that if a juror has personal knowledge of the facts of a case or is acquainted with a witness, victim or defendant, the juror should call that fact to the attention of the foreperson or prosecutor.<sup>2</sup>

Cases to be presented to a grand jury during its first few sessions should be screened so as to exclude matters involving major crimes or cases of a complex nature. However, if a major crime is properly prepared and explained, it is feasible to present it to a new grand jury at the first or second session. Doing so has certain beneficial effects; the effective presentation of a major case early in their term impresses grand jurors with the seriousness of their duties and gives them a sense of doing something important about a serious crime.

The terms "indictment" and "no-bill" should be defined for the grand jury with the legal and practical significance of each clarified. Furthermore, notwithstanding the absence of any authority from court rule or statute, the prosecutor should advise the grand jurors of the procedure commonly called the "no-bill/remand." This option has been widely accepted, if perhaps only because of its usage, as a legitimate third alternative available to the grand jury in the disposition of a case. The no-bill/remand option is a practical and justifiable alternative to

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<sup>2</sup> Questions involving any particular grand juror's interest/bias, a personal conflict or any other potential disqualifier must be handled carefully. As part of the orientation process, the need for impartiality should be impressed upon the grand jurors. It must be emphasized that resolving grand juror conflict questions is not a matter entrusted to the prosecutor. The grand jury is an arm of the judicial system, not law enforcement. All questions involving the eligibility/fitness of a grand juror to participate in a case must be brought to the attention of and be decided by the assignment judge. *State v. Murphy*, 110 N.J. 20, 31-36 (1988).

indictments where prosecution of the accused as a disorderly person would be more appropriate. See *Mondrow v. Selwyn*, 172 N.J. Super. 379, 387 (App. Div. 1980), certif. den. 84 N.J. 449 (1980). Indeed, the New Jersey Supreme Court has encouraged prosecutors not to seek indictments from the grand jury where disorderly persons offenses are a suitable alternative. See *State v. Saulnier*, 63 N.J. 199, 208 (1973).

Generally speaking, within the confines of applicable constitutional or statutory provisions, the grand jury is unfettered by technical rules and can adopt whatever procedures best suit its purposes. The procedure to implement a no-bill/remand is not inflexible, nor is it defined by mandatory procedural rules to be applied in the grand jury. Thus, if the grand jurors are unable to generate the twelve votes necessary for a true bill, the prosecutor can inquire whether the grand jurors intend a straight no-bill. If there is sentiment for a remand, there is no legal impediment against a motion to reopen the matter for further consideration. Of course, an original motion for a no-bill/remand is also available. It appears implicit in *R. 3:6-8*, however, that twelve votes are necessary to remand a complaint to municipal court as a disorderly persons offense. If the affirmative remand votes fall short of that figure, the effect is a straight no-bill.

Note, an argument can be made that a vote for a no-bill/remand is only a recommendation by the grand jury to the prosecutor to refer the matter for prosecution at the municipal court level. Under this view, the prosecutor still retains the discretion to treat the matter as a no-bill and/or to administratively dismiss the complaint. This conclusion flows from the fact that the no-bill/remand is a practical, rather than a legal option, and as such, can be considered as an advisory recommendation by the grand jury.

The respective duties of the foreperson, deputy foreperson and clerk of the grand jury should be outlined, particularly those duties referred to in *R. 3:6-1 et seq.* Thus, it

should be stated that the foreperson, and in his absence the deputy foreperson, presides over the daily grand jury sessions, administers the oath to witnesses, moderates grand jury discussion and endorses all indictments and presentments. It is the duty of the clerk to make and keep the minutes of the proceedings, as well as to record the vote of each juror, by name, on each considered matter.

In accordance with R. 3:6-6(a), the grand jurors should be advised that the prosecutor, the clerk, the witness under examination, interpreters when needed, and a stenographer [or operator of a recording device] will be present while the grand jury is taking evidence. No person other than the jurors, the prosecutor, the clerk and the stenographer may be present while the grand jury is deliberating. R. 3:6-6. The grand jury, moreover, may request the prosecutor and the stenographer to leave the jury room during its deliberations.

Finally, the role of the prosecutor in relation to the grand jury should be explained. *See* Role of the Prosecutor, *infra*. The grand jury should be informed that it is the responsibility of the prosecutor presenting a case to examine witnesses and to introduce other evidence. Further, the prosecutor is to advise the grand jury as to the applicable law, the admissibility of evidence and the propriety of specific questions which the grand jurors may wish to ask witnesses. Often grand jurors are tempted, particularly in marginal cases, to ask experienced police officers their opinion with respect to the guilt or innocence of a defendant. Grand jurors should be instructed not to ask such opinion questions of the witnesses. Finally, the prosecutor should note that at times it is incumbent upon him to explain the relationship between the testimony and the applicable statutes or legal principles. In doing so, however, it is imperative that the prosecutor scrupulously avoid passing judgment on the proofs or otherwise to intimate a personal view on how the matter should be decided by the grand jury.

## **THE ROLE OF THE PROSECUTOR**

A prosecutor's duty before the grand jury is to present the evidence and to explain the law in order to assist the grand jury in accomplishing its purpose:

- 1) to ensure that persons will be brought to trial only if a reasonable basis for the charge exists; and
- 2) to ensure that those brought to trial will be adequately informed of the charges against them.

Accordingly, once a decision has been made to refer a case to the grand jury (*see* Case Screening and Administrative Dispositions, *supra*), the prosecutor must determine what evidence is to be placed before the grand jury. First, after having thoroughly reviewed the file, the prosecutor must decide which witnesses are to be called to testify. Only those witnesses who are subpoenaed or who are invited and consent to appear may testify before the grand jury. *See State v. Spano*, 64 N.J. 566, 568 (1974). The witnesses will testify to those matters which the prosecutor thinks necessary for a proper understanding of the charge[s] in the complaint and to establish the legal elements of such charge[s].

A survey of County Prosecutors indicates that almost without exception experienced and able lawyers are placed in charge of the grand jury. These attributes are put to good use in deciding the quantity of testimony necessary for the grand jury's intelligent evaluation of a case, the extent of the examination of witnesses and the charges ultimately voted upon by the grand jury. Of course, it is within the authority of the grand jury to call for additional witnesses it may wish to hear in a particular case. Toward that end, the prosecutor should remind the grand jury of that prerogative.

As a practical matter, the number of witnesses actually presented is controlled in part by the time available and the number of cases which must be heard by the grand jury on a given

day. This is not to say that a particularly complex case should be presented in an abbreviated fashion because of the lack of time. Adequate time must be allocated to accommodate those cases where extended testimony is required for the grand jury to gain a full understanding of the charge and the defendant's involvement, or lack of it, in the crime.

The prosecutor may also make the determination that the potential defendant or target should be offered the opportunity to testify on his own behalf. This situation may arise in a number of circumstances, often involving cross complaints, including the neighborhood dispute, the domestic or intra-family quarrel or those instances where there is suspicion that the complainant may have had improper motives for signing the complaint. The defendant or target himself may initiate a request to be heard by the grand jury and the prosecutor may grant such a request if the ends of justice require it or to ensure a full presentation of the matter to the grand jury.

Regardless of whether the defendant chooses to testify, the prosecutor may possess or receive evidence that tends to exculpate the accused. It is obvious that if reliable exculpatory evidence exists, the prosecution is not likely to sustain its burden of proof before a petit jury at trial. In such instances, submission of exculpatory evidence to the grand jury is both practical and warranted. See Federal Grand Jury Practice Manual, U.S. Department of Justice. However, care must be taken not to create a "trial" of the case before the grand jury or an adversarial proceeding of any variety.

In the ordinary case, evidence offered by the defense (other than through the testimony of the defendant/target of the investigation) should be submitted to the grand jury only when it clearly negates guilt and the defendant/target would likely be exonerated by the grand jury if it were made aware of such

evidence.<sup>3</sup>

In presenting the typical criminal complaint to a grand jury, the prosecutor should say a few words about the complaint at the outset of the proceeding. He should, for example, set the scene for the grand jurors by setting forth the charge(s). In more complex cases, a brief explanation of the anticipated testimony and a review of the elements of the crimes charged may also be of assistance. While in no way expressing an opinion or urging a point of view, the prosecutor should provide the grand jurors with the factual background necessary to make the testimony that they are about to hear meaningful.

In examining witnesses before the grand jury, it is imperative that questions be concisely and simply stated; thus eliciting answers that are relevant and within the understanding of the grand jurors. It is necessary to remember that grand jurors have varied educational backgrounds, comprise many occupational levels and range in age from 18 to 75. They bring to their duties both their life experiences and preconceived ideas about the criminal justice system. It should also be kept in mind that while the prosecutor examining the witness has had the benefit of reading all the reports in the case, the grand jurors are hearing the testimony for the first time and must perform the difficult task of placing that testimony into the overall framework of the

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<sup>3</sup> The United States Supreme Court has declared that prosecutors are not under any obligation to present exculpatory evidence to the grand jury. *United States v. Williams*, 504 U.S., 112 S.Ct. 1735, 118 L.Ed.2d 352 (1992). A subsequent Hudson County trial court opinion concluded, however, that presentation of exculpatory evidence is required by the New Jersey Constitution. *See State v. Gaughran*, 260 N.J. Super. 284 (Law Div. 1992). The reading of precedent which produced this result is not likely to be employed by other courts, but the very existence of the *Gaughran* decision will doubtless encourage the filing of future applications to dismiss indictments based upon a failure to present exculpatory evidence to the grand jury.

case. It is in this area that the skillful prosecutor can maintain an objective stance and yet be of immeasurable assistance to the grand jury in fulfilling its function. Witness examination should be brief, with concentration on that which must be shown to establish a *prima facie* case. In this process, leading questions are entirely proper and are often necessary to ensure that the witness keeps to relevant issues.

Occasionally, it will be necessary to "cross-examine" a witness. Generally, such an approach may be necessary (1) when there is an obvious inconsistency between the witness' testimony before the grand jury and his prior statements; (2) when the witness' story is "unlikely;" (3) when there is a conflict in testimony between witnesses; (4) when the witness appears evasive or hostile; or (5) when there appears to be a strong probability that the witness is not being truthful. It is the prosecutor's duty to elicit the truth from the witnesses appearing before the grand jury. Probing examination is therefore appropriate and essential when it is suspected that a witness is being less than honest or forthright.

In presenting cases to the grand jury, the prosecutor must take care not to assume the role of advocate. There is, of course, no impropriety in the prosecutor's assisting in the investigation. Nor is it improper for the prosecutor to advise the grand jury as to the admissibility of evidence, on matters of procedure or to relate the proofs presented to the law applicable to the case. The prosecutor should not, however, participate in the grand jury's deliberations, express a view on questions of fact, comment on the weight or sufficiency of evidence or in any way attempt to influence the determination to be rendered by the grand jury. See *State v. Hart*, 139 N.J. Super. 565, 567-568 (App. Div. 1976).

Notwithstanding these broad guidelines, there are numerous situations where additional information within the knowledge of the prosecutor should be brought to the grand jury's attention to assure that justice is done. A partial list of these

situations is contained in Attorney General Formal Opinion 11-1976, and includes:

1. The prosecutor's reasonable doubt that the accused is in fact guilty;
2. The extent of harm caused by the offense;
3. The disproportion of the authorized punishment in relation to the particular offense of the accused;
4. Possible improper motives of a complainant;
5. The prolonged non-enforcement of a statute, with community acquiescence;
6. The reluctance of the victim to testify;
7. Cooperation of the accused in the apprehension or conviction of others, and
8. Availability and likelihood of prosecution by an other jurisdiction.

In short, a prosecutor may recommend a no-bill in those instances where justice so requires. *But see State v. Butterfoss*, 234 N.J. Super. 606 (Law Div. 1988), a non-binding trial opinion which held that it was improper for a prosecutor to recommend that a charge be no-billed by the grand jury. In some cases, substantial justice will best be achieved by a remand of the matter to the municipal court. The prosecutor should therefore be prepared to discuss the possible penalties and consequences of such a remand in the event of a no-bill. There is no doubt that it is improper for a prosecutor to influence the grand jury to indict when there is a lack of evidence to support such an

indictment. *State v. Hart, supra. State v. Ferrante*, 111 N.J. Super. 299, 304-306 (App. Div. 1970). However, it is equally clear that in the rare case when a grand jury votes not to indict and the prosecutor is convinced that a real and obvious miscarriage of justice has thereby occurred, the prosecutor should not hesitate to seek to represent the matter to a different grand jury. In short, the prosecutor must be guided by principles of justice with sensitivity to the deference given his position by the grand jurors and influence his commentary might have upon them.<sup>4</sup>

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<sup>4</sup> Although the prosecutor should not attempt to influence or direct the grand jury in its findings, he is not expected to limit his participation to an innocuous presentation. There is no legal bar to the use of vigorous and skillful questioning which will elicit and compel truthful responses from reluctant witnesses. See, e.g., *United States v. Rintelen*, 235 F. 787, 791 (S.D.N.Y. 1916); *State v. Schamberg*, 146 N.J. Super. 559 (App. Div. 1977) certif. den. 75 N.J. 10 (1977).

In *Schamberg* the court distinguished the *Hart* decision based upon the fact that the prosecutor did not make comment to induce the grand jury to indict, but rather used it as a means of urging the witness to tell the truth by confronting him with the possibility that his testimony as given was perjured.

## THE GRAND JURY RECORD

*N.J.S.A. 2A:73B-1* requires recordation of *everything* the prosecutor says once the presentation of a case or investigation has begun before the grand jury.<sup>5</sup>

The grand jury must receive a legal charge which states the law applicable to each different offense that the grand jury will be asked to consider. Because the law requires recordation of all comments by the prosecutor, the legal charge given to the grand jurors to aid them in their deliberations must be recorded. The following procedure with respect to the legal charge is suggested:

- a. Read the applicable statutes. Do not provide

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<sup>5</sup> *N.J.S.A. 2A:73B-1* provides:

In any case or investigation before a grand jury, the testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses or members of the grand jury shall be *transcribed*.  
(Emphasis added).

Considerable question had arisen concerning the proper interpretation to be given to the term "transcribed." After consultation with the Division of Criminal Justice and the Office of the Public Defender, the Administrative Office of the Courts determined that the appropriate reading to be given this statute does *not* require the production of a *transcript* of all testimony, comments and colloquy in the absence of a specific request therefore. Rather, the statute is intended to require only that there be a *recordation* of all testimony, comments and colloquy so that a transcript can be prepared upon an appropriate request.

written copies to the grand jurors as this is likely to foster personal or erroneous interpretations of the law. Do not go further than this unless questions are asked.<sup>6</sup>

- b. Read the applicable model (or proposed) jury charges, if available, in responding to grand jurors' questions about the applicable law. Again, confine these explanations to a reading. Do not provide written charges to the jurors.

It is common for many county grand juries to hear a large number of complaints relating to the same type of criminal activity (e.g., robbery, burglary, CDS, etc.) In those instances where the prosecutor believes it to be more efficient to instruct the grand jurors on the law only once, the instruction should be given during orientation and should include the elements of these crimes. This methodology will obviate the need to recite

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<sup>6</sup> Reading the statutes is the better practice. *But cf. State v. Laws*, 262 N.J. Super. 551, 562-63 (App. Div. 1993) holding that the reading of the applicable statute is not constitutionally required in New Jersey. Nor could the defendant in *Laws* demonstrate any prejudice since the prosecutor's detailed questions brought forth all the elements of the offenses which the court characterized as "self-explanatory."

legal instructions each time a familiar crime is presented.<sup>7</sup> That portion of the orientation should be recorded. No other portion of the orientation, however, need be recorded.

The court stenographer or sound recording device operator must be present in the grand jury room whenever the prosecutor is presenting a case. The stenographer/recording device operator should be instructed to record everything the prosecutor says, including all exchanges between the prosecutor and members of the grand jury and the prosecutor and the witnesses. Everything a grand juror says when he is engaged in discussion with the prosecutor should also be recorded. Likewise, everything a witness says in the grand jury room should be recorded, whether he is responding to a question or not. Exchanges among grand jurors *exclusively* (as in deliberations) should *not* be recorded. Comments by grand jurors which are not directed to the prosecutor or to a witness should also not be recorded.

It is recognized that the prosecutor's presence during deliberations is traditionally thought to be preferred. Practical experience and human nature show that exchanges between grand jurors and the prosecutor are encouraged by the physical presence of the prosecutor, even if the prosecutor does not initiate such exchanges. The prosecutor's presence also permits

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<sup>7</sup> Once an offense has been charged, reference to that initial charge is sufficient so long as the grand jurors indicate that they have no questions regarding the application of that particular law. A defendant may demand production of this portion of the orientation because it may reasonably be argued that the orientation's legal charge was applied to his subsequently presented case. Conversely, a prosecutor may see the need to produce a transcript of the orientation charge in order to answer a claim of erroneous instruction on the law. Notwithstanding the orientation charge, instructions which are complex or relate to more serious cases are best given or repeated at the time of such presentations.

interjection into the grand juror's discussions when the direction and tenor of those discussions make such a course seem advisable. In such instances, the prosecutor should repeat for the record the relevant comment or query of the grand jurors and then provide whatever response or explanation is appropriate. Bear in mind, however, that all exchanges between the prosecutor and the grand jurors must be recorded, even if they occur in the midst of the jurors' otherwise unrecorded deliberations.

If the prosecutor remains in the grand jury room during deliberations, the following procedure is recommended in order to preserve the grand jury's right to deliberate off the record and to ensure compliance with the requirements of the colloquy law. At the time of orientation, the grand jurors should be advised of the requirements of colloquy recordation and the sensitivity of the record. They should be instructed to avoid expressions of opinion or comments on credibility/quality of evidence while engaged in colloquy with the prosecutor. Such comments and expressions by grand jurors are best made during their own discussions and deliberations when they will not be recorded. The grand jurors should be instructed that if they want to guarantee that their discussion will go unrecorded, they can best assure that result by speaking among themselves at the appropriate time.

When the prosecutor is present during grand jury discussions or deliberations, the grand jurors should direct all requests and questions to their foreperson. These exchanges need not be recorded and allow the grand jurors to delineate that which may become part of the record through referral of the request/question from the foreperson to the prosecutor. This procedure also alerts the prosecutor to go back on the record for the purpose of responding to the grand jury's inquiry.

Nothing requires the recordation of comments made by the grand jury clerk. However, in situations where the prosecutor gives an audible direction to the clerk or engages the clerk

in colloquy that can be heard by the grand jurors, it is recommended that these exchanges be recorded in their entirety. Similarly, any statement or remark made by an interpreter in the grand jury's presence should be recorded.

The prosecutor, of course, is not obliged to remain in the grand jury room during grand juror deliberation and discussion. If the prosecutor elects to leave, however, the stenographer/recording device operator must also leave. In no case should a witness be present in the grand jury room in the prosecutor's absence.<sup>8</sup>

Once the grand jury has voted upon a matter and that vote has been tallied by the clerk, the grand jury record is effectively concluded. At that point, the prosecutor is free to engage the grand jury in off the record and non-memorialized discussion about the case. Experienced prosecutors often find such post-deliberation exchanges to be extremely beneficial and enlightening. Given the fact that grand jurors' backgrounds and attitudes are likely to be broadly akin to those of the petit jurors who will try an indicted case, prosecutors should not forego this opportunity to gauge juror reaction to the government's proofs. Open and frank discussion with the grand jurors may expose both unappreciated strengths and hidden weaknesses in the prosecution case. Again, as long as the grand jury has already voted on the matter, there is no bar to such discussions and nothing said by either the prosecutor or the grand jurors need be recorded.

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<sup>8</sup> There appears to be no authority which would permit the grand jury to request the prosecutor to leave the grand jury room while a witness is present or for the grand jury to question a witness in the prosecutor's absence

## EVIDENCE BEFORE THE GRAND JURY

As a general rule, presentation before a grand jury of inadmissible or even illegally obtained evidence procured in violation of an individual's constitutional rights does not serve to vitiate the resulting indictment.<sup>9</sup> In most jurisdictions, including New Jersey, the grand jury is not limited to receiving the evidence admissible at trial. *See, e.g., State v. Chandler*, 98 N.J. Super. 241 (Ct. Ct. 1967); *see also State v. Ferrante, supra.*; *State v. Garrison*, 130 N.J.L. 350 (Sup. Ct. 1943); *State v. Donovan*, 129 N.J.L. 478 (Sup. Ct. 1943); *State v. Ellenstein*, 121 N.J.L. 304 (Sup. Ct. 1938); *State v. Dayton*, 23 N.J.L. 49 (Sup. Ct. 1850). And for the most part, the competency of evidence presented to the grand jury may not be the subject of judicial inquiry. *State v. Chandler, supra.*

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<sup>9</sup> *See e.g., United States v. Calandra*, 414 U.S. 343 (1974); *United States v. Blue*, 384 U.S. 251 (1966); *Lawn v. United States*, 355 U.S. 339 (1958); *Costello v. United States*, 350 U.S. 359 (1966); *Holt v. United States*, 218 U.S. 245 (1910). One line of cases, however, has indicated that where a target of an investigation is compelled to give incriminating evidence before a grand jury, that same grand jury cannot permissibly indict for the offenses to which he has confessed. *See e.g., Goldberg v. United States*, 472 F.2d 513, 516 (2 Cir. 1973); *Jones v. United States*, 342 F.2d 863 (D.C. Cir. 1964); *United States v. Tane*, 329 F.2d 848 (2 Cir. 1964); *United States v. Lawn*, 115 F. Supp. 674 (S.D.N.Y. 1953), app. dism. sub. nom. *United States v. Roth*, 208 F.2d 467 (2 Cir. 1953). For example, the court in *Goldberg v. United States, supra*, observed that an indictment might be invalid if returned by the same grand jury before whom a defendant was compelled to testify against himself under a grant of immunity, and who actually testified as to incriminating matter. The court applied the rationale of *Bruton v. United States*, 391 U.S. 123 (1968), to the grand jury setting in finding that under such circumstances "it would be well nigh impossible for the grand jury jurors to put (defendant's) answer out of their minds." Thus, the very testimony which was compelled by the grant of immunity might be used against him by the grand jury. *Goldberg v. United States, supra* at 516.

The reason for the rule is obvious. Traditionally, the grand jury "has been accorded wide latitude to inquire into violations of (the) criminal law." *United States v. Calandra*, *supra* at 341. It is a grand inquest, a body with powers of investigation, the scope of whose inquiries is not to be limited by doubts whether any particular individual will be found properly subject to an accusation of crime. *Blair v. United States*, 250 U.S. 273, 282 (1919). It has been recognized that "the investigative power of the grand jury is necessarily broad if its public responsibility is to be adequately discharged. *Branzburg v. Hayes*, 408 U.S. 665, 700 (1972). Significantly, the grand jury is not "an officious meddler," *In re Addonizio*, 53 N.J. 107, 124 (1968) for its investigatory function "is not fully carried out until every available clue has been run down and all witnesses examined in every proper way to find out if a crime has been committed." *United States v. Stone*, 429 F.2d 138, 140 (2 Cir. 1970). Such an investigation may be triggered by tips, rumors or evidence proffered by the prosecutor. *Branzburg v. Hayes*, *supra* at 701.

One caveat is plainly in order. The policy prohibiting dismissal of an indictment by virtue of the introduction of inadmissible evidence does not apply to what has been characterized as "grand jury misconduct." New Jersey courts have held that "in order to promote the purity of the administration of justice and for greater security of the citizen," *State v. Dayton*, *supra* at 58, an indictment may be quashed by virtue of misconduct by the grand jury. Misconduct occurs when the grand jury "indifferently and openly without having some evidence" brings charges against an individual by returning an indictment. *State v. Donovan*, *supra* at 483. However, an indictment will not be dismissed as long as some legal evidence was presented which supports the charges. *State v. Smith*, 102 N.J. Super. 325 (Law Div. 1968) *aff'd* 55 N.J. 476 (1970) *cert. den.* 400 U.S. 949 (1970).

What has been said thus far should not be construed as a blanket endorsement of a policy permitting prosecutors to utilize incompetent and inadmissible evidence in grand jury proceedings. While it is true that reception of inadmissible evidence by the grand jury does not serve to invalidate a resulting indictment, it is a far different thing to suggest that prosecutors are not subject to any restraints in this regard.

It is recommended that prosecutors seek to present only admissible evidence to the grand jury. Incompetent and illegal evidence should not be presented to the grand jury. So too, as a general rule, evidentiary privileges should be honored and not violated at the grand jury proceedings. Where a privilege is personal to a defendant or the target of an investigation and that individual has the right to claim the privilege, it can be assumed that the individual will exercise the privilege at trial. In all other instance where privilege is not personal, consideration should be given to the nature of the privilege, the individual who has a right to exercise it and other surrounding circumstances.

Failure to observe evidentiary controls may result in unnecessary trials and permit improper rummaging into the personal lives of witnesses. Nevertheless, the nature of the grand jury process also suggests that some exceptions be made to the policy requiring that only admissible evidence be presented to the grand jury. For example, investigative grand juries must often sift through all available clues to determine whether a crime has been committed. It would be unwise to restrict the scope of the grand jury's inquiries by requiring that only competent, admissible evidence be received. So too, expert reports may often be presented to the grand jury in the interest of economy. Ordinarily where an expert would merely testify as to the contents of his report, his presence before the grand jury would not be needed. It seems only fair, however, that the prosecutor clearly inform the grand jurors of the availability of better or firsthand evidence so that they can, if they wish, request presentation of such proofs.

## **THE GRAND JURY SUBPOENA**

The grand jury is a law enforcement body charged with various investigatory and accusatory duties. Likewise, the Attorney General and the County Prosecutors, as the chief law enforcement officers within their respective jurisdictions, are charged with the duty to detect and prosecute violators of the law. *State v. Winne*, 12 N.J. 152 (1953) and N.J.S.A. 52:17B-97 *et seq.* Since the Constitution of the State of New Jersey mandates that no person shall be held to answer for a criminal offense unless indicted by a grand jury, N.J. Const. Art. 1, par. 8, the prosecutor and the grand jury must jointly discharge their responsibilities to the end that justice is done, *i.e.*, to assure that all indictments or presentments are supported by sufficient evidence. *State v. Ferrante, supra.* Toward that end, the grand jury and its legal advisor, the prosecutor, have been provided with legal process, that is the grand jury subpoena.

### **THE ISSUANCE OF THE GRAND JURY SUBPOENA**

The grand jury, traditionally and historically, has authority to issue subpoenas and to gather evidence. To assist the grand jury, the prosecutor may issue the grand jury's subpoena for evidence gathering purposes. *In re Addonizio, supra.* The power to issue the grand jury's subpoena is limited to the prosecutor. State and County investigators or police officers have no authority to issue grand jury subpoenas. Investigators or police officers shall not be given the authority to fill in blank grand jury subpoenas. As a general rule, the County Prosecutor should direct that the service of all grand jury subpoenas be authorized by a prosecutor. Once the subpoena is authorized by a prosecutor, it can be served by a police officer, investigator or other agent of the prosecutor, providing the agent is at least 18 years of age.

## **FORM OF THE SUBPOENA**

The subpoena *ad testificandum* shall identify the grand jury, the title of the action and shall command the person to whom it is directed to attend and give testimony at the time and place specified therein without prepayment of any witness fee. R. 1:9-1. Generally, the subpoena should specify the name of the defendant or subject under investigation. However, when secrecy so requires, the subpoena *ad testificandum* need not identify the subject matter of the testimony sought or identify the cause to which it pertains. *In Re Application of Waterfront Comm.*, 32 N.J. 323 (1960).

The subpoena *duces tecum* (R. 1:9-2) should follow the same form as the subpoena *ad testificandum*, except it must indicate, with some degree of specificity, a description of the records sought. *In re Addonizio, supra*. Courts have given wide latitude in compelling production of records covering many years, regardless of the statute of limitations. *In re Addonizio, supra*. However, the subpoena must be limited in scope, relevant in purpose and specific in directive so that compliance will not be unreasonably burdensome.

## **NOTICE REQUIREMENTS**

The New Jersey Court Rules do not specify any notice requirement for service of the grand jury subpoena. In theory, a subpoena can be served, compelling testimony or production of evidence immediately at the grand jury. However, the courts apply a subjective test of reasonableness depending on the nature of the testimony or records sought. *In re Addonizio, supra*. In an emergent situation, the Court may well deny a motion to quash a subpoena *ad testificandum* requiring a witness to testify at grand jury with one day's notice. However, in dealing with a subpoena *duces tecum* for large quantities of records, the return date of the subpoena should be sufficiently

in the future as to give the witness a reasonable time to comply. *State v. Asherman*, 91 N.J. Super. 159 (Cty. Ct. 1966). All subpoenas, both subpoena *ad testificandum* and subpoena *duces tecum*, must be made returnable for a day on which the grand jury is actually sitting. *State v. Hilltop Private Nursing Home*, 177 N.J. Super. 377 (App. Div. 1981).

### **STANDARDS FOR ISSUANCE OF THE SUBPOENA**

The grand jury has the duty not only to investigate violations of the law, but also to investigate conditions of public interest, even though no violation of a penal statute is, in fact, involved. *In re Addonizio*, *supra*. In order to satisfy this duty, the grand jury may investigate and subpoena evidence based upon anonymous charges, rumors or hearsay even though such an investigation will entail a "fishing expedition." *Blair v. United States*, *supra*; *In re Addonizio*, *supra*. A prosecutor, unlike a grand jury, does not have the power to order any individual to appear before him. *State v. Fay*, 146 N.J. Super. 378, 391 (Law Div. 1976), app. disp. 153 N.J. Super. 503 (App. Div. 1977); *United States v. Dionisio*, 410 U.S. 1, (1973). Accordingly, it is improper for a prosecutor to issue what is commonly known as an "office subpoena" commanding a witness to appear at the Prosecutor's Office to give a statement or testimony. *State v. Eisenstein*, 16 N.J. Super. 8, 13 (App. Div. 1951), *aff'd* 9 N.J. 347 (1952). However, the prosecutor should not be discouraged from *requesting* a witness to appear at his office for an interview in lieu of a grand jury appearance. Nor should the foregoing discourage a prosecutor from pre-grand jury interviews with prospective witnesses. In short, a grand jury subpoena should be issued only when the prosecutor has a good faith belief that the particular witness could be of some assistance to the grand jury's inquiry. It is recognized that the prosecutor has the responsibility of marshalling evidence before a grand jury and it is his function to determine the need for the

information sought by the issuance of the subpoena. *In re Petition to Compel Testimony of Tusso*, 73 N.J. 575 (1977).

### **THE SUBPOENA DUCES TECUM--WHAT CAN BE SUBPOENAED**

Generally, the subpoena *duces tecum* is directed to four (4) areas: municipal records; public utility records; business records; and personal records. To establish the validity of a grand jury subpoena *duces tecum*, the State must establish (1) the existence of a grand jury investigation and (2) the nature and subject matter of the investigation. *In re Grand Jury Subpoena Duces Tecum v. State*, 167 N.J. Super. 471 (App. Div. 1979). These matters may be proved by the simple representation of counsel. It is not necessary that the prosecutor seek the authorization of a sitting grand jury to issue a subpoena *duces tecum*; moreover, it is not even necessary that a grand jury be sitting or in session at the time of the issuance of the subpoena. However, the return date of the subpoena must be a day when the grand jury is sitting. *State v. Hilltop Private Nursing Home, supra*.

Compliance with a subpoena *duces tecum* may be accomplished by the presentation of the documents sought to the prosecutor or his investigator prior to or on the return date in lieu of an actual appearance before the grand jury. *Id.*

1. **Municipal Records:** All municipal records including records of municipal agencies, zoning boards, school boards and the like are subject to subpoena, restricted only by the test of reasonableness. These records may be subpoenaed on rumor or suspicion alone, and probably on the ground that the grand jury desires to inquire whether the public agency is operating properly. These records can be subpoenaed even though the municipal official to whom the records pertain is the target of the investigation.

2. **Public Utility Records:** Traditionally, all records of utilities could be subpoenaed subject to the Fourth Amendment test of reasonableness. *Hale v. Henkel*, 20 U.S. 43 (1905). It was a common practice, therefore, to obtain electric usage, gas customer information, bank records, telephone toll records, etc., by use of the grand jury subpoena, restricted only by the standards indicated above. In *State v. Hunt and Perillo*, 91 N.J. 338 (1982), however, the New Jersey Supreme Court held that telephone toll records are subject to an individual right to privacy and cannot be obtained without judicial sanction. See also *State v. Mollica and Ferrone*, 214 N.J. Super. 658 (Law Div. 1989) aff'd 217 N.J. Super. 95 (App. Div. 1989), remanded 114 N.J. 329 (1989); *State v. Engel*, 249 N.J. Super. 336 (App. Div. 1991) certif. den. 130 N.J. 393 (1992). Accordingly, toll billing information must be obtained by court order or search warrant. Whether the philosophy of *Hunt* will ultimately be extended to other documentary evidence (e.g. bank records, electric usage, etc.) remains to be seen, but it does also recommend the grand jury be used to obtain all other documentary evidence.

3. **Business Records:** All business records are subject to production, restricted only by the test of reasonableness, and a limited Fifth Amendment issue. In many instances individual officers or directors of the business may be the target of the investigation and the business is the artifice through which an illegal scheme was conducted or act committed. As a result the "business", at the direction of the target, is likely to resist production of records. What follows are the objections likely to be encountered and the grounds on which the issues are to be decided.

#### A. **Privilege Based Upon Content**

It is well settled law that the *contents* of business records, whether they may be from a corporation, partnership, unincorporated association or sole proprietorship are not privi-

leged under the Fifth Amendment to the United States Constitution; *Braswell v. United States*, 487 U.S. 99, 108 S.Ct. 2284 (1988); *United States v. Doe*, 465 U.S. 605 (1984); *Matter of Grand Jury Proceedings of Guarino*, 104 N.J. 218 (1986).

As a result, the only defense argument which remains is that some or all of the records sought are *personal*, rather than *business* records. This argument is most likely to arise in the context of a sole proprietorship. In any other context, a comingling of personal and business records will probably cause the personal records to lose all vestige of their "private" nature. See *Guarino, supra*. Accordingly, prosecutors should be aware of this issue and be prepared to aggressively litigate the nature of ostensibly personal documents comingled with business records.

#### **B. Privilege Based Upon Act of Production**

Since the decision in *Fisher v. United States*, 425 U.S. 391 (1976), the Supreme Court has more clearly defined its position with regard to particular classes of business entities: It is now settled law that a custodian of records for a "collective entity," whether it be a corporation, partnership or unincorporated association, may *not* resist a subpoena for records of the collective entity on Fifth Amendment grounds. See *Braswell v. United States, supra*. This position is true even if the contents of the documents will incriminate the custodian. *Braswell v. United States, supra; Fisher v. United States, supra*.

The United States Supreme Court reached this conclusion based upon agency analysis reasoning that the custodian, when producing records in response to a subpoena, acts as the agent of the entity. It is critical that prosecutors recognize the trade-off inherent in this analysis and made explicit in the *Braswell* decision. Because the custodian acts in a representative capacity when producing business records in response to a subpoena, the custodian's "individual act" may not subse-

quently be used against the individual. See *Braswell v. United States, supra* at 118.

Fifth Amendment privilege related to the act of production by a sole proprietorship presents a more complex problem.<sup>10</sup> While it is unclear what facts a sole proprietor must demonstrate to show that the act of production would entail testimonial self-incrimination, the standard appears to be whether "the existence and location of the papers are a foregone conclusion," and their production "adds little or nothing to the government's information." *Fisher v. United States, supra* at 411. In any event, prosecutors must keep this issue in perspective: evaluating whether the *act of production* is privileged, not whether the documents themselves are, for they are not. Any such privilege based upon act of production concerns can be overcome by a limited grant of immunity in accordance with *N.J.S.A. 2A:81-17.3*. This may, of course, create authentication problems which cannot be overcome.

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<sup>10</sup> In *Braswell v. United States, supra*, the Court stated: "We leave open the question whether the agency rationale supports compelling a custodian to produce corporate records when the custodian is able to establish, by showing for example that he is the sole employee and officer of the corporation, that the jury would inevitably conclude that he produced the records." *supra* at 118, fn. 11. Arguably, such cases should be treated in the same manner as a sole proprietorship. Doing so is consistent with the rationale of both *Braswell* and *Guarino*. At least two circuit courts, however, have reached the opposite conclusion in regard to the issue of compelling the sole officer and shareholder of a corporation to produce the subpoenaed records. *United States v. Lawn Builders of New England Inc.*, 856 F.2d 388 (1 Cir. 1988). *Accord In re Grand Jury No. 86-3 (Will Roberts Corporation)*, 816 F.2d 569 (11 Cir. 1987).

### **C. Compelled Testimony With Respect To Authentication of Records**

Assuming that a subpoenaed custodian of business records cannot invoke a Fifth Amendment privilege with respect to the production of records and therefore arrives at the grand jury with the appropriate records, to what extent can the custodian be compelled to testify with regard to the records? The most recent United States Supreme Court case on this subject, *Braswell v. United States, supra*, contains *dicta* which supports the proposition that custodians of records *can* be compelled to testify in authentication. See *Braswell v. United States, supra* at 114, and *United States v. Lawn Builders of New England, Inc., supra* at 394. See also *In re Grand Jury Proceedings (the John Doe Company, Inc.)*, 838 F.2d 624, 626 (1 Cir. 1988).

In light of the fact the New Jersey Supreme Court has not directly addressed the issue and the ambiguous nature of the precedents, a more conservative approach with regard to those cases where the act of production is *personally incriminating* to the custodian is recommended. This situation should be avoidable in most instances by having the collective entity select an alternative custodian. If the act of production is personally incriminating to the custodian, but can be compelled under the *Braswell* decision, testimony in authentication before the Grand Jury should not be sought. Instead, the production of the documents, if done outside the presence of the grand jury, should be carefully documented, in writing, by the individual accepting the documents. This person, usually an investigator, should specifically document the time, place and scope of the production. The documents can subsequently be authenticated through the testimony of the investigator.

#### **D. The Required Records Exception**

Records required to be maintained by law fall into the so-called "required records exception" to the Fifth Amendment privilege. See *In Re Doe*, 711 F.2d 1187 (2 Cir. 1983); *State v. Stroger*, 97 N.J. 391 (1984), and *In Re Siegel*, 208 N.J. Super. 588 (App. Div. 1986).

The rationale behind this exception is "that the public interest in obtaining the recorded information far exceeds the private interest militating against disclosure ... hence, defendant's business records are not at all of a testimonial or a compelled nature when they are prepared so as to, and in fact do, speak for themselves." *State v. Stroger*, *supra* at 405. Accordingly, sole proprietors and corporations with a sole officer and employee cannot allege an act of production privilege with regard to that portion of their records required to be maintained by law.<sup>11</sup>

#### **E. Records In The Custody of Another**

It is well settled that documents belonging to one person may be subpoenaed from a third party non-owner without impinging the Fifth Amendment rights of the owner, *unless* the documents remain in the constructive possession of the owner. See *Couch v. United States*, 409 U.S. 322 (1976); *Grand Jury Subpoena Duces Tecum dated May 29, 1987*, 834 F.2d 1128 (2 Cir. 1987).

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<sup>11</sup> According to the Second Circuit, to constitute "required records," the documents sought must satisfy a three part test: "(1) the requirement that they be kept must be essentially regulatory, (2) the records must be of a kind which the regulated party has customarily kept, and (3) the records themselves must have assumed 'public aspects' which render them analogous to public documents." *In Re Doe*, *supra* at 1191.

#### 4. *Personal Records of Target and Non-Target Witnesses:*

As a general rule, all individuals and the evidence possessed by them are subject to the grand jury subpoena unless such testimony or evidence to be produced is protected by statute or Court Rule. *United States v. Dionisio, supra; see Evid. R. 501-533.*

A defendant or target cannot be compelled to testify or produce personal papers or records that would incriminate the defendant. However, once the constitutionally protected evidence is transferred by the defendant or target to another person, these records can be subpoenaed from that other person unless otherwise protected by a statutory privilege. For example, a defendant's incriminatory financial records in his possession are not subject to a subpoena. A search warrant would be needed to obtain the records. However, if the defendant transfers those records or the information contained therein to his bank or broker, the records and the information contained therein can be subpoenaed from that bank or broker.

In dealing more specifically with the subpoena of testimony or documentary evidence from a target, such subpoena would likely be subject to a motion to quash because of the Fifth Amendment protection afforded to the target. In other words, a valid subpoena to obtain personal papers or documents in the possession of a defendant or a target probably could not withstand a claim of Fifth Amendment privilege, *In re Addonizio, supra*, since the target would be obligated to respond by personal and affirmative action. *Anderson v. Maryland, 427 U.S. 463 (1976)*. However, a non-target witness can be compelled to produce his personal records pursuant to a grand

jury subpoena provided that such records are not personally incriminatory or otherwise not protected by statutory privilege.

## **ATTORNEY GENERAL'S GUIDELINES FOR SUBPOENAS OF ATTORNEYS AND ATTORNEY RECORDS.**

The Sixth Amendment implications involved when a grand jury subpoena is issued to an attorney or for an attorney's records require law enforcement officials to ensure that a uniform approach is taken to these situations and that sensitivity is maintained to the possible constitutional problems which may arise. Accordingly, the Attorney General promulgated guidelines which are reprinted here to follow whenever subpoenas are issued to attorneys for their records.

### **I. INTRODUCTION**

The investigation of a criminal or quasi-criminal matter may warrant acquiring information or materials possessed by an attorney pertaining to the representation of the attorney's client. Under the rules of evidence and caselaw, the attorney-client privilege does not protect *all* information relating to an attorney's representation of his or her client. Nevertheless, acquisition of this type of information possesses the potential for an adverse effect upon the attorney-client relationship. Thus, before issuing a subpoena, the prosecuting attorney must seek to ascertain that legitimate information-gathering purposes are served which advance the public's interest in fair and effective law enforcement.

Toward that end, the following directive is promulgated. Part II of this directive pertains to guidelines for the especially sensitive situation in which the subpoena seeks information relating to the attorney's representation of a client currently charged or under investigation.

## **II. GUIDELINES FOR SUBPOENAS RELATING TO AN ATTORNEY'S REPRESENTATION OF A CLIENT CURRENTLY CHARGED OR UNDER INVESTIGATION**

**A.** There must be reasonable grounds to believe that a criminal offense or a quasi-criminal infraction has been or is being committed, that the information sought is reasonably needed for the successful and thorough completion of the investigation or prosecution, and that the subpoena will not seek merely peripheral or speculative information.

**B.** In determining whether to issue a subpoena to an attorney in a criminal or quasi-criminal matter for information or materials relating to the attorney's representation of a client, the prosecutor must give consideration to the public's interest in the fair administration of justice and effective law enforcement, as well as the individual's right to the effective assistance of counsel and the risk that the attorney might be disqualified as a result of having to comply with the subpoena.

**C.** The subpoena shall be drawn as narrowly as possible and directed to material information regarding a limited subject matter and shall cover a reasonably limited period of time.

**D.** The information sought shall not be protected by a valid claim of attorney-client privilege unless the prosecuting attorney has reasonable grounds to believe that the privilege will be waived.

**E.** All reasonable attempts shall be made to obtain the desired information from alternative sources or from the attorney voluntarily before issuing such a subpoena, unless these attempts would compromise an investigation or prosecution or would impair the ability to obtain the desired information from

the attorney if the attempts should prove unsuccessful.

F. With respect to criminal and quasi-criminal matters pending in the municipal courts, no such subpoena shall be issued unless and until the county prosecutor, the Director of the Division of Criminal Justice, or one of their designees approves.

### **III. RECORD-KEEPING REQUIREMENTS**

In addition to those instances described in Part II, the issuance of a subpoena for attorney information of any sort shall be accompanied by record-keeping on forms to be provided by the New Jersey Division of Criminal Justice. The current version of this form is found in the appendix.

### **IV. THE PURPOSE AND EFFECT OF THIS DIRECTIVE**

This directive is binding upon all county prosecutors and their respective offices; upon all municipal prosecutors and any other person performing the role of a municipal prosecutor (*e.g.*, a person authorized by *R. 7:4-4(b)*); and upon all attorneys in the New Jersey Division of Criminal Justice. This directive and the guidelines and procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the prosecuting attorney.

**(END OF ATTORNEY GENERAL GUIDELINES)**

## ***THE ATTORNEY-CLIENT PRIVILEGE***

The attorney-client privilege, codified at *N.J.S.A.* 2A:84A-20 and in *Evid. R.* 504, provides that "communications between a lawyer and his client in the course of that relationship and in professional confidence, are privileged." However, the attorney-client privilege, like all privileges, is disfavored; it interferes with the search for the truth, contrary to the primary, fundamental objective of the judicial system, *Fellerman v. Bradley*, 99 *N.J.* 493 (1985); *In re Richardson*, 31 *N.J.* 391 (1960); *In re Selser*, 15 *N.J.* 393 (1954). As a result, efforts to assert the privilege and deny access to documents or testimony should be tested by the grand jury.

Mere assertion of the privilege cannot suffice to invoke its protection; the privilege must in fact be established before the courts may allow such a heavy obstruction to the truth to stand. *Matter of Walsh*, 623 *F.2d* 489 (7 Cir. 1980), *cert. den.* 499 *U.S.* 994 (1980); *In re Grand Jury Empaneled, February 14, 1978*, 603 *F.2d* 469 (3 Cir. 1979); *United States v. Tratner*, 511 *F.2d* 248 (7 Cir. 1975); *cf. Hoffman v. United States*, 341 *U.S.* 479 (1951).

To determine whether a witness must answer grand jury questions or produce records in the face of a claimed attorney-client privilege, the court must first decide whether the communication should be regarded as a confidence by a client or as a communication related to representation. *In re Nackson*, 114 *N.J.* 527 (1989). This determination may be done in an *in camera* proceeding by the Assignment Judge.

To properly invoke the protection of the attorney-client privilege, the individual or entity claiming the privilege must have sought to be or have been a client of the attorney or agent of an attorney to whom the confidences were related. The communication must be made in confidence, without the presence of third parties, for the primary purpose of obtaining legal

assistance or a legal opinion and the communication must not be conveyed for the purpose of committing a crime or a tort. The privilege belongs to the client and therefore, it can only be waived by the client. *N.J.S.A. 2A:84A-20; Evid. R. 504.*

### ***THE CORPORATION'S PRIVILEGE***

*Upjohn Co. v. United States*, 449 U.S. 383 (1981), limits the privilege to communications made to attorneys solely for the purpose of the corporation to seek legal advice and counsel rendering it. *In re John Doe Corp.*, 675 F.2d 482 (2 Cir. 1982). *Upjohn, supra*, cited *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596 (8 Cir. 1978) several times, which held that the attorney-client privilege would be applicable to a corporation when each of the five following requirements were satisfied:

- 1) the communication was made for the purpose of securing legal advice;
  - 2) the employee making the communication did so at the direction of his corporate superior;
  - 3) the superior made the request so that the corporation could secure legal advice;
  - 4) the subject matter of the communications is within the scope of the employees corporate duties; and
  - 5) the communication is not disseminated beyond those persons who, because of the corporate structure, need to know it's contents.
- We note, moreover, that the corporation has the burden of showing that the communication in issue meets all of the above requirements.

*Diversified, supra* at 609.

### ***EXCEPTIONS***

The existence of an attorney-client relationship, however, does not protect all information imparted to counsel.

*Matter of Walsh*, 623 F.2d 489, 494 (7 Cir. 1980), cert. den. 499 U.S. 994 (1980); *United States v. Goldfarb*, 328 F.2d 280 (6 Cir. 1964), cert. den. 377 U.S. 976 (1964). The privilege "protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege." *Fisher v. United States*, supra at 403. The privilege exists to encourage clients to confide in their attorneys, not to permit an attorney to conduct his client's business affairs in secret. *In re Grand Jury Proceeding*, 721 F.2d 1221, 1222 (9 Cir. 1983). An investigation report not prepared by counsel, but later made a part of a litigation file is not privileged. *Wyle v. Mills*, 195 N.J. Super. 332, 336-337 (Law Div. 1984).

When a communication is made known to an individual in the general population, there is nothing to suggest that the client intends to keep the information secret, and the reasons underpinning the privilege do not apply. *In re Grand Jury Proceedings*, 791 F.2d 663, 665 (8 Cir. 1986); *Matter of Walsh*, supra at 494; *United States v. Kendrick*, 331 F.2d 110, 113-114 (4 Cir. 1964). It is well established that once privileged material is disclosed, the privilege of nondisclosure is waived. *State v. Bishop*, 187 N.J. Super. 187, 192 (App. Div. 1982); *In re Bridge*, 120 N.J. Super. 460, 466 (App. Div. 1972), certif. den. 62 N.J. 80 (1972), cert. den. 410 U.S. 991 (1973). *Evid. R. 530* specifically mandates waiver of the privilege where the client knowingly discloses a specific matter. Voluntary disclosure of a part of a privileged communication is a waiver of the remainder of the privileged communication on the same subject. See e.g., *Weil v. Investment/Indicators, Research & Management, Inc.*, 647 F.2d 18, 24 (9 Cir. 1981); *United States v. Cote*, 456 F.2d 142, 144-145 (8 Cir. 1972); *International Telephone and Telegraph Corp. v. United Telephone Co. of Florida*, 60 F.R.D. 177, 186-187 (M.D. Fla. 1973); *Sicpa v. North American v. Donaldson Enterprise, Inc.*, 179 N.J. Super. 56, 61 (Law Div. 1981).

## **WORK PRODUCT**

The work product doctrine protects the mental processes of an attorney and provides a privileged area within which he can analyze and prepare his client's case. *United States v. Nobles*, 422 U.S. 225, 238 (1975); *State v. Montague*, 55 N.J. 387, 401 (1970); *Hickman v. Taylor*, 329 U.S. 495 (1967). The New Jersey Supreme Court has explicitly held that the work product doctrine shields only matters that are inherently inadmissible in evidence, as would necessarily be the case with a lawyer's strategy and thought processes. But where the disputed information is a species of relevant factual evidence, no protection adheres. *State v. Mingo*, 77 N.J. 576, 584-585 (1978) (citing *State v. Montague*, *supra* at 402).

## ***SUBPOENA OF NON-TESTIMONIAL EVIDENCE***

The grand jury subpoena can be used to compel a person to appear at the grand jury for the purpose of obtaining his fingerprints, voice prints, handwriting exemplars and other types of non-testimonial evidence. Such evidence has been regarded as non-testimonial in nature, and is therefore not protected by the Fifth Amendment. Likewise, provided that the inquiry is reasonable, the subpoenaed material is not protected by the Fourth Amendment since the subpoena is not a seizure within the scope of the Fourth Amendment.<sup>12</sup> A subpoena will not suffice to compel a witness to participate in a line-up; a court order is required.

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<sup>12</sup> *United States v. Dionisio, supra; United States v. Mara, 410 U.S. 19 (1971).*

## ***OUT-OF-STATE DOCUMENTARY EVIDENCE***

Prosecutors will sometimes have to obtain documentary evidence (e.g. bank or corporate records) from out-of-state sources. Before resorting to interstate service of process, two alternatives should be attempted.

First, subpoenas may be mailed, often resulting in voluntary submission of material by return mail. In such instances, the material should be inventoried and secured by an investigator. Second, service may be made upon out-of-state businesses by service upon an agent in New Jersey. Regulated business, such as banks, often list agents with the Banking Commission or Secretary of State. Likewise, service upon a corporate officer, or upon an employee (while doing business) in New Jersey will suffice.

## ***SUBPOENAING OUT-OF-STATE WITNESSES***

Occasionally, cases arise in which a vital witness for the prosecution resides outside the State of New Jersey. If grand jury testimony is required from such a witness, two procedures may be utilized. First, a subpoena should be mailed to the non-resident witness directing his appearance at the grand jury session. However, mailing a subpoena to a witness residing in another state is nothing more than a request for the witness to voluntarily return to the State of New Jersey to testify. No sanction can be imposed upon that witness for failure to appear. If the witness declines to honor the subpoena, the prosecutor must resort to the "Uniform Act to Secure the Attendance of a Witness from Without a State in Criminal Proceedings."

Pursuant to *N.J.S.A. 2A:81-20*, the Uniform Witness Act provides:

1. If a person in any state, which by its laws has made provisions for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of 10 cents a mile for each mile by ordinary traveled route to and from the court where the prosecution is pending, and \$5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate unless otherwise ordered by the Court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

Pursuant to this Act, if a material witness, who is presently residing in another state, refuses to return to New Jersey to testify, he can be compelled to do so, provided that that sister state is a signatory of the Uniform Act.<sup>13</sup>

The following procedure is to be used: Once the decision has been made to compel the appearance of an out-of-state resident, the prosecutor must prepare a petition outlining the nature of the testimony sought from the witness with a showing of the materiality of this testimony. A certification must also be prepared and signed by the judge. This certification is simply a determination made by the court, based upon the petition, that the out-of-state resident is a material witness in a

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<sup>13</sup> The Uniform Act to Secure Witnesses has been adopted in all states, as well as in the District of Columbia, Puerto Rico, Panama Canal Zone and the Virgin Islands.

pending grand jury matter. Once the court signs the certification, a certificate must be obtained from the County Clerk stating that the judge signing the certification is a judge of a court of general jurisdiction and is empowered to try indictments.

The three documents: the petition, the court certification, and the affidavit of the County Clerk; should be forwarded to the prosecuting authority of the county in the State where the witness is to be found, along with the appropriate fee as specified by statute. An order to show cause will be issued by the court of that foreign jurisdiction compelling the witness to appear before that court for a hearing. At that hearing, if the court finds that the testimony to be sought is material, the court will order the witness to return to New Jersey to testify.

## **ATTORNEY REPRESENTATION OF MULTIPLE PARTIES**

Counsel for a corporation or individual may, upon his client's receipt of a subpoena or learning of the existence of a grand jury investigation, contact the prosecutor to determine the scope of the investigation. An issue may arise as to what extent defense counsel may assist interested witnesses in their appearance before the grand jury. The answer is especially important when the grand jury is investigative in nature or there are unknown or multiple targets.

The general rule regarding attorney conflicts is found at Rule of Professional Conduct (*R.P.C.*) 1.7. There is an absolute conflict for an attorney to represent both a fact witness and target involved in the same grand jury investigation. "[U]nder no circumstances and by no stretch of the imagination could an attorney with any propriety ever represent an eyewitness or material witness to a crime and also represent, or become professionally associated with, the individual charged with the commission of such a crime." *In re Garber*, 95 N.J. 597, 608 (1984). These conflicts are *not* waivable; remember that *Garber* is an ethics opinion. "The mere possibility of such a conflict at the outset of the relationship is sufficient to establish an ethical breach on the part of the attorney." *Haynes v. First National State Bank of New Jersey*, 87 N.J. 163, 181 (1981); *State v. Catanoso*, 222 N.J. Super. 641 (Law Div. 1987); *In re Opinion No. 415*, 81 N.J. 318 (1979). This conflict is even more compelling in the grand jury investigative context, where full disclosure to the client of all possible future conflicts is impossible as being "too complex and the consequences too speculative." *Aysseh v. Lawn*, 186 N.J. Super. 218, 226 (Ch. Div. 1982). Once issues of conflict in the context of multiple representation have been raised, the court has an obligation to hold a hearing to resolve the issue. *State v. Bellucci*, 81 N.J. 531 (1980); *State v. Green*, 129 N.J. Super. 157 (App. Div. 1974).

Additionally, in the appropriate situation, the prosecutor may move to disqualify an attorney from representation of multiple witnesses on the theory that the multiple representation impedes the effectiveness of the grand jury investigation. *Matter of Grand Jury Empaneled January 21, 1975*, 536 F.2d 1009, 1012 (3 Cir. 1976). It appears that the State bears the burden of proving that disqualification is justified. *State v. Catanoso*, *supra* at 644 (citing *State v. Morelli*, 152 N.J. Super. 67, 70 (App. Div. 1977)).

### **CORPORATE SITUATIONS**

Practical problems occur in multiple representation situations when an attorney represents a corporation. A corporation can only "speak" through its employees. A corporation has no privilege against self-incrimination, and as a result, most allegations of criminal conduct involving corporations are the subject of internal investigations ordered by management or the board of directors and may be protected by the attorney-client privilege. (See Attorney Client Privilege, *infra.*, for a discussion of these issues). However, corporate decisions are made and actions are taken by individuals who are likely to be held responsible for their own criminal acts. As a result, prosecutors need to be aware of the ethical rules regarding contact with corporate employees.

*R.P.C.* 4.2 prohibits *ex parte* communications with parties known to be represented by an attorney. This ethical prohibition has been applied with some success in criminal trial settings and can be asserted at the grand jury level. The practical significance is that strict application of the rule means current or former employees may not be interviewed without the presence of the corporate counsel. *R.P.C.* 4.2 has been interpreted in New Jersey to mean that, pre-indictment, investigators or police are free to interview and take statements from current or former employees of a corporation without the presence or interference

of corporate counsel. *State v. Ciba-Geigy Corp.*, 247 N.J. Super. 314 (App. Div. 1992), app. dism. 130 N.J. 585 (1992); See also *Niesig v. Team 1 et. al.*, 76 N.Y.2d 363, 558 N.E.2d 1030 (Ct. App. 1990). It appears, at present, that corporate counsel have the right to attend interviews of corporate witnesses during preparation for trial.<sup>14</sup> Therefore, in criminal investigations involving corporate misconduct, it may be advisable to take testimony, pre-indictment, from all corporate employees who may have relevant information.

Questions of conflict also arise over the payment of attorney fees for an employee by a target corporation. *In re Abrams*, 56 N.J. 271, 276-277 (1970), suggests that, in a criminal context, it is impermissible for a corporation to pay for an attorney for the witness whose testimony may inculcate the corporation in a crime. This interpretation is modified, but supported in theory, by *Wood v. Georgia*, 450 U.S. 261, 101 S.Ct. 1097 (1981).

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<sup>14</sup> Prior to this writing, the Supreme Court was asked to render a formal opinion interpreting the R.P.C. 4.2 issue.

## GRAND JURY WITNESSES

The responsibilities of the prosecutor vis-a-vis particular witnesses vary greatly depending upon the status of the witness subpoenaed to or appearing before a grand jury. In order to catalogue the duties of the prosecutor, it is necessary to distinguish between the different classes of witnesses likely to be encountered:

Witness (Non-Target/Non-Public Employee)  
Target<sup>15</sup> (Non-Public Employee)  
Public Employee Witness (Non-Target)  
Public Employee-Target  
Public Employee-Target (Departmental  
Investigations)

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<sup>15</sup> In the grand jury context, the term "target" is used to refer to a subject of the grand jury's inquiry. Thus, a person may be a "target" when he is already under formal criminal charges: *See, e.g., State v. Vinegra*, 73 N.J. 484 (1977); *In re Petition to Compel Testimony of Tusò, supra*; *State v. Stavola*, 118 N.J. Super. 393 (App. Div. 1972). He may be a "target" even though he is not under formal criminal charges at the time of the grand jury hearing, *see, e.g., State v. Browning*, 19 N.J. 424 (1955); *State v. Fary*, 19 N.J. 431 (1955); *In re Addonizio*, 53 N.J. 107 (1968); *State v. Sarcone*, 96 N.J. Super. 501 (Law Div. 1967). In this latter area, where no formal charges exist, the determination of whether a witness is to be treated as a "target" may be critical. The language in the New Jersey case law is not particularly illuminating. The target determination is straightforward when the grand jury proceeding is one "directed at the witness with the object of returning an indictment against him." *Vinegra, supra* at 488. There is less precision and certainty when the grand jury proceeding has a broader focus ("general inquiry"). *Id.* In this context, evidence, information and the subjective intent of the prosecutor are all factors to be examined by a reviewing Court to determine if a party was (or should have been) considered a "target." *See* cases cited above.

## **WITNESS (NON-TARGET/NON-PUBLIC EMPLOYEE)**

A non-target witness is one who is not identified or reasonably identifiable by the prosecutor as an object of the grand jury inquiry or investigation. The prosecutor's good faith determination as to the "status" of a particular witness will prevail, and the burden is on the witness to demonstrate that the inquiry was a "ruse" to induce the witness "to unwittingly give evidence against himself." *State v. Cattaneo*, 123 N.J. Super. 167, 172 (App. Div. 1973), certif. den. 63 N.J. 324 (1973). See also *State v. Vinegra*, 134 N.J. Super. 432 (App. Div. 1975), aff'd 73 N.J. 484 (1977).

It is not necessary to advise a non-target witness of his Fifth Amendment privilege against self-incrimination if he is called to testify before a grand jury conducting a "general investigation." "Where the inquiry is in fact a general investigation not aimed at the witness and the witness fails to claim the privilege, his testimony can be used against him and can even be the basis of an indictment." *State v. Fary*, 19 N.J. 431, 438 (1955). Thus, the witness need not be advised of his privilege when he is summoned to give testimony before a grand jury if there is only the mere possibility that he may later be indicted. *State v. Fary, supra; United States v. Luxenberg*, 374 F.2d 241 (6 Cir. 1967).

This general rule does not, however, preclude a witness from claiming his Fifth Amendment privilege against self-incrimination. This privilege extends to all witnesses, whether or not they are targets of the investigation. *State v. DeCola*, 33 N.J. 335 (1960). The privilege may not, however, be claimed prior to the administration of the oath and a question being asked. *Vineland v. Maretti*, 93 N.J. Eq. 513, 521 (Ch. 1922). Moreover, the witness must be prepared to demonstrate a factual basis to the court to justify his claim of privilege. If the question is answered by the witness without claim of privilege,

his answer to that question can be used against him. *State v. Toscano*, 13 N.J. 418, 423 (1953). In short, a non-target witness called before a grand jury need not be warned of his Fifth Amendment right against self-incrimination and any testimony elicited from him may later be used against him.

A non-target witness may only refuse to answer a question which will, in fact, incriminate him. *Evid. R. 502* defines incrimination:

Within the meaning of this article, a matter will incriminate (a) if it constitutes an element of a crime of this State, or another State or the United States, or (b) is a circumstance which with other circumstances would be a basis for a reasonable inference of the commission of such a crime, or (c) is a clue to the discovery of a matter which is within clauses (a) or (b) above; provided, a matter will not be held to incriminate if it clearly appears that the witness has no reasonable cause to apprehend a criminal prosecution. . .

Thus, an answer to a question is incriminating if it reveals the commission of an element of a crime, furnishes new evidence that the witness committed a crime or creates an inference that the witness has committed a crime. The right against self-incrimination extends not only to answers which within themselves would support a conviction under a criminal statute, but also to those answers which would furnish a link in the chain of evidence necessary to prosecute one under a criminal statute. *Malloy v. Hogan*, 378 U.S. 1 (1964); *In the Matter of Carl "Pappy" Ippolito*, 145 N.J. Super. 262 (App. Div. 1976) rev'd o.g. 75 N.J. 435 (1978).

When a non-target witness claiming his Fifth Amendment privilege refuses to answer a question, the prosecutor may properly challenge whether the witness may validly claim the privilege. This determination must be made by the court, usually

the Assignment Judge, before whom the witness can be brought. The procedure to be used will depend upon the policy of the particular Assignment Judge and the Prosecutor's Office. Some Assignment Judges prefer the prosecutor to swear the witness before the grand jury and to begin the interrogation. If the witness asserts the privilege, the prosecutor should then ask every question he intended to ask at the hearing. Once the questioning is complete and the witness has refused to answer, the prosecutor then appears before the Assignment Judge with the witness and the grand jury stenographer. The prosecutor should then present the argument and have the stenographer read back every question that the witness refused to answer. The purpose of having all of the prosecutor's questions read is to alleviate the necessity of having to reappear before the Assignment Judge for each individual question. The purpose for having the grand jury stenographer present is to ensure that the grand jury proceedings are accurately reported to the Judge.

Other Assignment Judges only require that the witness assert his Fifth Amendment privilege after the witness has been sworn and the first question has been asked, which eliminates the prosecutor's obligation to ask every potential question prior to the Assignment Judge's willingness to hear the merits of the issue. Further, some Assignment Judges do not require that the grand jury stenographer be brought to court but merely require the prosecutor to represent on the record the pending situation.

In all cases, the witness should then have the opportunity to explain to the court *in camera* why he is asserting his privilege. If the matter were not heard *in camera*, grand jury secrecy would be violated when the Judge required the grand jury stenographer to read back the grand jury questions and/or answers. All of the proceedings should be conducted in the presence of the prosecutor, however, so that he may accurately evaluate the arguments proffered by the witness.

It should be left to the discretion of each Prosecutor's Office whether to bring the grand jury foreman to the Assign-

ment Judge's court to observe the above-mentioned proceeding. Possibly the best procedure, would be not to request his presence because information may be elicited at the hearing that could potentially taint his vote in the pending investigation. Further, the foreman's presence is not necessary to either recount the facts of the case to the judge or to put forth legal argument.

The Assignment Judge cannot merely accept the witness' statement that the requested answer will tend to incriminate him. *In re Boiardo*, 34 N.J. 599 (1961). See also *In the Matter of Carl "Pappy" Ippolito*, *supra*. Rather, the witness must support his invocation of the privilege by a statement to the Assignment Judge specifically indicating the nature or area of the criminal exposure which he fears. The witness must show sufficient facts to the Assignment Judge to indicate a legitimate basis for his fear of criminal prosecution. *State v. DeCola*, *supra*; *In re Boyd*, 36 N.J. 285 (1962).<sup>16</sup> If, while making this disclosure, factually incriminating material is elicited, the witness is protected against the use of such evidence and its fruits. *In re Boyd*, *supra*. If a witness is a "target," he need show no more than that fact in order to support his Fifth Amendment claim. *In re Addonizio*, *supra*.

The Assignment Judge is usually the final arbiter of the applicability of the Fifth Amendment privilege. The Judge must determine whether the witness has a reasonable basis on which to "apprehend the peril." The danger must be real and appreciable, rather than of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency. *In re Pillo*, 11 N.J. 8 (1953). In making this

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<sup>16</sup> Federal courts have held that a spurious assertion of a claimed apprehension is punishable as perjury. *Carlson v. United States*, 209 F.2d 209, 214 (1 Cir. 1954).

determination, the court must consider all the facts and circumstances of the case; other matters in evidence or disclosed in argument, the implications of the question, the setting in which it is asked, the applicable statute of limitations and all other factors should be taken into consideration. *Evid. R. 502.*

In order for the court to find that a witness has no basis for an assertion of the Fifth Amendment privilege, it must be clear from a careful consideration of all the circumstances in the case that the witness is mistaken and that the answer cannot have a tendency to incriminate. *Malloy v. Hogan, supra.* If the court determines that there is no basis for the claim, it will order the witness to return to the grand jury and answer the prosecutor's questions. If, in a later proceeding, it is revealed that the privilege was improperly denied, the testimony elicited may not be used against the witness. *State v. DeCola, supra.* If the court finds that the witness has a basis for his claim of privilege, the witness does not have to answer the questions unless his testimony has been legally compelled; that is, the witness has been immunized against the use or derivative use of his testimony in a subsequent criminal prosecution against him.

### **TARGET (NON-PUBLIC EMPLOYEE)**

The latitude afforded the questioning of a "non-target" witness, as discussed above, does not apply to a witness who is the target of a grand jury's investigation. Even if the State makes the allegation that the proceedings are a general investigation, the "target" witness must be warned if the facts and circumstances show that in truth the witness is a target for indictment. *State v. Vinegra, supra; State v. Cattaneo, supra; State v. Sibilia, 88 N.J. Super. 546 (Cty. Ct. 1965).* A witness becomes a target of the investigation when he is called to obtain evidence to fix a criminal charge against him; he must then be given the

appropriate warnings. *State v. Sarcone, supra; State v. Fary, supra*. It is not necessary for a witness to have had formal charges filed against him in order to be considered a target. It is only necessary that an intent to indict at the time of questioning is present. However, if a witness is subsequently indicted after testifying before a grand jury without being given warnings, the burden is on the indicted witness to show that "there was a ruse by which it was sought to induce [him], unwittingly, to give evidence against himself." *Id.* at 438. See also *State v. Grundy*, 136 N.J.L. 96, 98 (Sup. Ct. 1947); *State v. Maiorano*, 240 N.J. Super. 352 (App. Div. 1990) certif. den. 127 N.J. 327 (1991). Any doubt is resolved in favor of the validity of the indictment; the indicted witness is treated as merely an ordinary witness who has waived the privilege by not claiming it. *State v. Fary, supra*.

It should be noted, however, that the State's ability to call a "target" witness before a grand jury has been regulated to ensure maximum protection to the individual. *State v. Sarcone, supra*. In *Sarcone*, a trial court held that the appearance of a "prospective defendant" before a grand jury, absent the warnings and a subsequent waiver, mandates a dismissal of a resulting indictment. Cf. *State v. Vinegra, supra*. It does, however, appear that a target may be called before the grand jury for the purpose of having him claim his privilege. Almost all of the federal circuit courts, as well as most of the state courts, hold that a prospective defendant may properly be subpoenaed to testify before a grand jury, placing the obligation upon the target, having been duly warned, to claim privilege. See *1 Crim. Jus. Quar.* at 49 (1972). Although the New Jersey Supreme Court has not ruled conclusively on this issue, it has inferentially upheld that holding in *Sarcone*. See *In re Addonizio, supra*. Rather than provide a target with a potential argument that the only reason that he was forced to claim his Fifth Amendment rights before the grand jury was to prejudice him, the more prudent course of action is to have the target claim the privilege on the record, but outside the presence of the grand jury.

A target may be summoned before a grand jury and, after proper advisement, claim privilege or elect to testify before the grand jury. In the latter situation it is necessary to obtain a waiver of immunity from the target after providing the advisement set forth below. It is not necessary that this waiver be committed to writing as long as a stenographic record is made of the prosecutor's giving the target warnings to the target and the target's indicating in response that he understands those warnings and is voluntarily waiving them. Without such a stenographic record, it is recommended that any waiver be in writing.

Again, it is emphasized that a witness who has been subpoenaed to testify before a grand jury, who has not been given the appropriate warnings and who has not signed a waiver of immunity, still has the burden of proof in establishing that he was, in fact, a target when he testified. *State v. Cattaneo, supra*; *State v. Grundy, supra*. This fact notwithstanding, it is recommended that the procedures outlined below be followed when any witness is subpoenaed to appear before a grand jury and it is evident that the inquiry has centered upon him and it appears that the investigation will result in formal charges being lodged against him.

The "target" witness should be advised:

- (1) of the subject matter of the investigation;
- (2) that he is a "target" of the investigation;
- (3) what a target is: "Should any criminal charges result from this Grand Jury investigation, you would likely be among those charged as having committed criminal conduct;"
- (4) that the target witness has the right to consult with an attorney;
- (5) that the target witness has the right to refuse to answer any question on the grounds that the

- answer may tend to incriminate him personally; and
- (6) that, should he answer any questions or make any statement, his responses or statements may be used against him in any proceeding or court.

The target should respond to each inquiry separately and finally be asked if he understands of what he has been advised. *See State v. Fary; supra; State v. Sarcone, supra.*

A target (at least in those cases where no complaint has been lodged) should be advised as outlined above "on the record", but outside the presence of the grand jury. It is further recommended that these advisements be given in the presence of counsel, if the witness has an attorney, and that counsel's presence be noted on the record. Further, it is recommended that, whenever practicable, the target be questioned as to his understanding of the advisements on the record. When these procedures cannot be followed, a written waiver should be executed by the target.

It is not recommended that "target warnings" be repeated in the presence of the grand jury, inasmuch as such a procedure might be considered a communication of the prosecutor's view of what the result of the grand jury investigation *should be*. In short, the target has been provided with the alternative courses of action open to him, and he must elect either to waive or to claim the privilege against self-incrimination.<sup>17</sup> Upon a target's claiming the Fifth Amendment privilege, the factual basis for the claim may *not* be sought by the prosecutor.

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<sup>17</sup> This recommendation is in no way intended to preclude a prosecutor from reviewing with the grand jury the circumstances surrounding the appearance of the target witness in order to assure the grand jury that the target is voluntarily appearing with a full understanding of the circumstances of the investigation.

## **PUBLIC EMPLOYEE WITNESS (NON-TARGET)**

Every public officer and employee<sup>18</sup> has the obligation to cooperate and to testify in any investigation pertaining to that public office or employment. However, this obligation cannot circumvent the Fifth Amendment protection against self-incrimination.

In the case of a non-target public employee, no warnings need be given prior to appearance before or questioning by the grand jury. If a non-target public employee declines without claim of privilege to appear or to testify, the employee is to be handled as any other witness, by contempt process pursuant to R. 1:10-1. Moreover, the public officer or employee is subject to removal from office for failure, without justification, to cooperate in the investigation. *N.J.S.A. 2A:81-17.2.*

In order to seek removal for failure to appear or failure to testify, it is necessary that the public employee be advised of the consequences of his decision. *See Kugler v. Tiller, 127 N.J. Super. 468 (App. Div. 1974).* In those situations in which the public officer appears and declines to testify, he should be advised on the record of his obligation to testify and the consequences of his refusal. In those situations in which the public employee declines to appear after being subpoenaed, he should be arrested on a bench warrant duly issued and, in addition to other advisements given upon his being presented to the court, should be advised of the consequences of the refusal to comply. If the public employee immediately alters his position

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<sup>18</sup> *N.J.S.A. 2A:81-17.2* defines "public employee" as "any person who occupies any office, position or employment in the government of the State of New Jersey, or the several counties and municipalities thereof, or any political subdivision of the State, or a school district, or any special district, or any authority, commission, board, or any branch or agency of the public service. This term shall include, but shall not be limited to, elected and appointed persons."

and appears and testifies, removal proceedings should be declined. Cf. *Hyland v. Smollok*, 137 N.J. Super. 456 (App. Div. 1975).

In those situations in which a non-target public employee appears and claims the Fifth Amendment privilege, his public office does not alter his status with respect to the prosecutor's right to challenge the basis for claiming privilege. If the claim of privilege is upheld, the prosecutor must decide (as in the case of a target public employee) whether to "compel" the testimony of the public officer. The testimony given will be protected from use or derivative use against that officer in any subsequent criminal proceeding.

If a public officer compelled to testify pursuant to N.J.S.A. 2A:81-17.2 persists in refusing to testify, after having been properly warned of the consequences, he may be subject to removal from office. N.J.S.A. 2A:81-17.2.<sup>19</sup> If the public officer, while testifying admits the commission of a crime relating to his public position, he is likewise subject to removal. *Id.*<sup>20</sup>

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<sup>19</sup> In addition to loss of office, the compelled public employee can be held in contempt for refusing to testify. See *Refusal to Answer Non-Incriminating Questions or to Respond After Testimony Has Been Compelled, infra.*

<sup>20</sup> See *State v. Bielecki*, 196 N.J. Super. 332 (App. Div. 1984). The defendant, a police chief, successfully avoided indictment for perjury and false swearing before a State Grand Jury investigating the defendant's conduct in office by reappearing before the grand jury and retracting earlier false testimony pursuant to N.J.S.A. 2C:28-1d and N.J.S.A. 2C:28-2b. In so doing, however, the defendant acknowledged criminal conduct (his previous false testimony) and was removed from office pursuant to N.J.S.A. 2A:81-17.2a3.

## **PUBLIC EMPLOYEE TARGET**

The public employee-target witness presents the most complex situation, involving as it does the absolute right of a target to claim privilege and the conflicting obligation of the public officer to cooperate.

The public officer-target should be considered a "target" first, thereby requiring warnings as described in the target (non-public employee) section. If a waiver of immunity cannot be secured (and after following the procedures for immunity considerations outlined herein), the testimony of the public employee-target can be compelled pursuant to *N.J.S.A. 2A:81-17* provided the public employee target has claimed the Fifth Amendment privilege. The result of compelling the public officer to testify eliminates him as a "target" of the investigation and immunizes him against the use and derivative use of his testimony. *N.J.S.A. 2A:81-17.2*. Since there is no court supervision, and since the prosecutor need do no more than to ask questions to grant this "immunity," it is absolutely necessary that each prosecutor understand the nature of the statutory provision (*N.J.S.A. 2A:81-17.2*) and the consequences of his actions.

At the outset, it should be noted that this statute, which requires public employees to testify upon matters directly relating to the conduct of their office does not deny these persons equal protection of the law in the constitutional sense. It does not take away from this class of citizenry the protection of the "target doctrine." Rather, the limitation imposed on this common law privilege is grounded in public policy and well within legislative power. *State v. Vinegra, supra*.

By amendment in 1975, the Public Employees Immunity Law reduced the risks of mistake. Now, in order for immunity to result, the public officer must first claim the privilege against self-incrimination, thereby putting the prosecutor on notice that the provisions of the Act may be invoked. If the prosecutor

persists in asking questions after a claim of privilege and responsive answers are given, "use plus fruits" immunity will result.

The key event in the public employee situation is the officer's claim of privilege. Upon that occurrence (assuming the privilege claim is valid), the prosecutor must elect either to immunize the witness or to stop questioning. If the prosecutor elects to continue the inquiry, he must advise the public officer as follows:

1. that the witness is a public officer or employee within the meaning of *N.J.S.A. 2A:81-17.2a*;
2. that pursuant to that Act, the witness has the duty to appear and to testify upon matters directly related to the conduct of his public position;
3. that if the witness fails to appear and to testify, the witness is subject to removal from office pursuant to that Act;
4. that if the witness does give testimony pursuant to this inquiry, neither that testimony nor anything derived from that testimony can be used against the witness in a subsequent criminal prosecution, except for perjury or false swearing;
5. that if the witness declines to provide testimony, in addition to any action the court may take in the nature of contempt, the witness is subject to removal from office for refusal to provide testimony pertaining to the conduct of the office; and
6. that if the witness admits the commission of a misdemeanor or high misdemeanor [indictable offense] relating to his public employment, office or position, the witness is subject to removal from office.

As in the case of target warnings, these advisements should be placed on the record (although there is no reason why this particular proceeding cannot occur before the grand jury). The public officer should be questioned as to his understanding of the advisements and his opportunity to consult with counsel as well. See generally, *Hyland v. Ranone*, 141 N.J. Super. 48 (App. Div. 1976), aff'd 75 N.J. 97 (1977); *Hyland v. Smollok*, supra; *Kugler v. Tiller*, supra.

### **PUBLIC EMPLOYEE-TARGET (DEPARTMENTAL INVESTIGATIONS)**

The Appellate Division has held that the use immunity provisions discussed above, which apply to public employee testimony before any court, grand jury or the State Commission of Investigation, also apply to departmental investigations. *Banca v. Phillipsburg*, 181 N.J. Super. 109 (App. Div. 1981). Specifically, the Court held that when a departmental investigation of assumed criminal activity focuses upon an employee working for that department, that employee is entitled to be clearly, unambiguously and expressly advised of his "use immunity" at the outset, as a prerequisite to any subsequent imposition of disciplinary sanctions for refusal to make a statement. As a further prerequisite thereto, the department is required to inform the employee that his refusal to answer questions could subject him to such disciplinary sanctions, including dismissal. *Id.* at 115-116. It is suggested, therefore, that the procedure described above for the public employee-target before the grand jury be applied at the departmental level as well. The obvious problem created by the *Banca* decision is that it places the decision to grant immunity, in certain instances, in the hands of those conducting the departmental investigation rather than leaving that decision to the discretion of the Attorney General or County Prosecutor. Once the employee has been compelled to testify at the departmental level, the testimony is immunized.

All County Prosecutors should promulgate procedures which require notice to them of all administrative proceedings in their jurisdiction compelling testimony. Without such prior notice, there is little potential to present a successful criminal prosecution against the party compelled at the hearing. See *In re Sealed Case (North v. Walsh)*, 829 F.2d 50 (D.C. Cir. 1987), cert. den. 484 U.S. 1027 (1988); *United States v. Poindexter, et al.*, 859 F.2d 216 (D.C. Cir. 1988), cert. den. 490 U.S. 1004 (1989).

### **CROSS-COMPLAINT WITNESS**

In those situation in which potential grand jury witnesses are the subject of cross-complaints arising from the same factual transaction, such persons should be advised of the existence of the criminal complaint and provided advisements similar to those given a target. It is recommended that a witness who is the subject of a cross-complaint be advised of his right to the advice of counsel, the subject of the criminal complaint arising from the same factual transaction to which he is to testify, the nature of the charges lodged against him and the possibility of incriminating himself by providing testimony to the grand jury. As in the case of target warnings, it is recommended that, whenever practicable, these warnings be given on the record, outside the presence of the grand jury.

Cross-complaint situations are generally sensitive in nature, involving as they do claims of wrongdoing by both the "victim" and the "culprit." Unfortunately, neither the prosecutor nor the grand jury can always identify the offender before all the facts are presented, and therefore all "witnesses" should be encouraged to testify. At the same time, given the facts that a criminal complaint has been lodged against the "witness," he should not generally be compelled to testify. This recommendation should be strictly followed in those situations involving a cross-complaint against a police officer. In short, inasmuch as

the prosecutor has the authority by virtue of *N.J.S.A. 2A:81-17.2* to compel the testimony of a public officer without court supervision, care should be taken that neither *de facto* nor statutory immunity results from the grand jury's inquiry.

***REFUSAL TO ANSWER NON-INCRIMINATORY QUESTIONS OR TO RESPOND AFTER TESTIMONY HAS BEEN COMPELLED***

After a witness has unsuccessfully claimed his privilege before the Assignment Judge. [see Witness (Non-Target/Non-Public Employee) *supra*], he must, upon the urging of the grand jury, answer the questions or face a contempt charge. Similarly, a witness whose testimony has been legally compelled must respond to interrogation or be faced with contempt, assuming this course of action is sanctioned by the grand jury.<sup>21</sup>

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<sup>21</sup> It is recommended that in all instances in which a contempt citation is to be sought, the grand jury affirmatively commission the prosecutor to pursue that particular action against the witness.

*N.J.S.A. 2A:81-17.3* provides specific statutory authority for a finding of contempt based upon refusal to testify:

If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify as aforesaid, he may be adjudged in contempt and committed to the county jail until such time as he purges himself of contempt by testifying as ordered without regard to the expiration of the grand jury: provided, however, that if the grand jury before which he was ordered to testify has been dissolved, he may then purge himself by testifying before the court.

There are two different ways that the matter of contempt can be approached, depending upon the objective. Civil contempt, found within *N.J.S.A. 2A:81-17.3* and *R. 1:10-5*, is coercive in nature and should be employed when the objective is obtaining the withheld testimony. See *In re Bridge, supra* at 469. Criminal contempt, found within *N.J.S.A. 2C:29-9*, should be used to punish past conduct to vindicate the court's authority.<sup>22</sup> If the objective is to coerce compliance with the court's order to testify, the court should first resort to civil contempt sanctions before initiating criminal contempt proceedings. See *Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888 (3 Cir. 1992). The court offended (usually the Assignment Judge) can bring summary contempt proceedings pursuant to *R. 1:10-2*, without indictment and without trial by jury. *In re Yengo*, 84 N.J. 111 (1980); *In re Buehrer*, 50 N.J. 501, 522 (1967). See also *State v. Hamm*, 121 N.J. 109 (1990).

If the matter is heard in a summary manner, there is some question as to the procedure to be utilized. The issue is whether the contempt is considered to have occurred in the presence of the court (*R. 1:10-1*) or whether the contempt action must be

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<sup>22</sup> Note that the court may also punish *facie curiae* misconduct using the summary proceedings contained in *R. 1:10-1*, in appropriate circumstances.

pursued by notice and an order to show cause (*R. 1:10-2*).<sup>23</sup>

Although this specific issue has yet to be definitely addressed in New Jersey, there is strong language in favor of using the notice and show cause safeguards contained in *R. 1:10-2* found in *Matter of Daniels*, 118 *N.J.* 51 (1990). Therein, the Supreme Court delineated the specific steps a court should follow in a contempt situation, ending with:

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<sup>23</sup> The court in *In re Schwartz*, 133 *N.J.L.* 79, 84-85 (Sup. Ct. 1945), determined that the grand jury is an arm of the court, that proceedings before it are to be considered as proceedings in court, and that contempt in the presence of the grand jury is to be treated as taking place in the presence of the court. This holding was overruled by *In re Schwartz*, 134 *N.J.L.* 267 (E. & A. 1946), where the court, determining that there was no contempt in that there was no violation of a court order, determined that the contempt - the refusal to answer questions before the grand jury - if it existed, would have been for the disobedience of a court order and would not have been contempt in the actual presence of the court.

Ignoring the decision of the Court of Errors and Appeals, the Supreme Court in *State v. Haines*, 18 *N.J.* 557 (1955), addressed the issue of whether the grand jury is part of the court. It quoted language from *Schwartz*, 133 *N.J.L.* at 79, indicating that contempt in the presence of the grand jury is to be treated as taking place in the presence of the court. See also *In re Carbua*, 139 *N.J. Eq.* 404 (Ch. 1947), *aff'd* 140 *N.J. Eq.* 563 (E. & A. 1947). However, other cases have cast the foregoing conclusions in doubt. For example, in *Swanson v. Swanson*, 8 *N.J.* 169 (1951), the court stated that where the contempt is in *facie curiae* but depends on proof from persons other than the judge himself, the proceedings for contempt should be by an order to show cause. See also *In re Yengo*, *supra* at 122. In *In re Finkelstein*, 112 *N.J. Super.* 534 (Ch. Div. 1970), the court determined that contempt at a court-ordered deposition might be contempt in *facie curiae*, but held that where the proof of the contempt would depend on those attending the deposition, an order to show cause procedure should be followed. See *In re Tiene*, 17 *N.J.* 170 (1954) (contempt proceeding for failure to obey court issued subpoena instituted by order to show cause).

Finally, if the conduct appears to be such that imprisonment may be warranted and immediate action is not essential to prevent demoralization of the court's authority before the public, or to assure continuity of proceedings, as in the case of a continually disruptive spectator, both a more formal charging process and reference to another judge for adjudication and sentence would ordinarily be required in order to accord due process. The charge should particularly inform the party of the need to present evidence in mitigation, or, as here, to call the other witnesses in the courtroom to state their accounts of the event.

*Matter of Daniels, supra* at 68.

In the grand jury context, where imprisonment is potentially warranted to coerce compliance and the secret nature of the proceedings militate against the risk of demeaning the court's authority in the eyes of the public, R. 1:10-2 procedures are likely required in all but the most extraordinary circumstances. This view is consistent with the apparent position of the federal courts. In *Harris v. United States*, 382 U.S. 162 (1965), the court held that prosecutions for contempt for refusing to answer questions before the grand jury were to be prosecutions upon notice and with an opportunity to defend. Cf. *United States v. Wilson*, 421 U.S. 309 (1975). Thus, it is strongly recommended that in those situations in which time is not of the

essence, summary contempt be pursued by notice and an order to show cause.<sup>24</sup>

In those situations involving serious time pressures, the witness should be brought before the court immediately, with counsel if possible. The court should direct the witness to comply with its previous order and obtain the witness' intention. In developing a record for contempt, it is most desirable (in addition to the testimony of the court reporter and the unresponsive answers of the witness being presented to the court) for the trial court to actually conduct the same inquiry in its presence.

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<sup>24</sup> 1. The judge whose order was allegedly breached may not hear the charge unless the witness consents. R. 1:10-4; See also *City of Bridgeton v. Jones*, 228 N.J. Super. 325, 337-338 (App. Div. 1988).

2. The contempt process may be instituted only by the court lest a litigant turn it to private gain. *In re Buehrer*, *supra* at 515.

3. The defendant shall be informed plainly whether the proceeding is penal as distinguished from civil in nature, where punishment is imposed until the party complies with the court's directive. *In re Buehrer*, *supra* at 515. This latter action is brought pursuant to R. 1:10-5. *In re Bridge*, *supra* at 469.

4. A penal charge may not be tried with a civil complaint unless consented to by the party. *In re Buehrer*, *supra* at 515.

5. A conviction is reviewable upon appeal both upon the law and the facts. R. 2:10-4.

6. There is a presumption of innocence. *In re Buehrer*, *supra* at 516.

7. Charges must be proven beyond a reasonable doubt. *In re Buehrer*, *supra*; R. 1:10.

## ***EVASIVE ANSWER CONTEMPT***

Contempt is not limited to a literal refusal to answer. Rather, answers themselves may be so evasive, equivocal, patently false and obstructive that they amount to a refusal to answer<sup>25</sup> and such conduct may also be treated and punished as a contempt in the manners described.<sup>26</sup>

This form of contempt, commonly referred to as "evasive answer contempt," is most often manifested by the witness' false assertion of a lack of recollection. Proof of this contempt, whether treated summarily or by indictment, must be established by the record alone without the use of evidence extrinsic to the record. *See Collins v. United States*, 269 F.2d 745 (9 Cir. 1959), cert. den. 362 U.S. 912 (1960).

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<sup>25</sup> The simplest form of obstructing justice is to refuse to answer a proper question. Another form is to assert failure of memory when there is in fact no such failure. A third is to profess at all times that one had nothing to conceal and is telling the truth, but to pretend to forget or to pretend to remember what is not so, whichever may be handiest at the time, to lie when one can, to tell the truth when one must, and by glibness and insolence waste more time than would be possible under either of the other methods. *People v. Finkle* 284 N.Y.S. 728, 731 (Sup. Ct. 1935), aff'd *Finkle v. McCook* 286 N.Y.S. 755 (App. Div. 1936).

*See also United States v. McGovern*, 60 F.2d 880 (2 Cir. 1932), cert. den. 287 U.S. 650 (1932); *O'Connell v. United States* 40 F.2d 201 (2 Cir. 1930); *United States v. Appel*, 211 F. 495 (S.D.N.Y. 1913); *People v. McCloskey*, 185 N.Y.S.2d 952 (App. Div.) aff'd 189 N.Y.S.2d 898 (Ct. App. 1959); and *People v. DeFeo*, 131 N.Y.S.2d 806 (App. Div. 1954).

<sup>26</sup> In New Jersey, authority to treat false and evasive answers as contempt is well established. *See, e.g., Swanson v. Swanson*, supra at 184 (1951).

In order to punish or convict for this form of contempt under common law<sup>27</sup> the record alone must show:

1. The witness' answers were evasive, equivocal, conspicuously unbelievable and patently false;
2. The witness gave such answers with the intent to deny a court order to answer truthfully or willfully demonstrated indifference to such an order; and
3. This conduct by the witness tended to obstruct the administration of justice. *Ex parte Hudgings*, 249 U.S. 378 (1919).

While one of the elements of this contempt crime is the false nature of the witness' answer[s], such falsity should be distinguished from the unequivocal lie which is treated as false swearing or perjury. 8 *Wigmore*, §2194a fn. 1. For example, if the man who killed Frank Victim by shooting him four times in the back of the head is asked, "Did you shoot Frank Victim?", of the following the last answer below is to be treated as perjury:

A: I don't remember.

A: I heard he committed suicide.

A: Maybe

A: No.

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<sup>27</sup> See *N.J.S.A. 2C:1-5c* preserving the common law crimes of contempt found in *N.J.S.A. 2A:85-1*, as distinguished from the elements of *N.J.S.A. 2C:29-9*.

## **CONTEMNOR'S APPLICATION FOR RELIEF**

Once adjudged in summary contempt and incarcerated, the contemnor will likely seek release. The contemnor has the burden of showing that the commitment order lacks coercive impact and has become punitive. *Matter of Grand Jury re Acceturo*, 242 N.J. Super. 281 (App. Div. 1990). The contemnor has a right to a hearing to determine whether there is any substantial likelihood that continued incarceration is coercive no later than expiration of 18 months of imprisonment. *Acceturo*, *supra* at 288. Incarceration may continue until the contemnor purges himself, or the incarceration ceases to be coercive, without regard to the expiration of the grand jury. N.J.S.A. 2A:81-17.3.

The court may, without holding a hearing, grant the State's motion for summary dismissal of a contemnor's petition for review where such a petition is clearly without merit. However, if the court concludes that there may be sufficient merit to warrant a hearing, the hearing should be given preference and determined promptly. *Acceturo*, *supra* at 290. Under no circumstances should the court grant a contemnor's motion for release without affording the State a hearing to test the veracity and credibility of contemnor's proof, as such determinations involve factual issues which should be resolved only on the basis of live testimony with the opportunity of cross-examination. *Acceturo*, *supra* at 289.

A civil contemnor held in a State institution must be held in some type of protective custody. *Acceturo*, *supra* at 292.

## **ATTORNEY CONSULTATION - ABUSE**

During a grand jury investigation, defense counsel or the witness may assert a Sixth Amendment right to consult counsel during questioning. As a practical matter, this may interfere with

or impede the grand jury investigation and virtually bring defense counsel into the jury room. Any attempt at this type of conduct is improper and should be resisted.

There is no Sixth Amendment right to counsel by a grand jury witness.<sup>28</sup> *State v. Captain, supra; United States v. Mandujano*, 425 U.S. 564, 96 S.Ct. 1768 (1976). However, courts have been understanding regarding the pressures put upon witnesses during investigations and are reluctant to leave them entirely without legal counsel. *United States v. Soto*, 574 F. Supp. 986, 993 (D. Conn. 1983.)

As a result, it is recommended that a prosecutor encountering this situation, where the progress of the grand jury is impeded by the constant (*i.e.* after each question or series of questions) consultation with defense counsel, should seek a restraining order from the Assignment Judge. In one instance, such a restraining order allowed 20 minutes of continuous questioning followed by 10 minutes of attorney consultation which was considered "a practical accommodation." *Soto, supra* at 993.

Application for a restraining order should be based upon interference with the grand jury process by frustrating the investigation and delaying the proceedings. Before seeking a restraining order, the prosecutor should establish a record of witness' conduct. The prosecutor must describe on the grand jury record what the witness is doing (*e.g.* writing questions), note the time the witness leaves and reenters the grand jury room, describe the reaction of the grand jurors and all other indicia of frustration or delay of the investigation. These facts will form the basis for the prosecutor's application to the Assignment Judge for a restraining order.

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<sup>28</sup> In *State v. Captain*, 123 N.J. Super. 167 (App.Div. 1973), the individual was not a "target of the grand jury investigation but was later prosecuted for perjury arising from his appearance before the grand jury.

## **SECRECY OF WITNESS TESTIMONY**

R. 3:6-7 provides that all persons, other than the witnesses take an oath of secrecy with respect to grand jury proceedings. Clearly, that means that a witness is free to speak about his appearance before the grand jury. However, a witness may not be compelled and may refuse to testify about his appearance before the grand jury. *In re Application of Eisenberg*, 654 F.2d 1107, 1113 (5 Cir. 1981); *In re Swearingen Aviation Corp.*, 605 F.2d 125, 127 (4 Cir. 1979). Absent court relief, a witness is free to discuss or refuse to discuss his grand jury appearance and testimony.

However, some cases suggest that where the integrity of the grand jury investigation is at issue, a court can enter a protective order preventing witnesses from discussing their testimony. *In re Swearingen Aviation Corp.*, 486 F. Supp. 9 (D.Md. 1979) mandamus refused, 605 F.2d 125 (4 Cir. 1979); *In re Grand Jury Witness Subpoena*, 370 F. Supp. 1282, 1285, n.5 (S.D.Fla. 1974).

## **CONSIDERATION TO WITNESSES**

The judgments which attend a possible grant of immunity or other consideration to a witness are often among the most sensitive and difficult a prosecutor can be called upon to make. Great care must be exercised to ensure that rightfully culpable defendants do not escape prosecution and that third parties are not unjustly accused by an actual or potential defendant who seeks personal exoneration at any cost.

On the other hand, immunity - as a matter of prosecutorial discretion<sup>29</sup> as well as statutory mandate - is a concept of long

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<sup>29</sup> See *State v. Winne*, *supra* at 172-175; *State v. McCrary*, 97 N.J. 132, 142 (1984); and *State v. Perry*, 124 N.J. 128, 167 (1991).

standing in our jurisprudence and is an important concomitant to Fifth Amendment privileges in the context of the societal interest in proper and thorough law enforcement efforts. In short, the concept of immunity provides the prosecutor with a mechanism to obtain evidence that otherwise would not be obtained:

The Fifth Amendment privilege is an exception to the longstanding principle that the public has a right to every man's evidence, a principle which is particularly applicable to grand jury proceedings. For a considerable period of time filled the need of achieving a further balance - some say implementing the balance - between the individual's right not to provide information incriminatory of himself and society's need for his information to pursue its criminal investigation of the criminal activity of others. The practice of immunity against the use of compelled incriminatory testimony has an unquestioned tradition in English legal history. Certain offenses, such as bribery, are of such a character that the only persons possessing helpful knowledge thereof are often times those who themselves are implicated in the offense. If the investigation of crime is not frustrated in such circumstances, there must be a means of both securing the citizen's privilege against compulsory self-incrimination and obtaining the necessary information.<sup>30</sup>

Ideally, of course, our citizenry should be uniformly forthright and willing to come forward at all times with relevant information, a situation which would obviate the need to

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<sup>30</sup> Statement of former U.S. Attorney General Edward H. Levi before the House Judiciary Committee, Subcommittee on Immigration, Citizenship, and International Law, on Grand Jury Reform, June 10, 1976.

immunize. Obviously, such is not the case. And, as stated above, the nature of many crimes, including the conspiratorial character of criminal conduct in the official corruption, organized crime and narcotics areas, requires the use of immunity as an investigative tool to identify factually the criminal event and to reach the key participants:

One might wish that our society were so structured that the investigation of crime could rely solely upon the wholly voluntary cooperation of citizens. But it is not and has never been. If the grand jury is to perform its historic function of investigating crime and returning only well founded indictments, it must have available to it compulsory process and the testimony of witnesses who sometimes are themselves involved in the matters under inquiry. Increasing the rights of witnesses to refuse to comply with a grand jury inquiry, whatever the merits of the suggestion, would seriously hamper the grand jury in its investigative efforts.<sup>31</sup>

Likewise, apart from statutory immunity, other forms of favorable consideration to a witness may also be required in the context of a grand jury inquiry. The sensitive nature of all such decisions, as well as the effect on any potential prosecution, is apparent. For that reason, standards governing the procedure to be followed and the criteria utilized in reaching these decisions are required.

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<sup>31</sup> *Id.*

## **CRITERIA FOR GRANTING CONSIDERATION TO A WITNESS**

Granting leniency to an individual in return for cooperation is a most delicate and complicated matter. The objectives and interests of thorough and diligent law enforcement must always be considered in the context of dealing fairly and justly with actual or potential defendants.

Although situations differ widely, it has been the general policy of this State's prosecutors to give up the least possible consideration to obtain the cooperation of witnesses. The question which must always be resolved is how much, if anything, is being given up when a potential witness is immunized and how does it balance against what is anticipated in return. Also, the effect of receiving any consideration upon the individual as a witness before a jury must be considered. Ultimately, a "bargain" should be struck only after all of its implications have been fully assessed. If a witness will testify truthfully with no immunity at all, he should receive none.

To understand how immunity can be used in a limited fashion in order to develop an investigation to a point where final judgments can be made, it is necessary to discuss the nature of the following forms of agreement between prosecutor and witness:

(1) an informal understanding that an interview will be conditioned on an agreement by the prosecutor that nothing said in the course of the interview will be used against the witness;

(2) a formal grant of "use plus fruits" immunity by court order; and

(3) a commitment by the State that in addition to "use plus fruits" immunity, some degree of leniency will be shown to the witness in connection with the disposition of a criminal or civil action against the witness, or that the witness will be totally insulated from criminal prosecution for the entirety of the

criminal episode ("transactional immunity").

The first two categories involve no commitment by the State other than that the witness' information itself and any leads derived therefrom will not be used against him.<sup>32</sup> Such immunity is not a bar to the prosecution of the witness in the event that evidence, derived from sources independent of the witness' statements, is developed. The drawback involved from a prosecutorial standpoint in using limited immunity is that if the witness is subsequently prosecuted, the State must prove that its evidence was derived from an independent source. *Kastigar v. United States*, 406 U.S. 441 (1972), reh. den. 408 U.S. 931 (1972); *Zicarelli v. N.J. State Commission of Investigation*, 406 U.S. 472 (1972); *State v. Strong*, 110 N.J. 583 (1988); *In re Petition to Compel Testimony of Tusso*, *supra*; *State v. Maiorana*, *supra*. See Statutory Immunity - Procedure, *infra*.

The most difficult situations from a judgment standpoint occur in negotiating some other form of consideration to a potential witness. The alternatives range from an agreement to accept a guilty plea to a reduced charge with no recommendation as to sentencing, to an agreement to dismiss all pending criminal cases and to refrain from instituting a civil action against the witness.

It is impossible to set forth a precise formula by which the decision to negotiate immunity is made, but there are certain factors which should be weighed when considering any form of immunity.

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<sup>32</sup> Note also that a prosecutor is prohibited from using a person's immunized grand jury testimony to impeach that person's credibility as a testifying defendant in a subsequent criminal trial. *New Jersey v. Portash*, 440 U.S. 450 (1979). See also *Pillsbury Co. v. United States*, 459 U.S. 248, 255, (1983) (testimony compelled from witness under immunity must leave him and the Government in substantially same position as if witness had retained right to remain silent); *United States v. Semkiw*, 712 F.2d 891 (3 Cir. 1983) (power to compel testimony from unwilling witness is limited by the Fifth Amendment).

1. Can the information be obtained from any source other than a witness who wants to negotiate immunity? It should be understood here that the proper policy is never to negotiate any form of actual leniency until the information being offered has been received and evaluated. If a potential witness refuses to disclose his information before such negotiations take place, an attempt should be made to compel his testimony through statutory forms of immunity or drop efforts to deal with him.

It must be stressed that "use plus fruits" immunity (*N.J.S.A. 2A:81-17*) should be used cautiously and sparingly, even though from a purely legal standpoint prosecution of the individual would not necessarily be foreclosed. There is no question that legal difficulties can be present (proving independent basis) if prosecution of the witness is pressed, and that significant practical difficulties may arise regarding the witness' credibility/bias in prosecutions against others.

2. How useful is the information for purposes of criminal prosecution? From time to time, law enforcement agencies make various kinds of deals with informants to obtain intelligence-type information. Such negotiations are not the development of admissible evidence which can be corroborated in the context of a grand jury inquiry.

3. What is the likelihood that the witness can successfully be prosecuted? When no case at all exists against the witness, immunity sacrifices only a vague possibility that one might be developed. If there is little chance of a successful prosecution, or if the case against the witness is relatively minor in nature, the State gives up less than it would if the anticipated prosecution of the potential witness is solid and significant.

4. What is the relative significance of the witness as a potential defendant? Such a witness must be considered in the broadest possible context of his background, power and influence, as well as the severity of the offenses committed and the extent of the potential witness' participation and responsibility for them.

5. What is the relative significance of the potential defendant(s) against whom the witness offers to testify? Again, this kind of a judgment should not be made in the narrow confines of the case itself. The defendant's importance must be measured by the seriousness of the social harm which will result from not prosecuting him, thereby leaving him free to exercise his power and influence.

6. What is the value of the testimony of the witness to the case? Where the testimony forms the core evidence upon which the prosecution is based, it is of greater value than testimony which is corroborative or merely cumulative.

7. What impact will immunity - particularly the terms of transactional immunity and consideration in the civil sense - have on the credibility of the witness at trial? The more the State has given up to obtain the testimony, the more likely it is that the witness will not be believed. All judgments on consideration should be made with the realization that any negotiations and the final results thereof *must* be disclosed. In each case there comes a point at which the terms of the immunity agreement are so favorable to the witness or so outrageous to the jury that a jury will not accept the testimony. Evaluate all proposed deals from the point of view of a jury; expect future defense counsel to drive home each favorable element in cross-examination.

8. What impact will immunity - again, particularly the terms of any transactional immunity and civil consideration - have on the prosecutor's personal credibility and that of his office? A prosecutor has an affirmative duty to engage in conduct which will assure the public that his office is being run in a fair and responsible manner. In weighing the relative significance of potential witnesses and targets of investigation, even the appearance of making judgments on the basis of personal or political motives must be avoided.

## **PROCEDURE**

Appended is a sample memorandum for documenting the approval of immunity applications which, once adapted to a particular Prosecutor's Office, should be utilized in all situations involving immunity or other substantial concessions to a witness in a grand jury context.

### **I.**

With respect to immunity or other substantial concession to a witness, obtaining all of the approvals shown on the face of the memorandum, including the prosecutor or his designee, constitutes a prerequisite to the grant of "use plus fruits" immunity (both informal and formal statutory situations), *de facto* transactional immunity, civil considerations or other substantial concessions to a witness for testimony in a grand jury or investigative context. In addition, the approval procedure shall also be pursued prior to seeking the testimony of a public official pursuant to *N.J.S.A. 2A:81-17.2(a)(1)*, and thus possibly invoking the statutory immunity there conferred. Attached to the approval memorandum, as noted upon its face, should be a supplemental memorandum giving a brief background of the case, listing the names of known and potential defendants and discussing the factors referred to in the section of this Manual dealing with the criteria to be utilized in weighing a decision to grant concessions to a witness.

### **II.**

With respect to a prosecutor's interview of witnesses without prejudice, an informal understanding with the witness that an interview will be conditioned on an agreement by the prosecutor that nothing the witness says or leads therefrom shall be used against him may be made after obtaining oral approval

from an immediate superior. It must be noted that the State is not required to negotiate this specific agreement representing the absolute extent of the immunity which may be granted a witness. An agreement with a witness that is more beneficial to the State may be negotiated. *See State v. Riley, 242 N.J. Super. 113 (App. Div. 1990)*. However, information proffered by defense counsel are not to be a part of the agreement.

No such agreement should be made by investigators or detectives without the approval of the appropriate deputy attorney general or assistant prosecutor.

Such agreements shall be as clear and precise as possible in their terms and shall be promptly reduced to writing in the form of a memorandum from the attorney to the section or bureau chief, and a copy of the memorandum shall be included in the case file. Further, such agreements should always be entered into with extreme caution and, within the prosecutor's discretion, only in situations where it appears to the prosecutor that the witness has valuable information which cannot be obtained from other sources, and where the object of the interview is to obtain facts concerning potential defendants other than the witness. *Cf. Banca v. Phillipsburg, supra; Palumbo v. Township of Old Bridge, 243 N.J. Super. 142 (App. Div. 1990)*.

In cases of extreme sensitivity or significance, before entering into such agreements the section or bureau chief shall obtain written approval from the Attorney General or County Prosecutor or his designee in the manner outlined above for the other concessions to witnesses.

### **STATUTORY IMMUNITY - PROCEDURE**

Inasmuch as "use plus derivative use" immunity is provided as a prosecutorial tool pursuant to *N.J.S.A. 2A:81-17.3*, the statutory procedure is recommended for all situations in which "immunity" is either part or all for the consideration

given a particular witness.

The Statute specifies that a petition, approved by the Attorney General, may be presented to the court for an order compelling the testimony of a particular witness. The petition must set forth the justification for the prosecutor's determination that the witness' testimony ought to be compelled; that is, that the witness has knowledge of the commission of a particular crime. A form petition is appended, which may be adapted to fit particular situations.

A prerequisite to the court's compelling the witness' testimony, and, as a consequence granting "use plus fruits" immunity, is the requirement that the witness claim his privilege against self-incrimination (preferably under oath in response to questions before the grand jury). The fact of the witness' claim of privilege and the specific questions to which that claim was asserted should be part of the petition in support of the prosecutor's application. In those situations in which the petition and order are predicated upon representations of counsel, the witness should be questioned on the day of the witness' appearance to testify on the record, but outside the presence of the grand jury, to determine whether he is actually invoking his privilege. Target warnings must be issued as required.

The petition being in proper form and approved by the Attorney General, the court generally may not question the decision of the prosecutor to immunize the witness and therefore must sign the order. A proposed form order is appended.

Additionally, when employing "use plus fruits" immunity, the prosecutor must avoid compelling the witness to testify before a grand jury which might later indict him for an offense other than perjury or false swearing.<sup>33</sup> *In re Tusso, supra*. In the

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<sup>33</sup> Neither New Jersey's immunity statute nor the Fifth Amendment to the United States Constitution precludes the use of a defendant's immunized testimony at a subsequent prosecution for making false statements, so long as that testimony otherwise conforms to applicable rules of evidence. The whole corpus of that testimony may be utilized by the State. *See United States v. Apfelbaum*, 445 U.S. 115 (1980).

extraordinary case, and only if there is a legitimate reason to compel the target's testimony (e.g., investigation of other targets), that compulsion should occur before a separate grand jury, or if before the same grand jury, only after that grand jury has taken its vote on whether to charge the target. By following this procedure, the prosecutor will greatly aid his task at the trial of the target if called upon to show an "untainted" independent source of evidence to obtain the indictment and to prosecute the indictment at trial. *In re Tusso, supra*.<sup>34</sup> If proper care is taken in the course of the investigation in anticipation of a subsequent taint hearing, the result of a grant of "use plus fruits" immunity *should* be nothing more than the inconvenience of an additional proceeding at the time of trial.<sup>35</sup>

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<sup>34</sup> *Vinegra, supra*, observed that the United States Supreme Court had consistently held that the receipt by a grand jury of evidence obtained in violation of a person's Fifth Amendment right does not "infect" an indictment based upon such testimony. The proper recourse in such matters is not dismissal of the indictment but, rather, suppression of such grand jury evidence (and fruits therefrom) at the time of trial. *Id.* at 490. Despite this observation by the New Jersey Supreme Court in 1977, the better course in 1993 is set forth in the text above and it is strongly recommended that the target not be compelled before the same grand jury that *will later* be asked to consider an indictment of the target.

<sup>35</sup> The preferred method for compelling testimony from an immunized witness whom the Grand Jury may also charge substantively is as follows:

(1) Have the Grand Jury vote on whether or not to charge the target;  
(2) If a true bill is returned, have the Court seal all of the evidence which was available to the prosecution at that time (*i.e.*, prior to compulsion). Remember that at the time of trial, the prosecutor will be limited to that evidence, so be liberal;

(3) A prosecutor other than the one who will try the target on the substantive charge should be assigned to handle the compulsion proceeding. *But cf. United States v. Pantone*, 634 F.2d 716 (3 Cir. 1980) (fact that prosecutor had access to immunized testimony of defendant in an unrelated but analogous investigation, after his first trial but prior to retrial does not

(continued...)

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<sup>35</sup> (continued...)

require dismissal of indictment nor withdrawal of the prosecutor); *United States v. Smith*, 580 F. Supp. 1418 (D.N.J. 1984) (defendant could be prosecuted and convicted for his allegedly illegal conduct even if that conduct was the subject of his testimony before the Commission, so long as federal prosecutors made no direct or derivative use of that testimony). See *In re Sealed Case (North v. Walsh)*, *supra*; *United States v. Poindexter, et al.*, *supra*. Criminal defendants have a right under the compulsory process clause to the government's assistance in compelling attendance of favorable witnesses at trial and the right to put before the jury evidence that might influence a determination of guilty. *Pennsylvania v. Ritchie*, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). However, a defendant has no right to call a witness before the jury solely to have the witness invoke his privilege against self-incrimination and refuse to testify. *State v. Robinson*, 253 N.J. Super. 346, 365 (App. Div. 1992), certif. den. 130 N.J. 6 (1992). See *State v. Cito*, 213 N.J. Super. 296 (App. Div. 1986), certif. den. 107 N.J. 141 (1987) (provisions of Immunity Statute, N.J.S.A. 2A:81-17 to compel witness to testify can only be invoked by the Attorney General or the Prosecutor, not defense counsel).

(4) The prosecutor should also take precautions to guard against "tainting" the trial prosecutor and State's witnesses for the purposes of the trial of the indictment of the compelled target. Those who are privy to the compelled testimony of the target should not participate at the trial of that target. Further, the prosecutor should be prepared to swear (and otherwise demonstrate) that those who are privy to the compelled testimony have not disclosed the contents of that compelled testimony or evidence derived therefrom to the trial team.

## UNINDICTED COCONSPIRATORS

If a Grand Jury determines that a person is a *conspirator* but chooses not to indict the person, the individual should not be named in the indictment. *State v. Porro*, 152 N.J. Super. 179 (App. Div. 1977) app. dism. 77 N.J. 504 (1978) cert. den. 439 U.S. 1048 (1978). The Grand Jury minutes should reflect the fact that the Grand Jury has determined that the person is a coconspirator, albeit unindicted. *Id.* Based on *Porro*, it is clear that the Grand Jury needs to be informed by the prosecutor, either directly or indirectly, of the identity of unindicted coconspirators who are not specifically named in the indictment.

A prosecutor's determination that a person is an unindicted coconspirator (as opposed to an *indicted* coconspirator) should be based on the facts and the law. It is often a simple, but can sometimes be a difficult and complex decision. In all cases it assumes that the prosecutor has initially determined that the person's conduct is sufficiently connected to the conspiracy to render the person a potential coconspirator.

As noted, in many cases this determination is simple, an unindicted coconspirator may be a person who: (1) has already been convicted or pled guilty to a crime arising from the same facts or transaction as the matter being presented to the Grand Jury and thus cannot be prosecuted by virtue of considerations of double jeopardy; (2) has been given a grant of immunity with respect to the matter under investigation by the Grand Jury; (3) is cooperating with the State; or (4) will not be prosecuted for other reasons grounded in prosecutorial discretion.

More difficult determinations occur when conduct embraces all elements of the conspiracy, as well as some or all of the elements of the object crimes, except the evidence establishing the person's intent is merely circumstantial and less than compelling.

In all cases, the prosecutor must weigh the evidence

carefully and make considered judgments. If a determination is made not to name the suspect as an *indicted* coconspirator, but to refer to the person as an unindicted coconspirator in the indictment, the prosecutor will normally draft the indictment referring to the person as a "person whose identity is known to the Grand Jurors, who is named a coconspirator but not as a defendant herein." Other similar language may be utilized in the indictment if the prosecutor so chooses. When reading the proposed indictment, the prosecutor should pause at the appropriate time and clearly identify this person for the Grand Jury.

## **THE VOTE OF THE GRAND JURY**

An indictment may be found only upon the concurrence of twelve or more jurors. *R. 3:6-8*. Jurors who vote on a matter must either have been present for all sessions or be otherwise informed of all of the evidence presented. *See State v. Del Fino*, 100 *N.J.* 154, 164 (1985); *State v. Ciba-Geigy Corp.*, 222 *N.J. Super.* 343, 352-355 (App. Div. 1988). The New Jersey Supreme Court has recommended that a juror review the transcript of the proceedings from which he was absent in order to become qualified to vote. *State v. Ciba-Geigy Corp.*, *supra* at 352-355. Because grand jury proceedings must be recorded, stenographically or by a sound recording, resort to the record is the preferred method of assuring that jurors are qualified to vote. *N.J.S.A. 2A:73B-1*; *R. 3:6-6(b)*. *See The Grand Jury Record*, *supra*.

Furthermore, qualifying jurors should be accorded adequate time to review the record and inform themselves of the evidence. *State v. Ciba-Geigy*, *supra* at 354-355. The failure of the jury to take adequate time may jeopardize the validity of the indictment. *See State v. Ciba-Geigy*, *supra* at 354-355 (where the Appellate Division concluded that the "presumption of validity" which attaches to an indictment was rebutted because the jurors spent an objectively inadequate time reviewing transcripts).

Although *R. 3:6-8(a)* makes clear that at least twelve grand jurors must vote to indict, New Jersey has no requirement that any greater number of jurors participate in the vote. *State v. Del Fino*, *supra*, supports the proposition that *R. 3:6-8(a)* is the grand jury quorum rule in this State. Thus, no greater

number of jurors are needed to vote. *See State v. Del Fino, supra* at 163.<sup>36</sup>

### **RECORDATION OF THE VOTE**

The grand jury clerk must record the vote of individual grand jurors. R. 3:6-5. A less precise recordation stating only "12 plus" votes does not suffice under the rule. *State v. Del Fino, supra*.

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<sup>36</sup> The Oregon Supreme Court recently determined that although five grand jurors may vote an indictment, all grand jurors -- seven under the Oregon system -- must deliberate on a matter. *Goodwin v. State of Oregon*, 116 Or. App. 279 (1992), 840 P.2d 1372 (Or. App. 1992). However, *Goodwin's* holding is based on an interpretation of specific provisions of the Oregon State Constitution.

## PRESENTMENTS

Originally, presentments were reports which served to call criminality to the attention of the proper authorities and to authorize or to request the preparation of an indictment. A presentment operated as an accusation upon which the prosecutor ordinarily was expected to act. *In re Presentment by Camden County Grand Jury*, 34 N.J. 378, 388 (1961). That practice has evolved into a grand jury's making reports containing comments or criticisms on the state of public affairs or conditions in a particular area or on matters of general interest. However, the report charges no crime and recites no facts upon which an indictment could be framed. *Id. See Fields v. Soloff*, 920 F.2d 1114 (2 Cir. 1990) (with presentments, grand jury recommends for prosecution charges it has initiated or it issues reports condemning official misconduct not rising to the level of criminal offense); *See also State v. Childs*, 242 N.J. Super. 121, 130 (App. Div. 1990).<sup>37</sup>

The Assignment Judge to whom a grand jury presentment is returned has the obligation to be assured of its propriety before filing it and making it public. *In re Presentment of Essex County Grand Jury*, 46 N.J. 467, 471 (1966); *In re Presentment of Bergen County Grand Jury*, 193 N.J. Super. 2, 9 (App. Div. 1984).

Substantial safeguards were established under R. 3:6-9 to protect an accused's rights during this examination process. If it appears that a crime has been committed for which an indictment may be had, the Assignment Judge shall refer the presentment back to the grand jury with appropriate instructions, R. 3:6-9(c). If a public official is censured by a grand jury, the Assignment Judge must examine all of the evidence to

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<sup>37</sup> The notice provisions under the relevant authority, R. 3:6-9, relate to individuals, not institutions. *In re Presentment of Bergen County Grand Jury*, 193 N.J. Super. 2, 12 (App. Div. 1984).

determine whether the proof is conclusive that the existence of the condemned matter is inextricably related to the non-criminal failure of the censured official to discharge his public duties. *In re Presentation of Passaic County Grand Jury*, 220 N.J. Super. 470, 476 (Law Div. 1986). Furthermore, the Assignment Judge must determine whether any part of the presentment should be stricken as being (1) false, (2) based on partisan motives, (3) indulging in personalities without basis, or (4) for other good cause. R. 3:6-9(c). Once the jurors approve the presentment, the Assignment Judge has the discretion to delete it in whole or in part.

The challenged portion of such a report must be suppressed or expunged unless free of all conflict, doubt, and susceptibility to diverse inferences. *Matter of Investigation into Hamilton Twp. Bd. of Educ.*, 205 N.J. Super. 248 (App. Div. 1985); *In re Presentment by Camden County Grand Jury*, 67 N.J. Super. 160 (Law Div. 1961).

Pursuant to R. 3:6-9(c), in addition to any deletions the Assignment Judge may have, a censured official may challenge the presentment at a hearing. To support the case, the censured public official may fully examine the grand jury minutes and introduce additional evidence to expose any deficiency.

In light of the challenges that are permitted to a presentment by both the subjects identified and criticized and the Assignment Judge, there are often lengthy delays in the publication and distribution of a presentment which makes this alternative a relatively inefficient tool for calling matters to the attention of the public and for recommending necessary public reform.

## **RE-PRESENTATION OF A CASE TO THE GRAND JURY**

There is no statute, court rule or judicial decision which prohibits the re-presentation of a case to a grand jury after the complaint has been administratively dismissed, downgraded and remanded to municipal court or otherwise disposed of without grand jury action. Nor does the fact that a grand jury has considered the matter and voted a no-bill legally bar re-presentation of the matter to the grand jury, because the return of a no-bill reflects nothing more than the fact that a particular grand jury at a particular time found that the proofs presented to it were insufficient to establish the commission of a crime or the participation in a crime of a particular accused. Within the applicable statute of limitations, the grand jury or its successor grand jury may properly reconsider and vote anew on the matter, notwithstanding the earlier return of a no-bill. *Rosetty v. Hamilton Twp. Comm.*, 82 N.J. Super. 340, 348-349 (Law Div. 1964), aff'd o.b. 96 N.J. Super. 66 (App. Div. 1967).

The grand jury also has the power to indict an accused who has already been indicted for the same or a related offense by a grand jury in another county. *State v. Josephs*, 79 N.J. Super. 411, 414 (App. Div. 1963). Similarly, the grand jury may indict a defendant for an offense even though it had previously indicted that defendant for a component part of that offense. It may even re-indict him for the same offense charged in a previous indictment. *Id.*

Superceding indictments which do no more than correct non-amendable technical deficiencies in a previous indictment are not a matter of controversy and may be obtained following re-presentation of the matter to the grand jury with appropriate instructions. Superceding indictments which expand the charges against the accused or enhance the sentencing maximum upon conviction, however, may well invite a legal challenge. In responding to motions to dismiss a superceding indictment, the

prosecutor should be prepared to refute the claim that the new indictment is the product of prosecutorial vindictiveness. *See, e.g., State v. Buckrham*, 167 N.J. Super. 455 (Law Div. 1979), vacated and remanded 173 N.J. Super. 87 (App. Div. 1980).

Where an indictment has been dismissed, the viability of a new or superceding indictment depends on considerations of double jeopardy, collateral estoppel, legislative prohibition and due process. *State v. Jones*, 183 N.J. Super. 172, 178 (App. Div. 1982). These factors, as well as the prospect of a vindictiveness claim, must therefore be carefully evaluated in determining whether a previously considered matter should be re-presented to the grand jury.

## POST-INDICTMENT PROCEDURE

An indictment, founded upon the concurrence of twelve or more jurors, must be returned in open court to the Assignment Judge or to any other judge authorized by R. 3:6-8(a).<sup>38</sup> The indictment may, with the approval of the Assignment Judge, be returned by the foreman or the deputy foreman rather than by the entire grand jury panel.

The indictment and all related papers must be entitled in the Superior Court. An indictment is sufficient if it charges the defendant, "with the commission of a crime in reasonably understandable language setting forth all of the critical facts and each of the essential elements which constitute the offense alleged." *State v. Wein*, 80 N.J. 491 (1979); *State v. Boratto*, 154 N.J. Super. 386 (App. Div. 1977). Moreover, the indictment must be sufficiently detailed to enable the defendant to prepare a defense; to avoid the risk of double jeopardy; and to

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<sup>38</sup> The necessity of post-indictment secrecy may require a sealed indictment. The following substantive considerations indicate a legitimate need to seal an indictment: flight of defendant from the jurisdiction, maintenance of such secrecy to continue effective investigation, protection of witnesses and others from threats or physical harm, economic reprisals and other intimidation, maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity or protection of confidential relationships.

The procedural process of sealing an indictment varies from county to county. Some grand jury prosecutors simply indicate on the indictment envelope "Sealed Indictment" or "Impounded Indictment" and request the Assignment Judge to seal same after reviewing it. The sealed indictment is given to the County Clerk (or some grand jury prosecutors retain the indictment) until such time, upon application to the Court, a request to unseal the indictment is granted. Although there is no required time to unseal the indictment, it is suggested that the indictment be unsealed within a reasonable time so that speedy trial considerations are not severely hampered.

prevent the substitution by a petit jury of an offense different than that considered by the grand jury. Each count should be followed by the citation to the statute alleged to have been violated. The indictment must be signed by the prosecutor, endorsed as a true bill by the foreperson, or in his absence by the deputy foreperson, and conclude: "against the peace of this State, the government and dignity of the same." *R. 3:7-3.*

If, at the time the indictment is returned, a defendant named therein is not yet under bail, the county clerk must issue a warrant unless requested by the prosecutor to issue a summons instead. *R. 3:7-8.* In order to ensure that the State Bureau of Identification is able to maintain a complete record of all persons charged with indictable offenses, all indicted defendants not yet under bail should be processed: photographed and fingerprinted.<sup>39</sup> If there is a prior agreement with a defendant or counsel regarding processing, a summons may be used.

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<sup>39</sup> Upon the arrest of a person for an indictable offense or within a reasonable time after the filing of an indictable complaint, all law enforcement officers are required to fingerprint that person and forward copies of those prints, along with photographs, other identifying data and a history of the charged offense, to the State Bureau of Identification. It is a disorderly persons offense for a person who has been charged in a complaint with an indictable offense and who has not been arrested to fail to submit to these identification procedures upon request or on the date of any court appearance. *N.J.S.A. 53:1-15.*

## **PRESS GUIDELINES**

Freedom of the Press and the right to a fair trial are constitutional guarantees, but as is often the case, one constitutional right will be in tension with the obligation of another. This tension is illuminated in respect to the need of the public to obtain information and the media's right to publish it against the obligation of the government to afford the accused a fair trial. *State v. Allen*, 73 N.J. 132 (1977). A balance must be struck between the venerated First Amendment guarantee which insures the freedom of the press and the equally compelling constitutional obligation which requires protection of the rights of one charged with criminal conduct. The right of the people to have a free press is a vital one, "but so is the right to have a calm and fair trial free from outside pressures and influences." *Craig v. Harney*, 331 U.S. 367, 394-395 (1947) (Dissenting opinion of Mr. Justice Jackson). Therefore, it is incumbent upon a prosecutor not only to maintain the rights of individuals involved in the criminal process, but also to inform the public concerning the operation of law enforcement agencies and the dispensation of criminal justice. The relationship between the Prosecutor's Office and the media should be open and cordial but the reality or appearance of collaboration is to be avoided.

The *Rules of Professional Conduct* regarding publicity as adopted by the Supreme Court of New Jersey are set forth below and are intended to assure a fair balance of both interests and to satisfactorily resolve most free speech/fair trial problems which may confront a prosecutor.

*R.P.C.* 3.6 reads as follows:

- (a) A lawyer *shall not make* an extrajudicial statement that a reasonable lawyer would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or the person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

- (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.
- (c) Notwithstanding paragraph (a) and (b)(1-5), a lawyer involved in the investigation or litigation of a matter *may state* without elaboration:
- (1) the general nature of the claim or defense;
  - (2) the information contained in a public record; Public Records as defined in Executive Order No. 123 (1985).
  - (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;
  - (4) the scheduling or result of any step in litigation;
  - (5) a request for assistance in obtaining evidence and information necessary thereto;
  - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and;

(7) in a criminal case;

- (i) the identity, residence, occupation and family status of the accused;
- (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
- (iii) the fact, time and place of arrest; and
- (iv) the identity of investigating and arresting officers or agencies and the length of the investigation. (emphasis added).

When publication of the identity of the victim would be embarrassing or demeaning to that person, such information should not be released. The rationale here, of course, has nothing to do with possible impairment of a fair trial, but arises out of consideration for victims of certain crimes, such as sexual assault or related offenses.

The special problems of child victims of sexual assault or abuse are specifically addressed in *N.J.S.A. 2A:82-46*, which includes a penalty for purposeful disclosure or release.

*N.J.S.A. 2A:82-46* reads:

- a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of children under *N.J.S.A. 2C:24-4*, or in any action alleging an abused or neglected child under *P.L. 1974, c. 119 (C. 9:6-8.21 et seq.)*, the name, address, and identity of a victim who was under the age of 18 at the time of the alleged commission of an offense shall not

appear on the indictment, complaint, or any other public record as defined in *P.L. 1963, c. 73 (C. 47:1A et seq.)*. In its place initials or a fictitious name shall appear.

b. Any report, statement, photograph, court document, indictment, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public. Unless authorized pursuant to subsection c. of this section, any person who purposefully discloses, releases or otherwise makes available to the public any of the above-listed documents which contain the name, address and identity of a victim who was under the age of 18 at the time of the alleged commission of an offense enumerated in subsection a. of this section shall be guilty of a disorderly persons offense.

c. The information described in this act shall remain confidential and unavailable to the public unless the court, after a hearing, determines that good cause exists for disclosure. The hearing shall be held after notice has been made to the victim, parents of victim, and to the person charged with the commission of the offense, counsel or guardian of that person.

d. Nothing contained herein shall prohibit the court from imposing further restrictions with regard to the disclosure of the name, address, and identity of the victim when it deems necessary to prevent trauma or stigma to the victim.

During the course of an ongoing grand jury investigation, no information concerning the grand jury proceedings shall be released to the press because *R. 3:6-7* requires that all grand jury proceedings remain secret. Four basic reasons have been set forth as grounds for this requirement of secrecy: (1) to prevent the escape of persons under investigation; (2) to prevent tampering with witnesses; (3) to insure deliberative freedom for the grand jury; and (4) to protect the reputation of an accused who ultimately is not indicted. *State v. Clement*, 40 N.J. 139 (1963).

### **CRIME SCENE**

Representatives of the press should be kept out of restricted crime scene areas to the same extent that members of the general public are so restricted. However, if a press photographer is in an area which is not restricted to the public, he should be neither encouraged nor discouraged from taking photographs. Under no circumstances should evidence be displayed at a crime scene for the purpose of photographing by the press. "The right to speak and publish does not carry with it the unrestrained right to gather information." *Branzburg v. Hayes*, *supra* at 684.

### **STILL AND TELEVISION CAMERA COVERAGE OF COURT PROCEEDINGS**

The *New Jersey Supreme Court Guidelines* (Revised September 25, 1990) do not permit television or photographic coverage of proceedings in juvenile court or trial courts involving custody of children, divorce, or matrimonial disputes, trade secrets and charges of sexual penetration or attempts thereof when the victim is alive. When the victim is deceased, the court may deny permission in consideration of the victim's survivors or analogous concerns. Television or photographic coverage

may be excluded in any proceeding where such coverage would cause a substantial increase in the threat of or the potential for harm to a participant in the case or would otherwise interfere with the achievement of a fair proceeding. Furthermore, coverage of domestic disputes in the municipal courts is prohibited, although coverage of municipal court cases involving seventeen-year old defendants charged with motor vehicle violations is permitted. Obviously, the secrecy requirements of grand jury proceedings prohibit all still and television camera coverage.

### **PHOTOGRAPHING EVIDENCE**

A photograph, which reflects the identity or nature of physical evidence expected to be presented in an adjudicated proceeding and which a reasonable lawyer would expect to be disseminated by means of public communication, ordinarily has a substantial likelihood of materially prejudicing a defendant in a criminal matter. *See R.P.C. 3.6 (b)(3)*.

The Supreme Court of New Jersey has recently had occasion to remind attorneys that the public production of any physical evidence such as seized drugs, confiscated weapons, or other captured contraband is "inappropriate" when such production will have a substantial likelihood of materially prejudicing an adjudicative proceeding. 132 *N.J.L.J.* Index page 278 (October 12, 1992).

Each County Prosecutor should establish internal controls governing release of information to the media. As a general rule, the County Prosecutor or his designee, not police officers or investigators, should be responsible for approving information disseminated to the media.

## **RELEASE OF GRAND JURY MATERIALS**

The secrecy requirements of grand jury proceedings are firmly rooted in New Jersey common law and are reflected in the New Jersey Court Rules. *R. 3:6-7. Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395 (1959). Nonetheless, the compelling needs of a defendant in a criminal trial have led to the most common exception to the secrecy rule, *see R. 3:13-3(a)(3)* and *R. 3:17*. The extent to which grand jury materials may be provided to civil litigants, government agencies, police or defendants not the subject of the particular grand jury proceeding, however, is less clear. The law in this area has been developing. At present the leading New Jersey case is *State v. Doliner*, 96 N.J. 236 (1985).

Despite the requirements of secrecy, New Jersey courts have in the past recognized that civil litigants have a legitimate interest in grand jury materials. In *Viruet v. Sylvester*, 131 N.J. Super. 559 (App. Div. 1975), the court, in rather broad language upheld the release of testimony since it perceived "no sound reason, in law or morality, why a civil litigant should not be entitled to the same right of discovery as a defendant charged with a crime." *Id.* at 603

Subsequently, the Appellate Division in *Doe v. Klein*, 143 N.J. Super. 134 (App. Div. 1976), narrowed the holding in *Viruet v. Sylvester*, *supra*, and in effect adopted the federal approach which had been reflected in *Proctor and Gamble Company v. United States*, 350 U.S. 677 (1968). The court also discussed the applicability of *Federal Rules of Criminal Procedure* 6(e)(2) and (3). In resolving the conflict between the grand jury's veil of secrecy and the liberal rules of discovery, the Appellate Division held that a civil litigant must "demonstrate compelling circumstances or need warranting disclosure of the grand jury minutes." *Doe v. Klein*, *supra* at 141. In *Doe* the Court suggested that a mere claim that time and expense would be saved by the release of grand jury testimony could not satisfy

the compelling need or circumstances test. The Court pointed out that the plaintiffs had been provided with the names and addresses of virtually all of the witnesses and could have deposed them.

The *Doe* decision has practical effects beyond its strict holding. First, because of the stringent requirements contained in the case, prosecutors should not consent to the release of grand jury testimony to a civil litigant. The prosecutor should demand that the litigant move before a judge, upon proper notice to the prosecutor, and establish the compelling need. Second, even if the testimony is ordered to be released, it would seem that the civil litigant has no right to the comments by the prosecutor or colloquy between the prosecutor and members of the grand jury. The mandates of *N.J.S.A. 2A:73B-1* were clearly intended to protect the rights of a defendant from prosecutorial overreaching. Accordingly, the order for disclosure should be confined to the release of testimony. Third, although *Doe* gives the impression that the rigid requirements for disclosure would probably not apply to release of *non-testimonial materials* acquired by grand jury subpoena, *State v. Doliner, supra*, makes it clear that a particularized showing must be made to obtain those materials.

In *State v. Doliner, supra*, the Court was concerned with what standard must be met to authorize a prosecutor to disclose grand jury materials to a government agency pursuing civil remedies. *Doliner* specifically involved grand jury materials developed during an investigation by the Attorney General's Office into medicaid fraud. Upon completion of the criminal aspect of the case, the prosecutor sought to turn the material over to other government attorneys who were undertaking civil proceedings. The Court established guidelines for disclosure.

Initially, the Court said that disclosure is subject to court approval, and that government agencies must make the same showing as civil litigants. *See Doe v. Klein, supra*. The showing to be made is also the same as the federal standard in cases such

as *United States v. Sells Engineering, Inc.*, 463 U.S. 418 (1983).<sup>40</sup> In order to obtain disclosure, there must be a strong showing of particularized need that outweighs the public interest in grand jury secrecy.

Prior to *Doliner, supra*, the Appellate Division decided a case, *In re 15th Essex County Grand Jury*, 111 N.J. Super. 564 (App. Div. 1970), that presaged an important aspect of the *Doliner* decision. In *In re 15th Essex County Grand Jury, supra*, the Court allowed the release of county grand jury materials to a United States Attorney. The federal government and County Prosecutor were conducting concurrent investigations. The Court reasoned that disclosure was appropriate because the secrecy requirement would not be abridged. The materials would merely be turned over to another grand jury. Thus, as in *Doliner, supra*, the Court was concerned with protecting the public interest in grand jury secrecy.

It does not appear that prior judicial authority is required for disclosure of grand jury testimony to county investigators, detectives or local police assisting in an ongoing investigation. Federal law clearly allows federal agents or investigators to have access to such testimony.<sup>41</sup> Federal experience suggests that a court order is not required and that disclosure is proper provided

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<sup>40</sup> In *Doliner, supra*, the Court said that the State and Federal standards should be harmonized where possible. For a federal case interpreting *Sells*, see *In the Matter of Grand Proceedings, Miller Brewing Co.*, 717 F.2d 1136 (7 Cir. 1982). On April 21, 1987, the United States Supreme Court issued an opinion in *United States v. John Doe, Inc.*, 481 U.S. 102 (1987). The Court ruled that an attorney who conducted a criminal prosecution may personally continue to review grand jury materials for purposes of the civil phase. If the attorney seeks to disclose the material to others, however, a court order must be obtained.

<sup>41</sup> For example, an I.R.S. agent can have access to testimony. See *Robert Hawthorne, Inc. v. Director of Internal Revenue*, 406 F. Supp. 1098 (D.C. Pa. 1976).

that the documents remain in the custody of the prosecutor.<sup>42</sup> Since *Doliner, supra*, speaks of harmonizing the federal and state standards, it appears that disclosure to investigators, detectives and local police participating in an ongoing investigation should not be prohibited. There is no New Jersey case directly on point. In *State v. Hilltop Private Nursing Home, supra*, the Court used this language in discussing the return of materials subject to a grand jury subpoena *duces tecum*:

Since the prosecutor can look at the information within the confines of the grand jury room in any event, it would appear logical to permit the prosecutor to take custody of such evidence for the grand jury and secure the assistance of investigators in placing the information in a condition of manageable comprehensibility.

*Id.* at 394.

Moreover, the prosecutor should not be precluded from such disclosure to other law enforcement personnel by virtue of *N.J.S.A. 2A:73B-3*. This statute prohibits any person, with the intent to injure another, from purposely disclosing any information concerning the proceeding of a grand jury. The criminal statute applies only when proof of an intent to injure exists. Certainly, the statute does not proscribe a limited disclosure to local police and members of the prosecutor's investigative staff where an active investigation can be shown to exist.

Of course, neither a prosecutor nor an investigator may reveal the contents of the testimony to others not so privileged. Clearly, an unauthorized release to the press would constitute an

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<sup>42</sup> See *United States v. Bazzano*, 570 F.2d 1120 (3 Cir. 1977), cert. den. 436 U.S. 917 (1977) where F.B.I. agents had access.

improper release of such material and could provide grounds for a criminal prosecution. See *State v. Kearney*, 109 N.J. Super. 502 (Law Div. 1970). In this regard, the prosecutor should be wary of the disclosure of grand jury witness testimony to other witnesses before trial. If the prosecutor or trial investigator reviews the testimony of two or more witnesses concurrently, allegations of attempts to "shape or tailor" testimony could be made.<sup>43</sup>

In *State v. Arace*, 230 N.J. Super. 22 (App. Div. 1989), the court addressed the issues concerning; (1) the use of grand jury materials in the civil phase of a dispute by a deputy attorney general who himself assisted in the presentation of the matter to the grand jury, and (2) whether a deputy attorney general may actually engage in civil litigation while simultaneously participating in the parallel presentation of the criminal aspects of the case to the grand jury. In that opinion, the court stressed that the grand jury was an "arm of the court" and information generated by the grand jury's inquiry is not the property of the government's attorneys, agents or investigators nor are they entitled to possession of them or to have unrestricted use of evidence, documents and exhibits generated by a grand jury investigation. Instead, those documents are the records of the court. The court perceived no justifiable reason to exempt a deputy attorney general from the requirement of obtaining a "turnover" order when he seeks to use grand jury materials in civil investigations or litigation and held that the requirement of a court order predicated upon a showing of particularized need fully applies when the deputy attorney general seeking access to evidence generated by a grand jury investigation personally presented the matter to the grand jury or assisted in such presentation.

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<sup>43</sup> An interesting discussion of such a situation can be found in *United States v. Bazzano*, *supra*.

In the *Arace* matter, the Appellate Court opined:

Where the attorney making the application was the individual who conducted the grand jury investigation, the issue presented is not one of "disclosure" as such. Instead, the question raised relates to continued "access" or use of grand jury materials.

To that extent, the court in determining the question of particularized need should be less concerned with the interests of grand jury secrecy. Rather, when the concerns for secrecy are not implicated, the court's inquiry should focus upon whether the grand jury process has been or is being abused in order to gather evidence or use in civil or administrative proceedings.... The principal evil to be guarded against is the temptation to employ the grand jury as a civil investigative unit. Therefore, the proper subject of judicial inquiry should be whether the circumstances disclose any evidence of grand jury abuse.

*Id.* at 37-38.

Further, the court held that the same deputy attorney general may simultaneously participate in both civil and grand jury investigations of suspected antitrust violations since the court was convinced that the dangers incident to the assignment of the same deputy attorney general in parallel civil and grand jury investigations were substantially reduced by the necessity of obtaining a "turnover" order.

The right of a criminal defendant to obtain grand jury transcripts from a proceeding that did not relate to the defendant was discussed in *State v. CPS Chemical Co., Inc.*, 198 N.J.

*Super.* 236 (App. Div. 1985). In that case the defendant contended that a prior grand jury proceeding involving different targets contained evidence that was relevant to the charges pending against the defendant. The Appellate Division ruled that the principles of *Doliner*,<sup>44</sup> *supra*, governed the case. A court must balance the defendant's need against the public interest in grand jury secrecy. The criminal defendant's application, however, should be treated with more liberality than the civil litigant's, because the former does not have available to him the broad range of discovery techniques available to the latter. The court ruled that defendants had made a sufficient showing for disclosure, but allowed the State and other defendants the opportunity to apply for a protective order.

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<sup>44</sup>For another decision applying the *Doliner* standards in a civil context, see *Stewart v. Dexter*, 218 N.J. 417 (Law Div. 1986).

**DEPARTMENT OF LAW AND PUBLIC SAFETY  
STATE OF NEW JERSEY  
DIVISION OF CRIMINAL JUSTICE**

**MEMORANDUM**

**TO:** DIRECTOR, DIVISION OF CRIMINAL JUSTICE

**FROM:** DAG/AP

**DATE:**

**SUBJECT:** IMMUNITY PETITION FOR TESTIMONY  
OF (WITNESS) RELATING TO (NAME OF  
INVESTIGATION)  
INVESTIGATION NO.

Attached is a Petition for Immunity, a proposed Order and a memorandum containing a description of the criminal charges involved and the reasons upon which approval of the immunity grant is sought and may be justified.

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Deputy Attorney General/  
Assistant Prosecutor

REVIEWED AND APPROVED AS TO  
BOTH FORM AND SUBSTANCE ON  
THE DATES HEREINAFTER SET  
FORTH:

DEPUTY BUREAU CHIEF \_\_\_\_\_ DATE \_\_\_\_\_

BUREAU CHIEF \_\_\_\_\_ DATE \_\_\_\_\_

DEPUTY DIRECTOR  
INVESTIGATIONS \_\_\_\_\_ DATE \_\_\_\_\_

DIRECTOR, DIVISION  
OF CRIMINAL JUSTICE \_\_\_\_\_ DATE \_\_\_\_\_

**Information Concerning Subpoena of Attorney or of Attorney's Records**

1) Name of Attorney Witness and his or her client:

2) Nature of Case:

( ) Criminal:                      What is the charge or suspected charge?

( ) Quasi-criminal:              What is the charge or suspected charge?

( ) Civil                              \_\_\_ Property Forfeiture

\_\_\_ Office Forfeiture

\_\_\_ Other

3) Relationship of attorney-witness to subjects or defendants or targets (specifically indicate whether the witness currently represents any defendants or subjects in the matter in which the subpoena is to be issued):

4) If subpoena calls for testimony, indicate the nature of the anticipated testimony:

5) Are there alternative sources for the information sought?

( ) Yes

( ) No

6) If there are alternative sources for the information, have attempts been made to obtain information from them?

( ) Yes, but with no success.

( ) Yes, with success. Explain below why the subpoena is necessary.

( ) No. Explain below why the alternative sources have not been pursued.

7) Basis for belief that information is not privileged or that the privilege will be waived.

8) Attach copy of subpoena.

---

Signature of Prosecutor

ROBERT J. DEL TUFO  
ATTORNEY GENERAL OF NEW JERSEY

BY:

DEPUTY ATTORNEY GENERAL/ASSISTANT PROSECUTOR  
DIVISION OF CRIMINAL JUSTICE  
HUGHES JUSTICE COMPLEX  
25 MARKET STREET, CN085  
TRENTON, NEW JERSEY 08625  
(609) 984-6500

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - COUNTY OF ( )

IN THE MATTER OF	)	<u>CRIMINAL ACTION</u>
[STATE, ( )	)	
COUNTY] GRAND JURY	)	PETITION TO COMPEL
INVESTIGATION	)	TESTIMONY UNDER
	)	N.J.S.A. 2A:81-17.3

1. I, ROBERT J. DEL TUFO, am the Attorney General of the State of New Jersey.

2. There is presently pending before the [State, ( ) County] Grand Jury an investigation involving violations of the following New Jersey Statutes: (Example) *N.J.S.A. 2C:41-2* (Racketeering), *N.J.S.A. 2C:37-2* (Promoting Gambling), *N.J.S.A. 2C:21-19* (Criminal Usury), *N.J.S.A. 2C:5-2g* (Leader of Organized Crime, and *N.J.S.A. 2C:5-2* (Conspiracy to commit the foregoing offenses).

3. The conduct which is being investigated is alleged to have begun on or about \_\_\_\_\_, and is continuing to occur, all principally within the County of \_\_\_\_\_ in the State of New Jersey. The conduct involves an alleged organized criminal operation.

4. The [State ( ) County] Grand Jury in its investigation, has reason to believe that (WITNESS NAME) has direct and personal knowledge about and in connection with the aforesaid activities.

5. (WITNESS NAME) has retained (Name of Counsel), Esq., as counsel. Deputy Attorney General/Assistant Prosecutor (Name) has advised me that he has spoken with (Name of Counsel), and advised him that (WITNESS NAME) is a target of an ongoing (State, County) Grand Jury investigation. (WITNESS NAME) cooperation in this investigation was solicited in the Spring of 1992 through communications of (Name of Counsel), but (WITNESS NAME) declined to cooperate with the (Division of Criminal Justice, \_\_\_\_\_ County Prosecutor's Office). It is anticipated

that should (WITNESS NAME) be called to testify before the ( ) Grand Jury he will refuse to testify in view of his target status.

or

on (date) , (WITNESS NAME) appeared before the [ ] Grand Jury and upon being advised that he/she was a target, declined to testify.

WHEREFORE, I, Robert J. Del Tufo, Attorney General of New Jersey, do herewith petition the Court, pursuant to *N.J.S.A. 2A:81-17.3*, to order (WITNESS NAME) to answer any and all questions propounded to him in the Grand Jury concerning possible violations of (conform) *N.J.S.A. 2C:41-2*, *N.J.S.A. 2C:37-2*, *N.J.S.A. 2C:21-19*, *N.J.S.A. 2C:5-2g* and *N.J.S.A. 2C:5-2*.

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Robert J. Del Tufo  
Attorney General of New Jersey

Sworn to and subscribed  
before me this day  
of , 1993.

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An Attorney-At-Law of New Jersey

ROBERT J. DEL TUFO  
ATTORNEY GENERAL OF NEW JERSEY

BY:

DEPUTY ATTORNEY GENERAL/ASSISTANT PROSECUTOR  
DIVISION OF CRIMINAL JUSTICE  
HUGHES JUSTICE COMPLEX  
25 MARKET STREET, CN085  
TRENTON, NEW JERSEY 08625  
(609) 984-6500

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - COUNTY OF ( )

IN THE MATTER OF	)	<u>CRIMINAL ACTION</u>
[STATE, ( )	)	
COUNTY] GRAND JURY	)	ORDER TO COMPEL
INVESTIGATION	)	TESTIMONY OF
	)	(WITNESS) UNDER
	)	<i>N.J.S.A. 2A:81-17.3</i>

ROBERT J. DEL TUFO, Attorney General of the State of New Jersey, Deputy Attorney General/Assistant Prosecutor appearing, having on this date made written and oral application for an Order compelling (WITNESS NAME) to answer questions and to testify before the duly constituted [State, ( ) County] Grand Jury, pursuant to *N.J.S.A. 2A:81-17.3*; and

It appearing that (WITNESS NAME) being aware of his target status, having previously declined an offer to cooperate with the Division of Criminal Justice [( ) County Prosecutor's Office] in this investigation, and being currently represented by counsel, will decline to answer questions concerning possible violations of (example) *N.J.S.A. 2C:41-2, N.J.S.A. 2C:37-2, N.J.S.A. 2C:21-19, N.J.S.A. 2C:5-2g, and N.J.S.A. 2C:5-2* on the grounds that his answers might tend to incriminate him.

IT IS ORDERED on this day of , 1993, that the said (WITNESS NAME) shall appear on the day of , 1993, and at such other reasonable times and places as the [State, ( ) County] Grand Jury may direct, and shall testify and produce evidence in response to all questions propounded to him concerning the inquiry before the [State ( ) County] Grand Jury.

that should (WITNESS NAME) be called to testify before the ( ) Grand Jury he will refuse to testify in view of his target status.

or

on (date) , (WITNESS NAME) appeared before the [ ] Grand Jury and upon being advised that he/she was a target, declined to testify.

WHEREFORE, I, Robert J. Del Tufo, Attorney General of New Jersey, do herewith petition the Court, pursuant to *N.J.S.A. 2A:81-17.3*, to order (WITNESS NAME) to answer any and all questions propounded to him in the Grand Jury concerning possible violations of (conform) *N.J.S.A. 2C:41-2, N.J.S.A. 2C:37-2, N.J.S.A. 2C:21-19, N.J.S.A. 2C:5-2g and N.J.S.A. 2C:5-2.*

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Robert J. Del Tufo  
Attorney General of New Jersey

Sworn to and subscribed  
before me this day  
of , 1993.

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An Attorney-At-Law of New Jersey

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## **APPENDIX**

### **COURT RULES**

#### **1:9-1. For Attendance of Witnesses; Forms; Issuance; Notice In Lieu of Subpoena**

A subpoena may be issued by the clerk of the court or by an attorney or party in the name of the clerk or as provided by *R. 7:3-3* (subpoenas in certain cases in the municipal court). It shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. If the witness is to testify in a criminal action for the State or an indigent defendant, the subpoena shall so note, and shall contain an order to appear without the prepayment of any witness fee. The testimony of a party who could be subpoenaed may be compelled by a notice in lieu of subpoena served upon his attorney demanding that the attorney produce his client at trial. If the party is a corporation or other organization, the testimony of any person deposable on its behalf, under *R. 4:14-2*, may be compelled by like notice. The notice shall be served in accordance with *R. 1:5-2* at least 5 days before trial. The sanctions of *R. 1:2-4* shall apply to a failure to respond to a notice in lieu of a subpoena.

#### **1:9-2. For Production of Documentary Evidence; Notice in Lieu of Subpoena**

A subpoena or, in a civil action, a notice in lieu of subpoena as authorized by *R. 1:9-1* may require production of books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena or notice if compliance would be unreasonable or oppressive and, in a civil action, may condition denial of the

motion upon the advancement by the person in whose behalf the subpoena or notice is issued of the reasonable cost of producing the objects subpoenaed. The court may direct that the objects designated in the subpoena or notice be produced before the court a time prior to the trial or prior to the time when the are offered to be in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys and in matrimonial actions and juvenile proceedings, by a probation officer or other person designated by the court. Except for pretrial production directed by the court pursuant to this rule, subpoenas for pretrial production shall comply with the requirements of R. 4:14-7(c).

### **1:10-1. Contempt in Presence of Court**

Contempt in the actual presence of a judge may be adjudged summarily by the judge without notice or order to show cause. The order of contempt shall recite the facts and contain a certification by the judge that he saw or heard the conduct constituting the contempt.

### **1:10-2. Institution of Proceedings**

Every other summary proceeding to punish for contempt shall be on notice and instituted only by the court upon an order for arrest or an order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of \_\_\_\_\_ Charged with Contempt of Court."

### **1:10-3 Bail Pending Hearings**

A person charged with contempt under R. 1:10-2 shall be admitted to bail pending the hearing. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.

#### **1:10-4. Contempt; Prosecution; Trial**

A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county, or where the court for good cause designates an attorney, then by the attorney so designated. Except with the consent of the person charged, the matter may not be heard by the judge allegedly offended or whose order was allegedly contemned. Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury.

#### **1:10-5 Relief to Litigant**

Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release. The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule. An application by a litigant may be tried with a proceeding under R. 1:10-2 only with the consent of all parties and subject to the provisions of R. 1:10-4.

#### **3:6-1. Summoning the Grand Jury**

The Assignment Judge of each county shall order and organize according to law one or more grand juries for the county not exceeding 23 members each to be summoned at such times as the public interest requires. At least one grand jury shall be serving in each county at all times.

### **3:6-2. Objections to Grand Jury and Grand Jurors**

The prosecuting attorney or a defendant, after being held to answer a complaint charging an indictable offense or after he has been indicted, may, in writing, challenge the array of the grand jury which has returned or is expected to return the indictment on the ground that it was not selected, drawn or summoned according to law, and may challenge an individual juror on the ground that he is not legally qualified. All such challenges shall be made within 30 days of the service of the complaint or within 30 days of the entry of a plea, whichever is later, or within such further time as the court permits. Such challenges shall be tried by the Assignment Judge, or a judge designated by him. If a defendant has already been indicted, such challenges may be the basis of a motion to dismiss the indictment.

### **3:6-3. Supervising and Charging the Grand Jury**

(a) Potential Bias. When appropriate, the Assignment Judge shall inquire of potential grand jurors about such aspects of their background as may reveal possible bias or interest in a matter to come before the grand jury. The Assignment Judge shall instruct the grand jury that without the Assignment Judge's approval no grand juror shall participate in any matter in which that juror has a bias or a financial, proprietary, or personal interest; and if that juror wishes to participate, the juror shall forthwith so inform the prosecutor. The prosecutor shall forthwith inform the Assignment Judge, who shall determine, in camera, whether such bias or interest exists and whether it justifies excusal.

(b) Copy of Charge. When the Assignment Judge or other judge designated by him charges the grand jury, he shall cause a copy of the charge to be promptly furnished to each juror.

### **3:6-4. Foreperson; Deputy Foreperson**

The Assignment Judge shall appoint one of the jurors to be foreperson and another to be deputy foreperson. The foreperson shall have power to administer oaths and shall endorse all indictments. During the absence of the foreperson, the deputy foreperson shall act as a foreperson.

### **3:6-5. Clerk**

The clerk of the grand jury shall make and keep minutes of the proceedings of the grand jury as well as a record of the vote of each juror, by name, on each considered matter. If there is no clerk of the grand jury, the foreman or another juror designated by him shall keep such a record. The record of the vote on every count of every indictment and on every presentment shall be filed with the clerk of the grand jury. The record shall not be made public except on order of the Assignment Judge.

### **3:6-6. Who May be Present; Record and Transcript**

(a) Attendance at Session. No person other than the jurors, the prosecuting attorney, the clerk of the grand jury, the witness under examination, interpreters when needed and, for the purpose of recording the proceedings, a stenographer or operator of a recording device may be present while the grand jury is in session. No person other than the jurors, the clerk, the prosecuting attorney and the stenographer or operator of the recording device may be present while the grand jury is deliberating. The grand jury, however, may request either (1) the prosecuting attorney and the stenographer or operator or (2) the clerk to leave the jury room during its deliberations.

(b) Record; Transcript. A stenographic record or sound recording shall be made of all testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecut-

ing attorney and witnesses or members of the grand jury, before the grand jury, but a transcript thereof shall be made only at the prosecutor's request or upon an order of the Assignment Judge or other judge designated by him entered pursuant to a motion authorized by *R. 3:13-3*. Such order shall designate the portion or portions of the proceedings to be transcribed and the person or persons to whom such transcript is to be furnished.

(c) **Retention of Records:** If no request has been made or order entered directing a transcript of the grand jury proceedings to be made within six months after their termination, the stenographic record or sound recording shall be sealed and deposited with the county clerk who shall retain it subject to the directions of the Administrative Director of the Courts.

### **3:6-7. Secrecy of Proceedings**

Except as otherwise provided by *R. 3:13-3* and *R. 3:17*, the requirement as to secrecy of proceedings of the grand jury shall remain as heretofore, and all persons other than witnesses permitted by *R. 3:6-6* to be present while the grand jury is in session, shall be required to take an oath of secrecy before their admission thereto. Such oath shall also be taken by typists making transcripts of testimony given before the grand jury.

### **3:6-8. Finding and Return of Indictment; No Bill**

(a) **Return; Secrecy.** An indictment may be found only upon the concurrence of 12 or more jurors and shall be returned in open court to the Assignment Judge or, in his absence, to any Superior Court judge assigned to the Law Division in the county. With the approval of the Assignment Judge, an indictment may be returned to such judge by only the foreman or the deputy foreman rather than with all other members of the grand jury. Such judge may direct that the indictment shall be kept secret until the defendant is in custody or has given bail and in

that event it shall be sealed by the clerk, and no person shall disclose its finding except as necessary for the issuance and execution of a warrant or summons.

### **3:6-9. Finding and Return of Presentment**

(a) Finding. A presentment may be made only upon the concurrence of 12 or more jurors. It may refer to public affairs or conditions, but it may censure a public official only where his association with the deprecated public affairs or conditions is intimately and inescapably a part of them.

(b) Return. A presentment shall be returned in open court to the Assignment Judge, who shall be notified in advance thereof by the foreman so that he may arrange to be available in court to receive it.

(c) Examination; Reference Back; Striking. Promptly and before the grand jury is discharged, the Assignment Judge shall examine the presentment. If it appears that a crime has been committed for which an indictment may be had, he shall refer the presentment back to the grand jury with appropriate instructions. IF a public official is censured the proof must be conclusive that the existence of the condemned matter is inextricably related to non-criminal failure to discharge his public duty. If it appears that the presentment is false, or is based on partisan motives, or indulges in personalities without basis, or if other good cause appears, he shall strike the presentment either in full or in part. As an aid in examining the presentment of the Assignment Judge may call for and examine the minutes and records of the grand jury, with or without the aid of the foreman or the prosecuting attorney, to determine if a substantial foundation exists for the public report. If the presentment censures a public official and the Assignment Judge determines not to strike, a copy of the presentment shall forthwith be served upon the public official who may, within 10 days thereafter, move for a hearing, which shall be held in camera. He may

examine the grand jury minutes fully, under such reasonable supervision as the court deems advisable, and be permitted to introduce additional evidence to expose any deficiency.

(d) Filing and Publication. Such portions of the presentment as are not referred back to the grand jury for further action or are not stricken in accordance with paragraph (c) of this rule shall be filed and made public, and the Assignment Judge shall instruct the clerk of the grand jury to send copies thereof to such public bodies or officials as may be concerned with the criticisms and recommendations made therein and to the Administrative Director of the Courts. The presentment or any portion thereof shall not be made public by any person except the assignment judge. The assignment judge shall withhold publication of the presentment until the expiration of the time for the making of a motion for a hearing by a public official pursuant to *R. 3:6-9(c)*, and if such motion is made, shall withhold publication of the presentment pending his determination.

(e) Review. The action taken by the assignment judge pursuant to this rule is judicial in nature and is subject to review for abuse of discretion by the State or by any aggrieved person, including any member of the grand jury making the presentment.

### **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 foreman 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 he committed it by one or more specific 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 defendant's motion.

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

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

Upon the return of the indictment or the filing of an accusation a summons or warrant shall be issued in accordance with *R. 3:3-1* by the county clerk in the manner provided by law for each defendant named in the indictment or accusation who is not under bail. The county clerk, 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.

### **3:13-3. Discovery and Inspection**

(a) **Discovery by the Defendant.** Upon written request by the defendant, the prosecuting attorney shall permit defendant to inspect and copy or photograph any relevant grand jury proceedings recorded pursuant to R. 3:6-6.

### **3:17-1. Order for Production at Trial**

If there shall not have been disclosure before trial, the court on defendant's motion made at trial shall order the prosecuting attorney to produce any statement or record of a statement, as described in R. 3:13-3(a)(8), in his possession made by a witness who is about to testify on direct examination on behalf of the State, provided such statement is relevant to the offense charged. If the entire statement is relevant, the court shall order it delivered to the defendant for his examination and use prior to the direct testimony of the witness.

### **3:17-2. Production After Court's Inspection; Objections**

If the prosecuting attorney claims that any statement so ordered to be produced contains matter which does not relate to the offense charged, the court shall order the prosecuting attorney to deliver such statement to it for inspection in camera and shall delete such non-relating portions thereof and direct delivery of the remainder of the statement to the defendant. If the defendant objects to such withholding of any portion of the statement, the prosecuting attorney shall preserve the entire statement to be made available to the appellate court in the event of an appeal by the defendant.

### **3:17-3. Continuance After Production**

The court may, on motion by a defendant to whom a statement has been delivered, continue the trial for such time as it determines is reasonably required by defendant for examination thereof and his preparation for its use at trial.

### **3:17-4. Non-Compliance with Order**

If the prosecuting attorney elects not to comply with an order of the Court under R. 3:17-1 or 3:17-2, the witness shall not be permitted to testify for the State.

### **3:25-1. Before or During Trial**

Upon motion by the prosecuting attorney, an indictment, accusation or complaint, or any count thereof, may be dismissed prior to trial by order of (a) the Assignment Judge or (b) the judge to whom the same has been assigned for disposition, provided that such judge has previously sentenced the same defendant on one or more counts of the same indictment, accusation or complaint, or of another indictment, accusation or complaint. A complaint may also be administratively dismissed by the prosecuting attorney, without presentation to the grand jury, in which event said prosecuting attorney, shall notify the defendant. During trial an indictment or accusation, or any account thereof, may be dismissed by the trial judge on motion by the prosecuting attorney and with the consent of the defendant.

### **3:25A-1. Application for Disposition**

Notwithstanding the provisions of Rule 3:14, when a defendant has charges pending in more than one county at any stage prior to sentencing, either the defendant, or the prosecutor in any such county with the consent of the defendant, may move before the presiding judge of the criminal part in the county in which consolidation is sought, or before any judge designated to hear such motion, for consolidation for purposes of entering a plea or for sentencing. Written notice of such motion and an opportunity to be heard shall be given to the prosecutor in each county in which such a charge is pending. The motion shall be supported by certification that includes the information the court is required to consider under this Rule.

In deciding whether to order consolidation and, if so, the county to be the forum for the consolidated charges, the judge shall consider: (1) the nature, number and comparative gravity of crimes committed in each of the respective counties; (2) the similarity or connection of the crimes committed including the time span within which the crimes were committed; (3) the county in which the last crime was committed; (4) the county in which the most serious crime was committed; (5) the defendant's sentencing status; (6) the rights of the victims and the impact on any victim's opportunity to be heard; and (7) any other relevant factor.

Each county prosecutor of the county in which a charge is pending shall be allowed to participate fully in the disposition of that charge after consolidation is ordered. If a plea agreement is entered that resolves less than all of the consolidated charges, the judge in the forum county shall order each unresolved charge to be returned immediately to the originating county. In the event that the consolidated charges have not been resolved within a reasonable period after consolidation, the judge in the forum county shall order each charge to be returned immediately to the originating county.

#### **7:4-4. Appearances; Exclusion of Public; Opening Statement**

(a) Presence of Defendant. Except as otherwise provided by R. 7:4-2(b) and 7:6-6, the defendant shall be present at every stage of the trial and at the imposition of sentence, but his voluntary absence after the trial has commenced in his presence shall not prevent continuing the trial to and including the entry of judgment. A corporation, partnership or unincorporated association shall appear by its attorney, except where *pro se* appearance has been allowed pursuant to R. 7:4-2(b). The defendant's presence is not, however, required at a reduction of sentence.

(b) Appearance of Prosecution. Whenever in his judgment the interests of justice so require, or upon the request of the court, the Attorney General, county prosecutor, municipal court prosecutor, or municipal attorney, as the case may be, may appear in any court on behalf of the State, or of the municipality, and conduct the prosecution of any action, but if the Attorney General, county or municipal court prosecutor or municipal attorney does not appear, any attorney may appear on behalf of any complaining witness and prosecute the action for and on behalf of the state or the municipality.

(c) Exclusion of Public. The court, in its discretion and with the defendant's consent, may exclude from the courtroom during the trial or hearing of any matter involving domestic relations, bastardy cases, sex offenses, school truancy and parental neglect any person not directly interested in the matter being heard or tried.

(d) Opening Statement. An opening statement shall be given by the municipal court judge prior to the commencement of the court session concerning court procedures and rights of defendants. This statement shall not be a substitute for the judge advising an individual defendant of his or her rights prior to hearing.

## **STATUTES**

### **2A:69-1. Qualifications of Jurors**

Every person, male and female, summoned as a grand juror, and every petit juror returned for the trial of any action of a civil or criminal nature in any of the courts of this State, shall be a citizen of this State for at least 2 years; over 21<sup>1</sup> and under 75 years of age; a resident of the county from which he shall be taken; shall not have been convicted of a crime; and shall not, at the time of his selection, be a person who through his office, position or employment is either directly or indirectly connected with the administration of justice. Such person shall be able to read, write and understand the English language and shall not have any mental or physical disability which will prevent him from properly serving as a juror.

### **2A:69-2. Exemptions From Jury Service**

The following persons shall be exempt from service on any panel of grand or petit jurors:

- a. Members or employees of police forces, State or local.
- b. Members of any fire department or fire patrol, volunteer or paid.
- c. Persons appointed as fish and game wardens or protectors.

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<sup>1</sup> Now 18 years of age and older. *N.J.S.A. 9:17B-1a.*

- d. Regularly licensed and practicing physicians and dentists in this State.
- e. Members of State or Federal military, naval or air forces (on active duty).
- f. School teachers (under contract as full time teachers) while their school are in session.
- g. Any person who has the actual physical care and custody of a minor child and who gives written notice to the jury commissioners of the county of his residence that jury service would interfere with the care required for such child.
- h. All officers and persons regularly employed by an agency under the authority of the State Board of Control of the Department of Institutions and Agencies, or regularly employed by hospitals.
- i. Telegraph and telephone operators and linemen and those directly engaged in the business of receiving and transmitting messages by telegraph or calls by telephone.
- j. Any person who is the holder of an exempt fireman's certificate issued pursuant to sections 40:47-52 to 40:47-59 of the Revised Statutes or any other law.
- k. Members of the State Legislature.
- l. Members of first aid and rescue squads.

**2A:69-3. Persons Whose Names Not on Jury List  
Ineligible To Serve; Exceptions**

A person whose name does not appear on the jury lists prepared pursuant to law shall not serve as a juror if objection to his serving because of the absence of his name from the lists is made before he is sworn. This section shall not apply to a foreign or struck jury; nor to cases where talesmen are summoned pursuant to section 2A:74-3 of this title or where jurors are selected and drawn under authority of sections 2A:71-10, 2A:71-12 and 2A:72-6 of this title.

#### **2A:69-4. Ineligibility for 1 year After Service**

Any person who has served as a grand or petit juror or as a struck juror shall be ineligible to serve either as a grand or petit or struck juror for 1 year thereafter.

#### **2A:69-5. Employee of State, County or Municipality or Mass Transportation Facility; Excuse From Employment for Jury Duty;**

Any person employed by the State, county or municipality or by any mass transportation facility who is summoned for service as a grand juror or petit juror in any court of this State or in the United States District Court for New Jersey shall be excused from his employment on all days he is required to be present in court in response to the summons for jury service. Any full-time employee shall be entitled to receive from his employer his usual compensation for each day he is excused for jury service, or at least his actual compensation, less the amount of per diem fee for each day of such jury service as shown on a statement issued to the juror by the sheriff or other court officer making payment of juror fees.

#### **2A:69-6. Mass Transportation Facility Defined**

For purpose of this act "mass transportation facility" shall include railroads operated by steam, electricity or other power, rapid transit lines and buses.

#### **2A:70-1. Grand and Petit Jury Lists; Number of Names on Lists**

The Assignment Judge of the Superior Court of each county shall, at least 40 days prior to the commencement of each stated session of the Superior Court in the county, order that two

lists, alphabetically arranged and consecutively numbered, of persons liable to jury duty, having regard to the just and distribution of jury service among those persons qualified therefor in the various wards and municipalities of such county. The lists shall state their occupation and places of abode, showing their respective municipalities and wards, if any, in municipalities, and shall be designated respectively the "grand jury list" and the "petit jury list." The number of persons named on the grand jury list shall at no time be less than 125 nor more than 500, to be determined by the assignment judge. The number of persons named on the petit juror list shall at not be less than 250, the number to be determined by such assignment judge.

#### **2A:70-2. Jury Lists Checked for Unqualified Persons**

At least 35 days prior to the commencement of each stated session of the Superior Court in each county, the Assignment Judge of the Superior Court for the county, shall closely check the grand jury list and petit jury list for the purpose of removing from such lists the names of such persons as may, in the opinion of the assignment judge, be unfit for jury service. The assignment judge may, in his discretion, strike from such lists the name of any person.

The grand and petit jury panels to be used during the next ensuing session shall be drawn from the names remaining on the lists, unless more than 20% of a list is struck, in which case the assignment judge shall forthwith fill the vacancies and file a corrected list or lists with the court. After the lists are satisfactory, the assignment judge shall renumber the names in consecutive order.

#### **2A:70-3. Certified Copies of Jury Lists for County Clerks; Copy Posted in Clerk's Office.**

After the jury lists have been checked and are satisfac-

tory to the assignment judge of the Superior Court for the county, the assignment judge shall cause an original and four copies to be made of each of such lists, certifying each copy as true and correct, and shall cause two copies of each to be filed in the office of the clerk of the county, at least 25 days prior to the commencement of each stated session of the Superior Court in the county, there to remain a public record.

Upon the filing of such lists with the county clerk a copy of each list shall be posted in the clerk's office in a conspicuous place.

**2A:70-4. Registry and Driver License Lists; Use to Make Jury Lists**

For the purpose of making up the jury lists, the assignment judge shall have access to and may copy registry lists of the several municipalities and election districts of their county and lists, which shall be compiled by the Division of Motor Vehicles, of the names and addresses of the holders of motor vehicle drive licenses who are residents of their county. The assignment judge shall use these lists to compile a single list from which all jurors shall be selected.

**2A:70-5. Questionnaire for Selected Persons or Juror Source List; Exemption Claims; Failure to Respond; Contempt of Court**

The assignment judge may, before certifying any lists, direct that questionnaires be sent to all persons whose names may be selected at random from the juror source list specified in 2A:70-4, requesting such persons to reply to the same and to give all pertinent information required including claims to exemption from jury duty. Persons giving satisfactory reasons for such exemption may be excused by the court.

Persons who, without cause, fail to respond to such requests, may be held for contempt of court.

## **2A:70-6. Revision, Correction and Certification of New Lists by Commissioners**

The assignment judge may, from time to time, before certifying the jury lists, revise, correct and certify a new jury list or lists, which shall not contain any names theretofore stricken off within 1 year.

## **2A:71-3.1. Use of Electromechanical Devices in Drawing Grand and Petit Jury Panels**

In any county wherein the jury commissioners of the county are authorized to use electromechanical devices commonly designated automatic business machines with punch cards and card sorting machines and have in use such machines and cards, the assignment judge of the county may order the use of such machines and cards or some of the, in drawing the grand and petit jury panels in lieu of the use of metal or plastic pieces and boxes, as provided in the chapter to which this act is a supplement, and in such case the said assignment judge shall direct the manner of such use so as to provide for the public impartial drawings of the names of the persons to constitute the said panels and the preparation of the lists of the names so drawn.

## **2A:71-4. Drawing Additional Grand and Petit Jury Panels**

The procedure set forth in section 2A:71-1 to 2A:71-3 of this title for the drawing of a panel of grand jurors and a panel of petit jurors shall be followed on a day and at a time to be fixed by the assignment judge of the superior court for the county, whenever an additional panel of grand jurors or of petit jurors is required during any stated session of the superior court as provided in this chapter or for any other cause.

## **2A:71-5. Number of Grand Juries**

The assignment judge of the superior court for each county shall order and organize, in the manner provided by law, 1 or more grand juries for the county to be summoned at such times as the public interest requires. There shall be at least 1 grand jury serving in each county at all times.

## **2A:71-6. Second Grand Jury in Counties Having More Than 250,000 Inhabitants**

In every county having a population exceeding 250,000 inhabitants, 2 separate grand juries, may be drawn the second of which may be summoned to attend 6 weeks after the opening of the stated session of the Superior Court in such county.

When the grand jurors of the second grand jury appear for service, the court may discharge the grand jury then serving. However, the assignment judge of the Superior Court for the county, may order the sheriff to refrain from summoning such new grand jurors, in which case the first grand jury shall continue to serve until the end of the session unless sooner discharged by the court.

## **2A:71-7. New Grand Jury on Discharge of Original Before End of Period for Which Drawn; Drawing and Summoning**

If a grand jury is discharged before the end of the period for which it is drawn, the assignment judge of the Superior Court for the county may order the drawing of a new grand jury panel to serve for a further period to be stated in the order. The new grand jury panel shall be drawn in accordance with the provi-

sions of chapter 71 of this title and shall be summoned in the same manner as the original grand jury.

**2A:71-10. Selection and Drawing of New Grand or Petit Jury Panel Where Original Panel Not Selected or Drawn**

Whenever, for any reason panel of grand or petit jurors shall not have been selected at the time and in the manner provided by law, the assignment judge of the Superior Court for the county may order that a panel of grand or petit jurors be selected and drawn, at a day to be fixed by the assignment judge, in the manner provided by this chapter.

**2A:71-12. New Panel When Original Panel Discharged or Challenged**

If on a challenge to the array or for other good cause, the whole panel of grand or petit jurors shall be set aside, the assignment judge of the Superior Court for the county may order the sheriff to return a competent number of jurors to serve in a place of the panel, the same to be selected in like manner as the original panel is required to be selected by this subtitle.

**2A:71-13. Duties of County Clerk Performed by Judge of the Superior Court**

If the clerk of a county, upon whom any duty is imposed by this subtitle, or his deputy authorized to act in his place, is for any cause absent at the time and place when and where any of such duties are required to be performed, a judge of the Superior Court may perform the duties of the clerk.

## **2A:71-14. Existing Powers Not Affected**

No provision of this subtitle having to do with the drawing and discharge of jurors or panels of jurors shall be held or construed to affect or limit in any way the powers, vested in any court as the successor of another court or courts, which were heretofore had or exercised by the latter court or courts.

## **2A:73-1. Persons and Numbers Thereof Constituting Grand Jury**

If, from any grand jury panel, more persons remain available for service, after excuses have been allowed, than are necessary to constitute the grand jury, the persons whose names are first drawn and not excused, not to exceed twenty-three in number, shall constitute the grand jury.

## **2A:73-2 Vacancies in Grand Jury; Filing**

If a grand juror, after he has been sworn becomes ill, dies or does not appear for service, the court may, in its discretion, cause another grand juror drawn from the same panel or from a panel similarly constituted, to be sworn in his stead.

## **2A:73-3. Oath of Foreman; Acting Foreman; Grand Jurors**

To the foreman and acting foreman of the grand jury there shall be administered the following oath:

"You as foreman (acting foreman) of this grand inquest to sit in behalf of the State of New Jersey in and for the county of \_\_\_\_\_, do solemnly swear that you will support the Constitution of the United States and the Constitution of this State; that you do believe in, advocate or advise the use of force, or violence, or other unlawful or unconstitutional means, to

overthrow or make any change in the government established in the United States or in this State; and that you are not a member of or affiliated with any organization, association, party, group or combination of persons, which so approves, advocates, or advises the use of such means, and that you shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or in any way come to your knowledge touching the present service; that the counsel of the State and your own counsel you shall keep secret; that you shall present no one through envy, hatred or malice; neither shall you leave any one unrepresented for fear, favor or affection, for reward, gain or the hope thereof; but that you shall present all things truly as they shall come to your knowledge, according to the best of your skill and understanding, so help you God.”

To the grand jurors as a body there shall be administered the same oath except that the first words “You as foreman” are to be replaced with the words “You as members.”<sup>2</sup>

#### **2A:73-4. Swearing of Witnesses by Foreman**

The foreman of the grand jury shall, from the time of his selection until his discharge, have power to administer the usual oath to such witnesses as shall give evidence before the grand jury of which he is the foreman. He shall, before he is discharged, certify to the court, under his hand, the names of the witnesses sworn by him.

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<sup>2</sup> The language “that you believe... or advises the use of such means” of the oath is subject to challenge as violating the First Amendment as focusing upon advocacy as opposed to activity. *Shapiro v. Roudebush*, 413 F.Supp. 1177 (1976). The oath printed above is the current, statutory, language however, the potential constitutional question should be noted.

#### **2A:73-5. Clerk to Grand Jury; Appointment; Term; Attendance**

The assignment judge of the Superior Court may appoint a clerk for the grand jury in and for each county, for a term not exceeding 3 years, unless sooner removed by the court. The clerk shall, when requested by the grand jury, attend its sessions, but shall not attend its deliberative sessions.

#### **2A:73-6. Salaries of Clerks to Grand Juries**

The clerk to the grand juries shall receive such annual salaries as shall be fixed by the courts appointing them. All salaries herein provided shall be paid monthly by the county treasurer of the respective counties.

#### **2A:73-7. Assistant to Clerk of Grand Jury; Designation; Duties; Compensation**

In any county of the first, second, third and fifth classes the assignment judge of the Superior Court for such county may designate 1 or more competent stenographers who are regularly employed at a stated salary in the office of the prosecutor of such county, to act, if and when required in addition to the regular duties, as an assistant to the clerk of the grand jury of such county. The person, or persons, so designated shall, when requested by the grand jury attend its sessions and take minutes of the evidence there adduced. The person or persons designated shall not be entitled to any extra compensation for their services as assistant to the clerk of the grand jury provided, however, the board of chosen freeholders may fix and pay extra compensation for the person or persons so designated for their services as assistant to the clerk of the grand jury to the extent necessary to compensate such person or persons for such

additional responsibilities and work.

**2A:73A-1. Short Title**

This act shall be known and may be referred to as the "State Grand Jury Act."

**2A:73A-2. Permanent Impaneling; Petition for Impaneling of Additional Grand Jury; Determination by Assignment Judge**

There shall be at least one grand jury which shall have jurisdiction extending throughout the State serving at all times. Such State grand jury shall be impaneled by an assignment judge of the superior court designated for this purpose by the Chief Justice.

Whenever the Attorney General or the Director of the Division of Criminal Justice deems it to be in the public interest to convene one or more additional State grand juries, he may apply in writing to the aforementioned assignment judge for an order in accordance with provisions of this act. Said assignment judge may, for good cause shown, order the impaneling of such additional State grand juries in accordance with said application, in which event each said grand jury shall have Statewide jurisdiction.

**2A:73A-3. Powers and Duties; Applicable Law; Rules and Regulations**

A State grand jury shall have the same powers and duties and shall function in the same manner as a county grand jury established pursuant to Title 2A of the New Jersey Statutes except that its jurisdiction shall extend throughout the State. The law applicable to county grand juries shall apply to State grand juries except insofar as they are inconsistent with this

regular act. The Supreme Court may promulgate such rules and regulations as it deems necessary to govern particularly the procedures of State grand juries.

**2A:73A-4. List of Prospective Jurors; Selection; Membership**

The administrative director of the courts, upon receipt of the order of an assignment judge of the Superior Court, shall prepare a list of prospective jurors drawn from the current grand jury lists of the several counties from which list the assignment judge shall impanel a State grand jury. A State grand jury shall be composed of members in the same number and having the same qualifications as provided by law in the case of a county grand jury, except that not more than 1/4 of the members of the State grand jury shall be residents of any one county.

**2A:73A-5. Summoning of Jurors by Sheriff**

The sheriff of the county in which a member of the State grand jury resides, upon receipt of a copy of a panel of State grand jurors transmitted to him by the administrative office of the courts, shall cause said member to be summoned for service.

**2A:73A-6. Judicial Supervision**

Judicial supervision of the State grand jury shall be maintained by the assignment judge who issued the order impaneling such grand jury, and all indictments, presentments and formal returns of any kind made by such grand jury shall be returned to such judge.

**2A:73A-7. Presentation of Evidence.**

The presentation of the evidence shall be made to the State grand jury by the Attorney General or his designees.

**2A:73A-8. Return of Indictment or Presentment;  
Designation of Venue; Consolidation of  
Indictments**

Any indictment or presentment by a State grand jury shall be returned to the assignment judge without designation of venue. Thereupon, the judge shall, by order, designate the county of venue for the purpose of trial. The judge may, by order, direct the consolidation of an indictment returned by a county grand jury with an indictment returned by a State grand jury and fix venue for trial.

**2A:73B-1. Transcriptions**

In any case or investigation before a grand jury the testimony of witnesses, comments by the prosecuting attorney, and colloquy between the prosecuting attorney and witnesses or members of the grand jury shall be transcribed.

**2A:73B-3. Unauthorized Disclosure of Proceedings  
with Intent to Injure; Penalties;  
Civil Liability**

(a) A person, including a public officer or employee, who, with the intent to injure another, purposely discloses, other than as authorized or required by law, any information concerning the proceedings of a grand jury commits a crime of the fourth degree. A public officer or employee who is convicted of a violation of this section shall be dismissed from his office or discharged from his employment.

(b) A person injured as a result of a violation of subsection a. of this section may bring a civil action in the Superior Court against the person convicted of the violation. The person making the unauthorized disclosure shall be liable to the injured person for actual damages plus punitive damages of not less than \$1,000.00 or more than \$100,000.00, reasonable litigation costs and reasonable attorney fees.

## **2C:29-9. Contempt**

(a) A person is guilty of a crime of the fourth degree if *he* purposely or knowingly disobeys a judicial order or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

(b) Except as provided below, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L. 1991, c.261 (C.2C:325-17 et al.) when the conduct which constitutes the *violation* could also constitute a crime or a disorderly persons offense. In all other cases a person is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of this act. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection n. of section 13 of P.L. 1991, c.261 (C.2C:25-29) shall be excluded from the provisions of this subsection.

## ***RULES OF PROFESSIONAL CONDUCT***

### **R.P.C. 1.7 Conflict of Interest; General Rule**

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

### **R.P.C. 4.2 Communication With Person Represented By Counsel**

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.



**INDICTMENT FORMS**

CONSPIRACY - \_\_\_\_\_ DEGREE

N.J.S.A. 2C:5-2

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), [who are named as the defendants herein; and other persons whose identities are both known and unknown to the Grand Jurors, who are names as coconspirators but not as defendants herein,]<sup>1</sup> on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with the purpose of promoting or facilitating the commission of the crimes of list crimes by title, not statute,

OPTION 1 [did agree together and with two persons, whose identities are known to the Grand Jurors, who at all times relevant to this indictment were an agent of the Police Department and a member of the Police Department working in an undercover capacity, that:] (or)

OPTION 2 [did agree that:]

A. One or more of them knowingly would engage in conduct which would constitute the aforesaid crimes, or

B. One or more of them knowingly would aid in the planning, solicitation or commission of said crimes, that is:

1. list crimes, include elements and statutes
2. Example Knowingly or purposely to distribute a controlled dangerous substance, that is, cocaine, in a quantity

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<sup>1</sup> If there is a juvenile coconspirator(s), only the initials of the juvenile(s) should be utilized: "...did conspire with J.D. & S.B., juveniles whose identities are known to the Grand Jurors,"

of five ounces or more including any adulterants or dilutants, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(1).

3. Example Knowingly or purposely to possess with the intent to distribute a controlled dangerous substance, that is, cocaine, in a quantity of five ounces or more including any adulterants or dilutants, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(1). [End of examples]

#### OVERT ACTS

The Grand Jurors aforesaid, upon their oaths, do further present that in pursuance of the said conspiracy, the following OVERT ACTS, among others, were committed:<sup>2</sup>

[Insert Overt Act(s)]

All in violation of N.J.S.A. 2C:5-2, and against the peace of this State, the government and dignity of the same.

#### PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Name and degree of crimes to be committed.
5. Statute of crime to be committed.
6. Degree of conspiracy - see N.J.S.A. 2C:5-2.
6. Third-Fourth degree conspiracy must list at least 1 overt act, except CDS distribution conspiracies.

See Unindicted coconspirators section of Grand Jury Manual for further explanation.

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<sup>2</sup> There is, no need to include Overt Acts in CDS conspiracies.

As a general rule, keep Overt Acts simple, make sure they are acts in furtherance of the conspiracy, and try to include at least one act for each named defendant.

BURGLARS TOOLS - FOURTH DEGREE

N.J.S.A. 2C:5-5

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, [OPTION 1] knowingly did manufacture an engine, machine, tool, or implement adapted, designed or commonly used for committing or facilitating an offense in violation of N.J.S.A. 2C:20-1 et seq., or an offense involving forcible entry into premises, knowing the same to be so adapted or designed or commonly used and with either a purpose to so use or employ it, or with a purpose to provide it to another who Defendant(s) knew had such a purpose to use or employ it, (or) [OPTION 2] knowingly did publish plans or instructions dealing with the manufacture or use of a burglar tool (as defined in N.J.S.A. 2C:5-5) with intent that such publication be used for committing or facilitating any offense in violation of N.J.S.A. 2C:20-1 et seq., or an offense involving forcible entry into premises,

contrary to the provisions of N.J.S.A. 2C:5-5, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Specify either option 1 or 2 above.

MOTOR VEHICLE MASTER KEYS - FOURTH DEGREE

N.J.S.A. 2C:5-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, [OPTION 1] knowingly did possess a motor vehicle master key or device designed to operate a lock or locks on motor vehicles or to start a motor vehicle without an ignition key, (or) [OPTION 2] knowingly did offer or advertise for sale, sell, or give to any person a motor vehicle master key or device to start a motor vehicle without an ignition key,\*

contrary to the provisions of N.J.S.A. 2C:5-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense, etc.
4. Select Option 1 or 2.

\*Note certain persons may possess or receive such devices - check N.J.S.A. 2C:5-6b and c

MURDER:

N.J.S.A. 2C:11-3a(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant, on or about Date, in the City, Town, of Municipality, County of County, aforesaid, and within the jurisdiction of this Court, acting alone or with one or more persons did cause the death of victim's name during the option A, B, or C the crime of option I, II, III, IV, V or VI, contrary to the provisions of N.J.S.A. 2C:11-3a(3), and against the peace of this State, the Government and dignity of the same.

OPTIONS

- A. the commission of
- B. an attempt to commit
- C. flight after committing

OPTIONS

- I. robbery
- II. sexual assault
- III. arson
- IV. burglary
- V. kidnapping
- VI. criminal escape

A/P MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim

AGGRAVATED MANSLAUGHTER - FIRST DEGREE

N.J.S.A. 2C:11-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did commit aggravated manslaughter by causing the death of Victim's name, contrary to N.J.S.A. 2C:11-4a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of deceased

\* Criminal homicide is aggravated manslaughter where the actor recklessly causes death under circumstances manifesting extreme indifference to human life. However, pursuant to Rule 3:7-3(b) the short form indictment set forth above is sufficient.

MURDER\*

N.J.S.A. 2C:11-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did cause the death of victim's name, or knowingly or purposely did cause serious bodily injury resulting in the death of victim's name, [by his own conduct] [by procuring the commission of the offense], contrary to the provisions of N.J.S.A. 2C:11-3, and against the peace of this State, the government and dignity of the same.

Note that this charge does not comport with State v. Gerald, 113 N.J. 40 (1988), which held that capital murder must be committed with the purpose to cause the death of the victim. It does comport with the Amendment to the State Constitution effective December 3, 1992, and P.L. 1993 ch. 111 enacted May 5, 1993. These laws amended N.J.S.A. 2C:11-3 and amended Article 1, paragraph 12 of the New Jersey Constitution, which prohibits cruel and unusual punishment, in response to Gerald's construction of the statute and Article 1 para. 12 of the Constitution.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Name of victim.

\* This should be charged if the State will prosecute the case as a capital crime.

MURDER - FIRST DEGREE

N.J.S.A. 2C:11-3a(1) or (2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, [purposely or knowingly did cause the death of victim], [purposely or knowingly did inflict serious bodily injury upon victim's name which resulted in the said victim's death], contrary to the provisions of N.J.S.A. 2C:11-3a(1) or (2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of deceased

MANSLAUGHTER - SECOND DEGREE

N.J.S.A. 2C:11-4b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did commit manslaughter by causing the death of Victim's name, contrary to N.J.S.A. 2C:11-4b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality of offense
  4. Name of deceased
- \* Criminal homicide is manslaughter when the actor acts recklessly or acts in the heat of passion resulting from a reasonable provocation. However, pursuant to Rule 3:7-3(b) the short form indictment set forth above is sufficient.

DEATH BY (AUTO OR VESSEL) - THIRD DEGREE

N.J.S.A. 2C:11-5

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, recklessly did drive a (vehicle or vessel) and thereby caused the death of Victim's name, contrary to the provisions of N.J.S.A. 2C:11-5, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of deceased
5. option of vehicle/vessel

**AIDING SUICIDE - SECOND DEGREE**

(Death Resulted)

N.J.S.A 2C:11-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did aid Victim's initials to commit suicide, the death of Victim's initials thereby resulting, contrary to the provisions of N.J.S.A 2C:11-6, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of deceased

AIDING SUICIDE - SECOND DEGREE

(Attempt Made - No Death)

N.J.S.A 2C:11-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did aid Victim's initials to commit suicide, an attempted suicide by Victim's initials thereby resulting, contrary to the provisions of N.J.S.A 2C:11-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of victim

**AIDING SUICIDE - FOURTH DEGREE**

(No Attempt Made)

**N.J.S.A 2C:11-6**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did aid Victim's initial to commit suicide, no actual attempt thereby resulting, contrary to the provisions of N.J.S.A 2C:11-6, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of deceased

AGGRAVATED ASSAULT - SECOND DEGREE

N.J.S.A. 2C:12-1b(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, option A, B, or C, contrary to the provisions of N.J.S.A. 2C:12-1b(1), and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. purposely did attempt to cause serious bodily injury to Victim
- B. purposely or knowingly did cause serious bodily injury to Victim
- C. under circumstances manifesting extreme indifference to the value of human life, recklessly did cause serious bodily injury to Victim

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B or C
- 5. Name of victim

AGGRAVATED ASSAULT -- SECOND DEGREE

(Graves Act)

N.J.S.A. 2C:12-1b(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, option A, B or C, , and while committing said crime Defendant(s) (used) (was/were in possession of) a firearm, contrary to the provisions of N.J.S.A. 2C:12-1b(1), and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. purposely did attempt to cause serious bodily injury to victim
- B. purposely or knowingly did cause serious bodily injury to victim
- C. under circumstances manifesting extreme indifference to the value of human life recklessly did cause serious bodily injury to victim

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B or C
- 5. Name of victim

**AGGRAVATED ASSAULT - THIRD DEGREE**

**N.J.S.A. 2C:12-1b(2)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, option A or B bodily injury to Victim's name with a deadly weapon, contrary to the provisions of N.J.S.A. 2C:12-1b(2), and against the peace of this State, the government and dignity of the same.

**OPTIONS**

- A. purposely did attempt to cause
- B. purposely or knowingly did cause

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Name of victim

AGGRAVATED ASSAULT - FOURTH DEGREE

N.J.S.A. 2C:12-1b(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, recklessly did cause bodily injury to Victim's name with a deadly weapon, contrary to the provisions of N.J.S.A. 2C:12-1b(3), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim

AGGRAVATED ASSAULT - FOURTH DEGREE

N.J.S.A. 2C:12-1b(4)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did under circumstances manifesting extreme indifference to the value of human life, point a firearm<sup>1</sup> at or in the direction of Victim's name, contrary to the provisions of N.J.S.A. 2C:12-1b(4), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim

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<sup>1</sup> Firearm as defined in N.J.S.A. 2C:39-1f.

AGGRAVATED ASSAULT ON A LAW ENFORCEMENT OFFICER -  
THIRD OR FOURTH DEGREE

N.J.S.A. 2C:12-1b(5)(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, option A; B or C, bodily injury to Officer's name of Officer's Police Department, while the said Officer was acting in the performance of his duties while in uniform or exhibiting evidence of his authority, contrary to the provisions of N.J.S.A. 2C:12-1b(5)(a), and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. purposely did attempt to cause
- B. purposely, knowingly or recklessly did cause
- C. negligently did cause, with a deadly weapon

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B or C
- 5. Name of officer
- 6. Officer's police department
- 7. Degree of crime - Third Degree if the victim suffers bodily injury, otherwise Fourth Degree

AGGRAVATED ASSAULT - THIRD DEGREE\*

(Fireman)

N.J.S.A. 2C:12-1b(5)(b)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, negligently did \*\*cause bodily injury to Victim, a paid (or volunteer) fireman, acting in the performance of his duties while in uniform (or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman) with a deadly weapon, that is, weapon, contrary to the provisions of N.J.S.A. 12-1b(5)(b), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Paid or volunteer (member of \_\_\_\_\_ fire dept.)
  3. Date of offense
  4. Municipality and county of offense
  5. Specify deadly weapon
- \* See N.J.S.A. 2C:12-1(7) for grading of offense. For aggravated assault offenses, it is a Third Degree offense if the "victim suffers bodily injury, otherwise it is a crime of the fourth degree."
- \*\* It is also an offense to "attempt to cause or purposely, knowingly or recklessly causes bodily injury" N.J.S.A. 2C:12-1a(1) and the use of a deadly weapon is not an element thereof.

AGGRAVATED ASSAULT ON A FIREMAN -  
THIRD OR FOURTH DEGREE

N.J.S.A. 2C:12-1b(5)(b)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, option A or B bodily injury to Victim, a paid (or volunteer) fireman, acting in the performance of his duties while in uniform or otherwise clearly identifiable as being engaged in the performance of the duties of a fireman, contrary to the provisions of N.J.S.A. 2C:12-1b(5)(b), and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. purposely did attempt to cause
- B. purposely, knowingly or recklessly did cause

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Name of fireman
6. Degree of crime - Third Degree if the victim suffers bodily injury, otherwise Fourth Degree

AGGRAVATED ASSAULT - THIRD DEGREE\*

(Emergency First Aid)

N.J.S.A. 2C:12-1b(5)(c)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, negligently did\*\* cause bodily injury to Victim, a person engaged in emergency first aid or medical service, who was acting in the performance of his duties while in uniform (or otherwise clearly identifiable as being engaged in the performance of emergency first aid or medical services), with a deadly weapon, that is, weapon, contrary to the provisions of N.J.S.A. 2C:12-1b(5)(c), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of medic
2. Name of medic emergency group
3. Name of defendant
4. Date of offense
5. Municipality and county of offense

\* N.J.S.A. 2C:12-1b(7) for grading of offense. For aggravated assault offense it is a crime of the Third Degree if the "victim suffers bodily injury, otherwise it is a crime of the fourth degree."

\*\* It is also an offense to "attempt to cause or purposely, knowingly or recklessly causes bodily injury" N.J.S.A. 2C:12-1a(1) and the use of a deadly weapon is not an element thereof.

AGGRAVATED ASSAULT - FOURTH DEGREE  
(Serious Bodily Injury by Auto or Vessel)

N.J.S.A. 2C:12-1c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did drive a [vehicle or vessel] recklessly and thereby caused serious bodily injury to Victim's name, contrary to the provisions of N.J.S.A. 2C:12-1c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant
2. Date of offense
3. Municipality and county of offense
4. Option of vehicle or vessel
5. Name of victim

ASSAULT UPON AN INSTITUTIONALIZED ELDERLY  
PERSON - FOURTH DEGREE

N.J.S.A. 2C:12-1d

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, while being employed at name of facility did, during the course of his/her(their) employment, assault victim by option A or B, said victim being an institutionalized elderly person of the age of age at the time of the assault, while the said victim was a patient, resident or client of name of facility, contrary to the provisions of N.J.S.A. 2C:12-1d, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. attempting to cause or purposely, knowingly or recklessly causing bodily injury to victim's name
- B. negligently causing bodily injury to victim's name with a deadly weapon.

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Name of facility where defendant(s) is employed
- 5. Name of victim
- 6. Age of victim (must be 60 or over)
- 7. Choose option A or B

BIAS ASSAULT - FOURTH DEGREE

N.J.S.A. 2C:12-1e

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit an assault by option A, B or C, and said defendant(s) acted during the commission of the assault, at least in part, with an ill will, hatred or bias toward, and with a purpose to intimidate victim's name(s) because of victim's name(s) race, color, religion, sexual orientation or ethnicity, contrary to the provisions of N.J.S.A. 2C:12-1e, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. attempting to cause or purposely, knowingly or recklessly causing bodily injury to victim's name
- B. negligently causing bodily injury to victim's name with a deadly weapon
- C. attempting by physical menace to put Victim's name in fear of imminent serious bodily injury

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B or C
- 5. Name of victim(s)

RECKLESS ENDANGERMENT - THIRD DEGREE

(Loss of a Vessel)

N.J.S.A. 2C:12-2(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did describe defendant's(s') act(s) which resulted in the loss or destruction of the vessel known as vessel's name, contrary to the provisions of N.J.S.A. 2C:12-2(a), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Act committed
5. Name of vessel

RECKLESS ENDANGERMENT - FOURTH DEGREE

N.J.S.A. 2C:12-2(b)(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did manufacture or sell a golf ball containing acid or a corrosive fluid substance, contrary to the provisions of N.J.S.A. 2C:12-2(b)(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

RECKLESS ENDANGERMENT - FOURTH DEGREE

N.J.S.A. 2C:12-2(b)(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did (offer victim) (give victim) (entice victim to take) a treat, candy, gift or food which was poisonous, deleterious or harmful to health or welfare of said victim, contrary to the provisions of N.J.S.A. 2C:12-2(b)(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Name of vessel

TERRORISTIC THREATS - THIRD DEGREE  
(Threat to Commit Crime of Violence)

N.J.S.A. 2C:12-3a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, (with purpose to terrorize victim's name) (with purpose to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience) (in reckless disregard of the risk of causing terror, or the evacuation of a building...), did threaten to commit crime of violence, contrary to the provisions of N.J.S.A. 2C:12-3a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify crime of violence threatened
5. Name of victim

TERRORISTIC THREATS - THIRD DEGREE

(Threat to Kill)

N.J.S.A. 2C:12-3b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did threaten to kill victim's name with purpose to put the said victim's name in imminent fear of death under circumstances reasonably causing the said victim's name to believe the immediacy of the threat and the likelihood that it would be carried out, contrary to the provisions of N.J.S.A. 2C:12-3b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim

STALKING - \_\_\_\_\_ \* DEGREE

N.J.S.A. 2C:12-10

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did repeatedly follow Victim's Name and engage in a course of conduct or make a credible threat with the intent of annoying or placing Victim's name in reasonable fear of death or bodily injury, contrary to the provisions of N.J.S.A. 2C:12-10, a crime of the Choose option A, B, or C, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. fourth degree
- B. third degree in that the crime was committed in violation of an existing court order prohibiting the behavior
- C. third degree\*

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality of offense
- 4. Name of victim
- 5. \*Choose degree of crime (A, B, C)

\* In that this is the second or subsequent offense of stalking by this defendant which involves an act of violence or a credible threat of violence against the same victim.

KIDNAPPING - FIRST OR SECOND DEGREE\*

(Hold for Ransom, Rewarded or as a Shield)

N.J.S.A. 2C:13-1a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, option A or B with the purpose of holding the said victim's name option 1 or 2, [and did fail to option I, II or III,] contrary to the provisions of N.J.S.A. 2C:13-1a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. unlawfully did remove victim's name from the place where he/she was found
- B. unlawfully did confine victim's name

OPTIONS

- 1. for ransom or reward
- 2. as a shield or hostage

OPTIONS

- I. release the said victim's name prior to apprehension
- II. release the said victim's name unharmed prior to apprehension
- III. release the said victim's name in a safe place prior to apprehension

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Victim's name
6. Choose option 1 or 2
7. Choose options I, II or III
- 8.\* Grading - kidnapping is a crime of the first degree if any of options I, II or III apply, and is a crime of the second degree only if the victim is released unharmed and in a safe place prior to apprehension of defendant.

KIDNAPPING - FIRST DEGREE

(Hold for Other Purposes; Victim Under 16  
and Sexually Assaulted or Sold, etc.)

N.J.S.A. 2C:13-1b

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oaths present that Defendant(s), on or  
about Date, in the City, Town of Municipality, County of  
County, and within the jurisdiction of this Court, option A, B  
or C with the purpose to option 1, 2 or 3, and defendant(s)  
name, during the course of said kidnapping, option I or II,  
contrary to the provisions of N.J.S.A. 2C:13-1b, and against the  
peace of this State, the government and dignity of the same.

OPTIONS

- A. unlawfully did remove victim's initials from his place  
of residence or business
- B. unlawfully did remove victim's initials a substantial  
distance from the vicinity where he was found
- C. unlawfully did confine victim's initials for a  
substantial period

OPTIONS

- 1. facilitate the commission of a crime or flight thereafter
- 2. inflict bodily injury on or to terrorize victim's initials  
or another
- 3. interfere with the performance of any governmental or  
political function,

**OPTIONS**

- I. having committed a crime in violation of N.J.S.A. 2C:14-2, 2C:14-3a or 2C:24-4b against the said victim initial's
- II. having sold or delivered victim initial's to another for pecuniary gain other than in circumstances which did lead to the return of victim initial's to a parent, guardian or other person responsible for the general supervision of victim initial's

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B or C
- 5. Victim's initials
- 6. Choose option 1, 2 or 3
- 7. Choose option I or II

KIDNAPPING - FIRST OR SECOND DEGREE\*

(Hold for Other Purposes)

N.J.S.A. 2C:13-1b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, option A, B or C with the purpose to option 1, 2 or 3 [and did fail to option I, II or III], contrary to the provisions of N.J.S.A. 2C:13-1b, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. unlawfully did remove victim's name from the his place of residence or business
- B. unlawfully did remove victim's name a substantial distance from the vicinity were he was found
- C. unlawfully did confine victim's name for a substantial period

OPTIONS

- 1. facilitate the commission of a crime or flight thereafter,
- 2. inflict bodily injury on or to terrorize victim or another,
- 3. interfere with the performance of any governmental or political function,

**OPTIONS**

- I. release the said victim's name prior to apprehension
- II. release the said victim's name unharmed prior to apprehension
- III. release the said victim's name in a safe place prior to apprehension

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B or C
- 5. Victim's name
- 6. Choose option 1, 2 or 3
- 7. Choose option I, II or III
- 8.\* Grading - kidnapping is a crime of the first degree if any of options I, II or III apply, and is a crime of the second degree only if the victim is released unharmed and in a safe place prior to apprehension of defendant.

CRIMINAL RESTRAINT - THIRD DEGREE

N.J.S.A. 2C:13-2

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly option A or B, contrary to the provisions of N.J.S.A. 2C:13-2, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. did restrain Victim's name unlawfully, in circumstances exposing Victim's name to risk of serious bodily injury
- B. did hold Victim's name in a condition of involuntary servitude

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Name of victim
- 5. Choose option A or B

INTERFERENCE WITH CUSTODY - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:13-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, option 1, 2, 3 or 4, contrary to the provisions of N.J.S.A. 2C:13-4, and against the peace of this State, the government and dignity of the same.

OPTIONS

1. knowingly did take or detain a minor child, to wit Victim's Initials, with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or visitation of the said minor child
2. after being served with process or having actual knowledge of an action effecting marriage or custody but prior to the issuance of a temporary or final order determining custody and visitation rights to a minor child did take, detain, entice, or conceal the child within or outside the State for the purpose of depriving the child's other parent of custody or visitation, or to evade the jurisdiction of the courts of this State
3. after being served with process or having actual knowledge of an action effecting the protective service needs of a child pursuant to Title 9 of the Revised Statutes in an action effecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, did take, detain, entice, or conceal the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State
4. after the issuance of a temporary or final order specifying custody, visitation or joint custody rights, did take, detain, entice, or conceal a minor child from the other parent in violation of the custody or visitation order

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Choose options 1, 2, 3 or 4
  5. Name of victim or initials
  6. Degree
- \* It is a second degree crime if "the child is taken, detained, enticed or concealed outside the United States."  
N.J.S.A. 2C:13-4a.

CRIMINAL COERCION - \_\_\_\_\_\* DEGREE

N.J.S.A. 2C:13-5

The Grand Jurors of the State of New Jersey, for the County of \_\_\_\_\_, upon their oaths present that \_\_\_\_\_ Defendant(s) \_\_\_\_\_, on or about \_\_\_\_\_ Date \_\_\_\_\_, in the \_\_\_\_\_ City, Town \_\_\_\_\_ of \_\_\_\_\_ Municipality \_\_\_\_\_, County of \_\_\_\_\_ County \_\_\_\_\_, and within the jurisdiction of this Court, knowingly did threaten to inflict bodily injury on \_\_\_\_\_ Victim's name \_\_\_\_\_, with purpose to unlawfully restrict the said \_\_\_\_\_ Victim's \_\_\_\_\_ freedom of action to engage in or refrain from engaging in conduct, contrary to the provisions of N.J.S.A. 2C:13-5, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Injury threatened where applicable
6. Degree\*

\* Criminal coercion is a crime of the Fourth Degree unless the threat is to commit a crime more serious than one of the Fourth Degree or the actor's purpose is criminal, in which case it is a crime of the Third Degree.

AGGRAVATED SEXUAL ASSAULT - FIRST DEGREE

N.J.S.A. 2C:14-2a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit an act of sexual penetration upon Victim, Choose option A, B, C, D, E, F, G, H or I, contrary to the provisions of N.J.S.A. 2C:14-2a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. when Victim's initials was less than 13 years old
- B. when Victim's initials was at least 13 but less than 16 years old and Defendant(s) was related to Victim's initials by blood or affinity to the third degree
- C. when Victim's initials was at least 13 but less than 16 years old and Defendant(s) had supervisory or disciplinary power over Victim initials by virtue of Defendant's legal, professional or occupational status
- D. when Victim's initials was at least 13 but less than 16 years old and Defendant(s) was a foster parent, a guardian, or stood in loco parentis within the household
- E. during the commission or attempted commission of a (an) Choose option 1-7
  - 1. robbery
  - 2. kidnapping
  - 3. homicide
  - 4. aggravated assault on another
  - 5. burglary
  - 6. arson
  - 7. criminal escape
- F. while Defendant(s) was armed with a weapon or an object fashioned in such a manner as to lead Victim to reasonably believe it to be a weapon and threatened by word or gesture to use the weapon or object

- G. and Defendant(s) was aided or abetted by one or more other persons and Defendant(s) used physical force or coercion
- H. and Defendant(s) was aided or abetted by one or more persons and Victim was one whom Defendant(s) knew or should have known was physically helpless, mentally defective or mentally incapacitated
- I. and Defendant(s) did use physical force or coercion and severe personal injury was sustained by Victim

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Name of victim\*
  5. Choose option A, B, C, D, E, F, G, H or I
- \* Child victims should be referred to by their initials pursuant to N.J.S.A. 2A:82-46.

SEXUAL ASSAULT - SECOND DEGREE

(Sexual Contact with Children)

N.J.S.A. 2C:14-2b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit an act of sexual contact with Victim's initials, a child less than 13 years of age, for the purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade Victim's initials, Defendant(s) being at least four years older than Victim's initials, contrary to the provisions of N.J.S.A. 2C:14-2b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim\*

\* See N.J.S.A. 2A:82-46 which requires that child victims of sexual assaults to be identified by initial or a pseudonym.

For this crime to be charged, the victim must be less than 13 years old and the defendant must be at least four years older than the victim.

SEXUAL ASSAULT - SECOND DEGREE

N.J.S.A. 2C:14-2c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit an act of sexual penetration upon Victim Choose option A, B, C, D, E, F or G, contrary to the provisions of N.J.S.A. 2C:14-2c, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. by using physical force or coercion
- B. when Victim was one whom Defendant(s) knew or should have known was physically helpless, mentally defective or mentally incapacitated,
- C. while Victim was on probation or parole and defendant had supervisory or disciplinary power over Victim by virtue of Defendant's legal, professional or occupational status,
- D. while Victim was detained in a hospital, prison or other institution and Defendant(s) had supervisory or disciplinary power over Victim by virtue of Defendant's legal, professional or occupational status,
- E. when Victim's initials was at least 16, but less than 18 years old and Defendant(s) is (related to the victim by blood or affinity to the Third Degree) (a foster parent, a guardian, or stood in loco parentis within the household)
- F. when Victim's initials was at least 16, but less than 18 years old and Defendant(s) was a member of Victim's initials household with supervisory or disciplinary power over Victim
- G. when Victim's initials was at least 13, but less than 16 years old and Defendant(s) was at least 4 years older than Victim's initials

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim\*
5. Choose option A, B, C, D, E, F or G

\* See N.J.S.A. 2A:82-46 which requires that child victims of sexual assault be identified by their initials or a pseudonym.

AGGRAVATED CRIMINAL SEXUAL CONTACT - THIRD DEGREE

N.J.S.A. 2C:14-3a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit an act of sexual contact with Victim Choose option A, B, C, D, E, F, G or H, for the purpose of sexually arousing or sexually gratifying said Defendant(s) or to humiliate or degrade the said Victim, contrary to the provisions of N.J.S.A. 2C:14-3a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. when Victim's name was at least 13 but less than 16 years old and Defendant(s) was related to Victim by blood or affinity to the third degree
- B. when Victim's name was at least 13 but less than 16 years old and Defendant(s) had supervisory power over Victim by virtue of Defendant's legal, professional or occupational status
- C. when Victim's name was at least 13 but less than 16 years old and Defendant(s) was a foster parent, a guardian, or stood in loco parentis within the household
- D. during the commission or attempted commission of a (an) Choose option 1-7
1. robbery
  2. kidnapping
  3. homicide
  4. aggravated assault on another
  5. burglary
  6. arson
  7. criminal escape
- E. while Defendant(s) was armed with a weapon or an object fashioned in such a manner as to lead Victim to reasonably believe it to be a weapon and threatened by word or gesture to use the weapon or object

- F. and Defendant(s) was aided or abetted by one or more other persons and Defendant(s) used physical force or coercion
- G. and Defendant(s) was aided or abetted by one or more persons and Victim was one whom Defendant(s) knew or should have known was physically helpless, mentally defective or mentally incapacitated
- H. and Defendant(s) used physical force or coercion and severe personal injury was sustained by Victim

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim\*
5. Choose option A, B, C, D, E, F, G or H

\* See N.J.S.A. 2A:82-46 which inquires that child victims of sexual assault be identified by their initials or pseudonym.

SEXUAL CONTACT - FOURTH DEGREE

N.J.S.A. 2C:14-3b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit an act of sexual contact with Victim Choose option A, B, C, D, E or F, for the purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade the said Victim, contrary to the provisions of N.J.S.A. 2C:14-3b, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. by using physical force or coercion
- B. when Victim was one whom Defendant(s) knew or should have known was physically helpless, mentally defective or mentally incapacitated,
- C. while Victim was on probation or parole and Defendant(s) had supervisory or disciplinary power over Victim by virtue of Defendant's legal, professional or occupational status,
- D. while Victim was detained in a hospital, prison or other institution and Defendant(s) had supervisory or disciplinary power over Victim by virtue of Defendant's legal, professional or occupational status,
- E. when Victim's initials was at least 16, but less than 18 years old and Defendant(s) had supervisory or disciplinary power over Victim (was related to Victim by blood or affinity to the Third Degree) or (was a foster parent, a guardian or stood in loco parentis within the household)
- F. when Victim was at least 13, but less than 16 years old and Defendant(s) was at least 4 years older than Victim

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim\*
5. Choose option A, B, C, D, E or F.

\* It is permissible and advisable to use the initials of the victim.

LEWDNESS - FOURTH DEGREE

(Child Under 13)

N.J.S.A. 2C:14-4a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did expose his/her/their intimate parts for the purpose of arousing or gratifying the sexual desire of the said Defendant(s) or of any other person under circumstances where Defendant(s) knew or reasonably expected that he/she/(they) was(were) likely to be observed by a child who was then less than thirteen years of age and Defendant(s) was at least four years older than said child, to wit, Age, contrary to the provisions of N.J.S.A. 2C:14-4a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY:

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Age of Victim(s)
5. Age of Defendant(s)

**LEWDNESS - FOURTH DEGREE**

(Victim Having Mental Disease Or Defect)

**N.J.S.A. 2C:14-4a(2)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did expose his/her/their intimate parts for the purpose of arousing or gratifying the sexual desire of the said Defendant(s) or any other person under circumstances where Defendant(s) knew or reasonably expected he/she(they) was(were) likely to be observed by a person who because of mental disease or defect was unable to understand the sexual nature of Defendant(s) conduct, contrary to the provisions of N.J.S.A. 2C:14-4a(2), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY:**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

ROBBERY - SECOND DEGREE

(With Bodily Injury or Threatened  
Bodily Injury or Force)

N.J.S.A. 2C:15-1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, in the course of committing a theft, Choose option A, B, C, D, E, F or G, contrary to the provisions of N.J.S.A. 2C:15-1, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. knowingly did use force upon Victim
- B. knowingly did inflict bodily injury upon Victim
- C. knowingly did threaten immediate bodily injury to Victim
- D. purposely did put Victim in fear of immediate bodily injury
- E. knowingly did commit the crime of (State a 1st or 2nd degree crime) upon Victim
- F. knowingly did threaten immediately to commit the crime of (State a 1st or 2nd degree crime) upon Victim
- G. knowingly did threaten immediate bodily injury to Victim and/or purposely did put Victim in fear of immediate bodily injury

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality of offense
- 4. Choose option A, B, C, D, E, F or G
- 5. Name of victim

ROBBERY - \_\_\_\_\_ \* DEGREE

(With Serious Bodily Injury or Attempt)

N.J.S.A. 2C:15-1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, in the course of committing a theft knowingly did, Choose option A, B, C, D or E Victim, Options I, II, III or IV (is applicable) contrary to the provisions of N.J.S.A. 2C:15-1, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. inflict bodily injury upon
- B. use force upon
- C. threaten immediate bodily injury upon
- D. purposely put victim in fear of immediate bodily injury upon the said
- E. commits [or threatens immediately to commit] a crime of the first or second degree, that is, crime, upon

OPTIONS

- I. while armed with a deadly weapons
- II. by use of deadly weapon
- III. by threatening the immediate use of a deadly weapon
- IV. while armed with or threatening the immediate use of deadly weapon

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A, B, C or D and option I, II, III or IV, (if applicable)
5. Name of victim

\* Grading. Robbery is a crime of the second degree, except that it is a crime of the first degree if in the course of committing the theft the actor attempts to kill anyone, or purposely inflicts or attempts to inflict serious bodily injury, or is armed with, or uses or threatens the immediate use of a deadly weapon.

AGGRAVATED ARSON - SECOND DEGREE

N.J.S.A. 2C:17-1a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did (start a fire)(cause an explosion) at location, option A, B or C, contrary to the provisions of N.J.S.A. 2C:17-1a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. thereby purposely or knowingly placing another person, namely Victim, in danger of death of bodily injury
- B. with the purpose of destroying a building or structure of another, namely Victim
- C. with the purpose of collecting insurance for the destruction or damage to property under circumstances which recklessly placed another person, namely Victim, in danger of death or bodily injury

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Location
- 5. Name of victim
- 6. Choose option or fire or explosion
- 7. Choose option A, B or C

ARSON - THIRD DEGREE

N.J.S.A. 2C:17-1b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town, of Municipality, County of County, and within the jurisdiction of this Court, purposely did (start a fire) (cause an explosion) at location, option A,B or C, contrary to the provisions of N.J.S.A. 2C:17-1b, and against the peace of this State, the Government and dignity of the same.

OPTIONS

- A. thereby recklessly placing another person, namely Victim, in danger of death or bodily injury
- B. thereby recklessly placing a building or structure of another, namely Victim, in danger of damage or destruction
- C. with the purpose of collecting insurance for the destruction or damage to such property

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and County of offense
- 4. Location
- 5. Name of victim
- 6. Choose option of fire or explosion
- 7. Choose option A,B, or C

FAILURE TO CONTROL OR REPORT DANGEROUS FIRE - FOURTH DEGREE

N.J.S.A. 2C:17-1c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowing that a fire was endangering life or a substantial amount of property of another, did option 1 or 2, contrary to the provisions of N.J.S.A. 2C:17-1c, and against the peace of this State, the government and dignity of the same.

OPTIONS

1. fail to take reasonable measures to put out or control the fire when the said Defendant(s) could have done so without substantial risk to himself
2. fail to give a prompt fire alarm when option A or B
  - A. defendant knew that he was under an official, contractual, or other legal duty to prevent or combat the fire
  - B. defendant knew the fire was started, albeit lawfully, by him or with his assent, or on property in his custody or control

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Option 1 or 2
5. If 2, choose option A or B

ARSON - FIRST DEGREE

(For Hire)

N.J.S.A. 2C:17-1d.

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did directly or indirectly (pay or accept) a form of consideration, that is, (list consideration given or accepted) for the purpose of (starting a fire)(causing an explosion) at location, contrary to the provisions of N.J.S.A. 2C:17-1d, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Option of pay or accept
5. Option of fire or explosion and location of fire or explosion
6. Consideration

CREATING RISK OF WIDESPREAD INJURY  
OR DAMAGE - SECOND DEGREE\*

N.J.S.A. 2C:17-2a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did cause widespread injury or damage, in that Defendant(s) purposely or knowingly caused the describe actions creating cause for damage, thereby resulting in describe damage, at the facility specify location/ jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 2C:17-2c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specific act causing widespread injury or damage
5. Describe damage - widespread injury or damage is defined in N.J.S.A. 2C:17-2e
6. Specific location establishing jurisdiction

\* For third degree crime, substitute "recklessly" for "purposely or knowingly." N.J.S.A. 2C:17-2b

CAUSING A HAZARDOUS DISCHARGE REQUIRED TO BE  
REPORTED PURSUANT TO THE SPILL ACT - SECOND DEGREE\*

N.J.S.A. 2C:17-2a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did cause a hazardous discharge required to be reported pursuant to the "Spill Compensation and Control Act," N.J.S.A. 58:10-23.11 et seq. or the rules and regulations adopted pursuant thereto, in that Defendant(s) purposely or knowingly, unlawfully did cause the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping from containers which leaked to the ground one or more of the following hazardous substances: specify hazardous substance options at the facility located at specify location/jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 2C:17-2a(2), and against the peace of this State, the government and dignity of the same.

OPTIONS:

- A. a substance as defined in N.J.A.C. 7:1E Appendix A
- B. a substance listed in N.J.A.C. 7:14A Appendix B

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify hazardous substance from options
5. Specify location establishing jurisdiction

\* For third degree crime, substitute "recklessly" for "purposely or knowingly."

RELEASE AND ABANDONMENT OF HAZARDOUS WASTE -  
SECOND DEGREE\*

N.J.S.A. 2C:17-2a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did cause the release and abandonment of hazardous waste and toxic pollutants, in that the said Defendant(s) purposely or knowingly, unlawfully caused the release and abandonment of Specify hazardous waste from options, into/onto/at Specify location establishing jurisdiction where hazardous waste was released or abandoned, New Jersey, contrary to the provisions of N.J.S.A. 2C:17-2a(2), and against the peace of this State, the government and dignity of the same.

OPTIONS

Specify a hazardous waste by citing N.J.S.A. 13:1E-38c and description from N.J.A.C. 7:26-8.1 et seq.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify hazardous waste from options
5. Specify location establishing jurisdiction

CAUSING THE RELEASE OR ABANDONMENT OF  
TOXIC POLLUTANTS - SECOND DEGREE\*

N.J.S.A. 2C:17-2a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did cause the release or abandonment of toxic pollutants, in that Defendant(s) purposely or knowingly, unlawfully caused the release or abandonment of toxic pollutants as defined in N.J.S.A. 58:10A-3r, Specify toxic pollutant from options, at Specify location establishing jurisdiction, contrary to the provisions of N.J.S.A. 2C:17-2a(2), and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. a substance as defined in N.J.A.C. 7:1E Appendix A
- B. a substance listed in N.J.A.C. 7:14A Appendix B

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify toxic pollutants from options
5. Specify location establishing jurisdiction

\* For third degree crime, substitute "recklessly" for "purposely or knowingly."

CREATING RISK OF WIDESPREAD INJURY  
OR DAMAGE - FOURTH DEGREE

N.J.S.A. 2C:17-2c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, recklessly did create a risk of widespread injury or damage, by Describe actions creating risk of damage, at the facility Specify location/jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 2C:17-2c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specific act creating risk of widespread injury or damage. Note widespread injury or damage is defined at N.J.S.A. 2C:17-2e
5. Specific location establishing jurisdiction

\* N.J.S.A. 2C:17-2d makes it a fourth degree crime to fail to take reasonable measures to prevent or mitigate widespread injury or damage when one is under an official, contractual or legal duty to prevent or mitigate the harm or assents to the act causing or threatening the harm.

CRIMINAL MISCHIEF - \_\_\_\_\_ \*DEGREE

N.J.S.A. 2C:17-3a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, (purposely or knowingly did damage the personal property of Victim) (recklessly or negligently did damage the tangible property of Victim in the employment of fire, explosives or other dangerous means listed in section 2C:17-2a), causing pecuniary loss in excess of \$Amount, contrary to the provisions of N.J.S.A. 2C:17-3a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Name of victim
  5. Loss in excess of \$500 - Fourth Degree; loss in excess of \$2000 - Third Degree\*
- \* It is also a Third Degree crime to substantially interrupt or impair public communication, transportation, water, gas, power or other public service. If applicable, this should be inserted as an element, pled and proven.

CRIMINAL MISCHIEF - \_\_\_\_\_ DEGREE

(Endangering Person or Property by Tampering)

N.J.S.A. 2C:17-3a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or recklessly did tamper with the tangible property of victim, so as to endanger the (person)(property) of victim, causing a pecuniary loss in excess of \$Amount, contrary to the provisions of N.J.S.A. 2C:17-3a(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Name of victim(s)
  5. Loss in excess of \$500 - Fourth Degree; loss in excess of \$2000 - Third Degree
- \* It appears that if one endangers a person or property, and there is no pecuniary loss as a result of the tampering (or less than \$500) and no "substantial" interruption or impairment of public communications, transportation, supply of water, gas or power or other public service, no "crime" has been committed - evaluate for remand as a DP.

PROHIBITED ALTERATION OF MOTOR VEHICLE TRADEMARK  
OR IDENTIFICATION NUMBER - THIRD DEGREE

N.J.S.A. 2C:17-6a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did remove, alter, change destroy, cover or obliterate the identification number on a motor vehicle, that is, Describe vehicle, for an unlawful purpose, contrary to the provisions of N.J.S.A. 2C:17-6a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Describe vehicle

REMOVAL OR ALTERATION OF MOTOR VEHICLE  
IDENTIFICATION NUMBER - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:17-6b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did, for an unlawful purpose, possess a motor vehicle, or any of the parts thereof, from or on which a trademark, distinguishing or identification number or serial number or mark had been removed, covered, altered, changed, defaced, destroyed or obliterated, the said motor vehicle or parts having a value of \$ Value\*, contrary to the provisions of N.J.S.A. 2C:17-6b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
- \*4. Degree - exceeds \$500 - third degree  
at least \$200 but does not exceed \$500 - fourth degree

BURGLARY - SECOND DEGREE

N.J.S.A. 2C:18-2

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did enter the structure of Owner/Victim at address with the purpose to commit an offense therein, and in the course of committing the said offense option A, B, C, D or E, contrary to the provisions of N.J.S.A. 2C:18-2, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. was armed with a deadly weapon
- B. displayed what appeared to be a deadly weapon
- C. purposely, knowingly or recklessly inflicted bodily injury on Victim
- D. purposely attempted to inflict bodily injury on Victim
- E. purposely or knowingly threatened to inflict bodily injury on Victim

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Name of owner/victim
- 5. Address of owner/victim
- 6. Choose option A, B, C, D or E

BURGLARY - THIRD DEGREE

(Automobile)

N.J.S.A. 2C:18-2

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did enter an automobile, that is, Description of auto, belonging to Owner/Victim, with the purpose to commit an offense therein, contrary to the provisions of N.J.S.A. 2C:18-2, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Description of automobile
  - a. Year
  - b. Type
  - c. Registration number
5. Name of owner/victim

**BURGLARY - THIRD DEGREE**

**(Structure)**

**N.J.S.A. 2C:18-2**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did enter the structure of Owner/Victim at address with the purpose to commit an offense therein, contrary to the provisions of N.J.S.A. 2C:18-2, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Address of owner/victim

CRIMINAL TRESPASS - FOURTH DEGREE

N.J.S.A. 2C:18-3a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowing that Defendant(s) was (were) not licensed or privileged to do so, did option A or B the dwelling of Victim at Address, contrary to the provisions of N.J.S.A. 2C:18-3a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. enter
- B. surreptitiously remain in

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Degree

THEFT - THIRD DEGREE

(Firearm)

N.J.S.A. 2C:20-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did unlawfully take or exercise unlawful control over movable property of Owner/Victim namely, a firearm, that is, description of firearm (including serial number) with purpose to deprive the owner thereof, contrary to the provisions of N.J.S.A. 2C:20-3, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Description of firearm (rifle, shotgun, handgun, etc., including serial number)

THEFT - \_\_\_\_\_ DEGREE\*

(Property or Money and Property)

N.J.S.A. 2C:20-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date in the Town, City of Municipality, County of County, and within the jurisdiction of this Court knowingly did unlawfully take or exercise unlawful control over the movable property of Owner/Victim that is, money (or property) in an amount (or having a value) of \$Amount\*, with purpose to deprive the owner thereof, contrary to the provisions of N.J.S.A. 2C:20-3, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. The value of the money or property
6. Degree

**NOTE:** Value does not have to be given if the property is an automobile or firearm (See N.J.S.A. 2C:20-2).

**NOTE:** If bailment exists assistant prosecutor may substitute the wording "in the custody of..."

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY UNLAWFUL TAKING - THIRD DEGREE

(Automobile)

N.J.S.A. 2C:20-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did unlawfully take or exercise unlawful control over the movable property of Owner/Victim, that is, a description automobile, with purpose to deprive the owner thereof, contrary to the provisions of N.J.S.A. 2C:20-3, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Description of automobile, include year, model and VIN if possible

THEFT - \_\_\_\_\_ DEGREE\*

(Vehicle Other than Automobile)

N.J.S.A. 2C:20-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s) on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did unlawfully take or exercise unlawful control over the movable property of Owner/Victim, that is, a Year of van/pick up Make of van/pickup having a value of \$Amount\*, with purpose to deprive the owner thereof, contrary to the provisions of N.J.S.A. 2C:20-3, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Year of van/pickup
6. Make of van/pickup
7. Registration/serial number
8. Value of vehicle

Note: If bailment exists, assistant prosecutor may substitute wording "in the custody of..."

\* See N.J.S.A. 2C:20-b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY DECEPTION - \_\_\_\_\_ DEGREE\*

(General)

N.J.S.A. 2C:20-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did obtain the property Owner/Victim having a value of approximately \$Amount\*, by deception, that is, by creating or reinforcing the false impression that describe deception, contrary to the provisions of N.J.S.A. 2C:20-4, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Description of deception
6. Value
7. Degree

\* See N.J.S.A. 2C:20-b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY DECEPTION - \_\_\_\_\_ DEGREE\*

(Not a Check - FLIM-FLAM)

N.J.S.A. 2C:20-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did commit theft of approximately \$Amount\*, by obtaining money of Victim by deception, by creating or reinforcing a false impression that see examples, contrary to the provisions of N.J.S.A. 2C:20-4, and against the peace of this State, the government and dignity of the same.

EXAMPLES: Defendant(s) would paint the house of the said Victim

Defendant(s) had television sets for sale

Defendant(s) had found money, a part of which would be given to the said Victim

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Value
5. Name of victim
6. Phrase describing promise of defendant

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY DECEPTION - \_\_\_\_\_ DEGREE\*

(Check)

N.J.S.A. 2C:20-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did commit theft by obtaining money from Person cashing check, an employee of address of business, in the amount of \$Amount\* by deception, by creating or reinforcing a false impression that check number number or check mark, drawn on the account of name of account holder at the bank where check is drawn, dated date, payable to payee's name, for check amount was good and negotiable, whereas the said Defendant(s) well knew, the said check was not good and not negotiable, contrary to the provisions of N.J.S.A. 2C:20-4, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of person cashing check
5. Person's place of employment
6. Address of business where check was cashed
7. Details of check:
  - a. Number, if there is one
  - b. account on which check is drawn
  - c. business on which check is drawn
  - d. address of business where check is drawn
  - e. date on check
  - f. payee's name
  - g. amount of check

If there is no number in the upper right hand corner of check, secretary should use a CHECK MARK instead of CHECK NUMBER.

N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

**THEFT BY DECEPTION - \_\_\_\_\_ DEGREE\***

(Cash)

**N.J.S.A. 2C:20-4**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did obtain in excess of \$200, \$500 or \$75,000\*, from Owner/Victim, by deception, that is, by creating or reinforcing the false impression that Describe deception, contrary to the provisions of **N.J.S.A. 2C:20-4**, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Value
6. Degree

\* See **N.J.S.A. 2C:20-2b** for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY DECEPTION - \_\_\_\_\_ DEGREE\*

(Welfare Fraud)

N.J.S.A. 2C:20-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did obtain from the County County Board of Social Services (welfare assistance) (food stamps) (medicaid) having a value of approximately \$Amount\*, by deception, that is, by creating or reinforcing the false impression that description of deception, contrary to the provisions of N.J.S.A. 2C:20-4, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Welfare assistance, food stamps or Medicaid or appropriate combination
5. Description of deception
6. Value
7. Degree

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY EXTORTION - SECOND DEGREE

N.J.S.A. 2C:20-5

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did obtain by extortion property of Victim, that is, description, by purposely threatening to (insert appropriate language)\*, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

- \* - inflict bodily injury on, physically confine or restrain anyone or commit any other criminal offense
- accuse person of an offense or cause charges of an offense to be instituted against person
- expose or publicize any secret or any asserted fact, whether true or false, tending to subject person to hatred, contempt or ridicule, or to impair his credit or business repute
- take or withhold action as an official, or cause an official to take or withhold action
- bring about or continue a strike, boycott or other collective action, (if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act)
- testify or provide information or withhold testimony or information with respect to another's legal claim or defense
- inflict any other harm which would not substantially benefit defendant but which is calculated to materially harm victim

**PROSECUTOR MUST SUPPLY.**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Description of property
6. Select appropriate language, conform as necessary

THEFT OF PROPERTY LOST, MISLAID OR  
DELIVERED BY MISTAKE - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:20-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did come into control of property of another having a value of approximately \$Amount\*, that is description of property, knowing that the said property was lost, mislaid or delivered by mistake and was owned by Owner, and with purpose to deprive the owner thereof did convert the said property to Defendant(s) own use, contrary to the provisions of N.J.S.A. 2C:20-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of owner/victim
5. Description of property
6. Value
7. Degree

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

RECEIVING STOLEN PROPERTY - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:20-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit theft by knowingly receiving or bringing into this State movable property of Owner's name, that is, description of property, having a value of approximately \$Amount, knowing the same to be stolen or believing that it had probably been stolen, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Owner's name
5. Value
6. Degree

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

**THEFT - THIRD DEGREE**  
**(Receiving Stolen Automobile)**

**N.J.S.A. 2C:20-7**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit theft by knowingly receiving or bring into this State movable property of Owner's name, that is, a description of car automobile, knowing the same to be stolen or believing that it had probably been stolen, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Owner's name
5. Description of automobile

RECEIVING STOLEN PROPERTY - THIRD DEGREE

(Firearm)

N.J.S.A. 2C:20-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit theft by knowingly receiving or bringing into this State movable property of Owner's name, namely a firearm, that is, Description of firearm, knowing the same to be stolen or believing that it had probably been stolen, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Owner's name
5. Description of firearm, include serial number if possible

RECEIVING STOLEN MOTOR VEHICLE - \_\_\_\_\_ DEGREE\*

(Vehicle Other than Automobile)

N.J.S.A. 2C:20-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit theft by knowingly receiving or bringing into this State movable property of Owner's name, that is, a Year of van/pickup Make of van/pickup Registration/Serial Number, having a value of approximately \$Amount, knowing the same to be stolen or believing that it had probably been stolen, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Owner's name
5. Year of van/pickup
6. Make of van/pickup
7. Registration/serial number
8. Value
9. Degree

\* Note - If bailment exists, assistant prosecutor may substitute wording "in the custody of..."

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

**THEFT - THIRD DEGREE**

(Bringing Stolen Automobile Into State)

**N.J.S.A. 2C:20-7**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit theft by knowingly receiving or bringing into this State movable property of Owner's name, that is, a description of auto automobile knowing the same to be stolen or believing that it had probably been stolen, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Owner's name
5. Description of automobile

THEFT - \_\_\_\_\_ DEGREE\*

(Bringing Stolen Property Into State)

N.J.S.A. 2C:20-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit theft by knowingly receiving or bringing into this State movable property of Owner's name, that is, description of property, having a value of approximately \$Amount\*, knowing the same to be stolen or believing that it had probably been stolen, contrary to the provisions of N.J.S.A. 2C:20-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Owner's name
5. Value
6. Degree

Note: Omit value if automobile, firearm, boat, plane or; CDS

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

FENCING - \_\_\_\_\_ DEGREE\*

(Possession of Altered Property)

N.J.S.A. 2C:20-7.1a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), a dealer in property, on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did have in his possession property, that is, description of property, having an approximate (aggregate) value of \$Amount\* from which the identifying features, namely, serial numbers or permanently affixed labels, the said Defendant(s) knew or should have known had been removed or altered without the consent of the manufacturer, contrary to the provisions of N.J.S.A. 2C:20-7.1a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Describe defaced property (serial number, label, etc.)
5. Value or aggregate value - see N.J.S.A. 2C:20-7.1c

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

FENCING - \_\_\_\_\_ DEGREE\*  
(Dealing in Stolen Property)

N.J.S.A. 2C:20-7.1b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did traffic in, initiate, organize, plan, finance, direct, manage, or supervises trafficking in stolen property, that is, description of property, having an approximate (aggregate) value of \$Amount\*, contrary to the provisions of N.J.S.A. 2C:20-7.1b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Value

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT OF SERVICES - \_\_\_\_\_ \* DEGREE

(Deception or Threat)

N.J.S.A. 2C:20-8a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit the crime of theft or services, in that the said Defendant(s) purposely did obtain services, that is, description of services, having an approximate value of \$Amount\*, which the said Defendant(s) knew to be available only for compensation, by deception or threat, or by false token, slug, or other means (including but not limited to mechanical or electronic devices or through fraudulent statements), to avoid payment for service, contrary to the provisions of N.J.S.A. 2C:20-8a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Description of services
6. Value

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT OF SERVICES - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:20-8b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City, of Municipality, County of County, and within the jurisdiction of this Court, did commit the offense of theft of services, in that the said Defendant(s), having control over the disposition of services of another, having an approximate value of \$Amount\* to which he was not entitled, that is description of services, knowingly did divert the said services to his own benefit or the benefit of another not entitled thereto, contrary to the provision of provisions of N.J.S.A. 2C:20-8b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Description of services
6. Value

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

THEFT BY FAILURE TO MAKE REQUIRED  
DISPOSITION OF PROPERTY RECEIVED - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:20-9

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did commit theft by purposely obtaining or retaining property belonging to Victim, that is, description of property, having an approximate value of \$Amount, upon agreement or subject to a known legal obligation to make specified payment or other disposition and did deal with said property as Defendant's(s') own and did fail to make the required payment or disposition, contrary to the provisions of N.J.S.A. 2C:20-9, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Owner(s) of money or property
6. Value

\* See N.J.S.A. 2C:20-2b for grading of crime, based upon value as follows:

\$200 to \$500 - Fourth Degree  
More than \$500 - Third Degree  
\$75,000 or more - Second Degree

FORGERY - FOURTH DEGREE

(Altering)

N.J.S.A. 2C:21-1a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud or injure\* Victim, knowingly did alter or change a writing of another, that is, description of writing, who did not authorize said act, contrary to the provisions of N.J.S.A. 2C:21-1a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim
5. Description of writing

\* It is also criminal to knowingly facilitate a fraud or injury.

FORGERY - FOURTH DEGREE

(Checks)

N.J.S.A. 2C:21-1a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud or injure Victim, knowingly did execute a writing, namely check number check number at the payor bank payable to payee so that it purported to be the act of \_\_\_\_\_, who did not authorize said act or a fictitious person, contrary to the provisions of N.J.S.A. 2C:21-1a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of person/business or bank
5. Detail of check:
  - a. Number, if there is one
  - b. Bank on which check is drawn
  - c. Account on which check is drawn
  - d. Payee's name
6. Forged name

**UTTERING A FORGED INSTRUMENT - FOURTH DEGREE**

(General)

N.J.S.A. 2C:21-1a(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud or injure, did utter to victim, a writing, that is, a (an) description of instrument, knowing the same to be option A or B, contrary to the provisions of N.J.S.A. 2C:21-1a(3), and against the peace of this State, the government and dignity of the same.

**OPTIONS**

- A. (altered) (changed) without authorization
- B. (made) (completed) (executed) (authenticated) (issued) (transferred) so that it purported to be the act of (another who did not authorize that act) (a fictitious person)

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Name of person/business or bank
- 5. Select appropriate language

UTTERING FORGED INSTRUMENT - FOURTH DEGREE

(Checks)

N.J.S.A. 2C:21-1a(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with the purpose to defraud or injure, knowingly did utter as true to Victim check number          drawn on the account of Payor at the Payor bank payable to Payee in the amount of \$          bearing thereon a forged or falsely made signature or endorsement, knowing the same to be forged or falsely made, contrary to the provisions of N.J.S.A. 2C:21-1a(3), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of person/business or bank
5. Detail of check:
  - a. Number, if there is one
  - b. Bank on which check is drawn
  - c. Account on which check is drawn
  - d. Payee's name

OPTIONS

- A. (altered) (changed) without authorization
- B. (made) (completed) (executed) (authenticated) (issued) (transferred) so that it purported to be the act of another who did not authorize that act) (or a fictitious person)

POSSESSION OF A FORGERY DEVICE - THIRD DEGREE

N.J.S.A. 2C:21-1c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to use (or to aid or permit another to use) the same for purposes of forging written instruments, did (make) (possess) a device, apparatus, equipment or article, that is, type of forgery device specifically designed or adapted to such use, contrary to the provisions of N.J.S.A. 2C:21-1c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of forgery device

CRIMINAL SIMULATION - FOURTH DEGREE

N.J.S.A. 2C:21-2

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud (with knowledge that Defendant(s) facilitated a fraud), did make, alter or utter object so that it appeared to have value because of antiquity, rarity, source, or authorship which it did not possess, contrary to the provisions of N.J.S.A. 2C:21-2, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. State object

FRAUDS RELATING TO PUBLIC RECORDS  
AND RECORDABLE INSTRUMENTS - THIRD DEGREE

N.J.S.A. 2C:21-3(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, with purpose to deceive or injure another, knowingly did destroy, remove or conceal, a will, deed, mortgage, security instrument or other writing for which the law provides public recording, contrary to the provisions of N.J.S.A. 2C:21-3(a) and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Specify writing or document

FALSIFYING RECORDS - FOURTH DEGREE

N.J.S.A. 2C:21-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to deceive (injure) another (conceal a wrongdoing), option A or B, contrary to the provisions of N.J.S.A. 2C:21-4a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. did (falsify) (destroy) (remove) (conceal) a writing or record, that is description
- B. knowing it to contain a false statement of information, did utter a writing or record, that is, description

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Description of writing or record

FALSIFYING OR TAMPERING WITH RECORDS  
ISSUING A FALSE FINANCIAL STATEMENT - THIRD DEGREE

N.J.S.A. 2C:21-4b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to deceive (injure) another or to conceal a wrongdoing, did, by oath or affirmation, option A or B, contrary to the provisions of N.J.S.A. 2C:21-4b, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. knowingly make or utter a written instrument which purported to describe the financial condition or ability to pay of person and which was inaccurate in some substantial respect
- B. represent in writing that a written instrument purporting to describe person's financial condition or ability to pay as of a prior date was accurate with respect to such person's current financial condition or ability to pay, knowing it was substantially inaccurate in that respect

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Identify person

PURPOSEFUL DESTRUCTION, ALTERATION OR  
FALSIFICATION OF RECORD RELATING TO  
CARE OF MEDICAL OR SURGICAL OR  
PODIATRIC PATIENT IN ORDER TO  
DECEIVE OR MISLEAD - FOURTH DEGREE

N.J.S.A. 2C:21-4.1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely did destroy, alter, or falsify a record relating to the care of a medical, surgical, or podiatric patient in order to deceive or mislead person as to information, including but limited to, a diagnosis, test, medication, treatment or medical or psychological history concerning the patient, contrary to the provisions of N.J.S.A. 2C:21-4.1, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Identify person misled or deceived. note person includes any individual, entity, enterprise. See N.J.S.A. 2C:20-1.

ISSUING A BAD CHECK -- \_\_\_\_\_ \* DEGREE

N.J.S.A. 2C:21-5

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did issue check number \_\_\_\_\_ drawn on the account of \_\_\_\_\_ at the Bank in the amount of \$\_\_\_\_\_ \* knowing that Bank would not honor said check, contrary to the provisions of N.J.S.A. 2C:21-5, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Details of check
  - a. Check number
  - b. Amount of check
  - c. Bank on which check is drawn
  - d. Account on which check is drawn

\*NOTE: If check is for \$200 to \$999.99 - Fourth Degree  
If check is for \$1,000 to \$74,999.99 - Third Degree  
If check is for \$75,000 or over - Second Degree

**TAMPERING WITH PHYSICAL EVIDENCE - FOURTH DEGREE**

**N.J.S.A. 2C:28-6(1)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, believing that an official proceeding or investigation was pending or about to be instituted, knowingly did (alter) (destroy) (conceal) (remove) an object, article, record, document or other thing of physical substance, that is, description with a purpose to impair its verity or availability in such proceeding or investigation, contrary to the provisions of N.J.S.A. 2C:28-6(1) and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY:**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

UNLAWFULLY PROCURING THE ISSUANCE  
OF A CREDIT CARD - FOURTH DEGREE

N.J.S.A. 2C:21-6b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, with purpose to procure the issuance of a credit card from name company or store issuing credit card, and with the intent that it be relied upon, knowingly did make, directly or indirectly a false statement in writing respecting Defendant's(s') identity or financial condition, contrary to the provisions of N.J.S.A. 2C:21-6b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of credit card issuing company or store

CREDIT CARD THEFT - FOURTH DEGREE

N.J.S.A. 2C:21-6c(2)(3)(4)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, [OPTION 1] knowingly did receive and retain possession of a credit card, knowing that the credit card had been lost, mailed or delivered under a mistake as to the identity or address of the cardholder, with the intent to use it, sell it, or transfer it to a person, other than the issuer or the cardholder, (or) [OPTION 2] who was not the issuer of the credit card, did knowingly sell the said credit card, (or) [OPTION 3] knowingly did buy a credit card from a person who was not the issuer of said card, (or) [OPTION 4] knowingly did obtain control over a credit card as security for a debt, with the intent to defraud the issuer, or a person or organization providing money, goods, services or anything else of value, or any other person,

contrary to the provisions of N.J.S.A. 2C:21-6c(2)(3)(4), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.

CREDIT CARD FRAUD - THIRD DEGREE

N.J.S.A. 2C:21-6c(5)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly and with intent to defraud issuer or person defrauded, did option A or B, that is, credit card and number, purportedly issued by issuer, contrary to the provisions of N.J.S.A. 2C:21-6c(5), and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. falsely make or falsely emboss a purported credit card
- B. utter a purported credit card which had been falsely made or falsely embossed

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of issuer or person
5. Select option A or B
6. Credit card and number
7. Issuer of credit card

CREDIT CARD FRAUD - THIRD DEGREE

N.J.S.A. 2C:21-6e

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, who was authorized by an issuer or who was an agent or employee of a person who was authorized by an issuer

[OPTION 1] (applies both to persons authorized by issuers and their agents) to furnish money, goods, services or anything else of value upon presentation of a credit card by a cardholder, with the intent to defraud the issuer or the cardholder, knowingly did furnish money, goods, services or anything else of value upon presentation of a credit card obtained in violation of N.J.S.A. 2C:21-6c or which Defendant(s) knew was forged, expired or revoked, (or)

[OPTION 2] (applies only to those authorized by issuers, not their agents. See N.J.S.A. 2C:21-6(e)(2)) knowingly did fail to furnish money, goods, services or anything else of value which Defendant knowingly represented in writing to the issuer that he had furnished,

contrary to the provisions of N.J.S.A. 2C:21-6e, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.

**FRAUD INVOLVING INCOMPLETE CREDIT CARDS - THIRD DEGREE**

**N.J.S.A. 2C:21-6f**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s); on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess two incomplete credit cards, for which Defendant(s) was not the cardholder, with the intent to complete them without the consent of the issuer, contrary to the provisions of N.J.S.A. 2C:21-6f, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.

**FRAUDULENT USE OF A CREDIT CARD - THIRD DEGREE**

**N.J.S.A. 2C:21-6h**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did use a(n) option 1 thru 7 type of card credit card to obtain money, goods, services or other things of value from name of business, contrary to the provisions of **N.J.S.A. 2C:21-6h**, and against the peace of this State, the government and dignity of the same.

**OPTIONS**

1. counterfeit
2. fictitious
3. altered
4. forged
5. lost
6. stolen
7. fraudulently obtained

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of credit card
5. Name of victim business

DECEPTIVE BUSINESS PRACTICES - FOURTH DEGREE

N.J.S.A. 2C:21-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, in the course of business,

[OPTION 1] knowingly did make a false or misleading written statement for the purpose of obtaining property or credit, (or)

[OPTION 2] knowingly did make a false or misleading written statement for the purpose of promoting the sale of securities, (or)

[OPTION 3] knowingly did omit information required by law to be disclosed in written documents relating to securities,

contrary to the provisions of N.J.S.A. 2C:21-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Select option 1, 2 or 3.

MISCONDUCT BY A CORPORATE OFFICIAL - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-9(c)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did use, control or operate a corporation for the furtherance or promotion of a criminal object, thereby deriving a benefit of \$amount, that is, the said Defendant(s), being title or corporation position, did use, control or operate name of corporation, a corporation of the State of New Jersey, for the furtherance or promotion of the criminal objects of object, in violation of N.J.S.A. \_\_\_\_\_; object, in violation of N.J.S.A. \_\_\_\_\_; and Object, in violation of N.J.S.A. \_\_\_\_\_; contrary to the provisions of N.J.S.A. 2C:21-9c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Amount of benefit derived, this determines grade of offense. See N.J.S.A. 2C:21-10(d).
5. Identify crimes, e.g., theft by deception, extortion, commercial bribery, etc.

\* \$75,000 or more, Second Degree  
More than \$1,000, Third Degree  
\$1,000 or less, Fourth Degree

COMMERCIAL BRIBERY - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-10

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did solicit, accept or agree to accept a benefit of \$Amount as consideration for knowingly violating or agreeing to violate a duty of fidelity to which the said Defendant(s) was subject as an agent, employee, etc. (see N.J.S.A. 2C:21-10a(1) through (6)), that is, the said Defendant(s), then and there being a (an) agent, employee, etc., did accept or agree to accept cash, property in the approximate amount of or if property, with an approximate value of \$Amount, as consideration for the said Defendant(s) describe violation or duty or fidelity

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contrary to the provisions of N.J.S.A. 2C:21-10, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Select appropriate status for defendant, e.g., employee, partner, agent which gives rise to the duty of fidelity. See N.J.S.A. 2C:21-10a(1) through (6).
5. Briefly describe duty. This can be done by reviewing employment contracts, employee ethics manuals, state licensing statutes to select relevant language from those sources to illustrate the defendant's duty which was breached by the acceptance of the property or cash payment.

6. The amount of the benefit solicited, accepted or agreed to be accepted determines the grade of the offense. See N.J.S.A. 2C:21-10d.

\* \$75,000 or more, Second Degree  
More than \$1,000, Third Degree  
\$1,000 or less, Fourth Degree

RIGGING PUBLICLY EXHIBITED CONTEST -- \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-11a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages which govern it, did confer (or offer or agree to confer) a benefit in the amount of \_\_\_\_\_, upon [or did threaten an injury to a participant, official or other person associated with the contest or exhibition], contrary to the provisions of N.J.S.A. 2C:21-11a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Amount of benefit

\* See N.J.S.A. 2C:21-11c for grading. If the benefit is \$75,000 or more it is a second degree crime, exceeds \$1,000 but is less than \$75,000 it is a third degree crime and \$1,000 or less it is a fourth degree crime.

RIGGING PUBLICLY EXHIBITED CONTEST - \_\_\_\_\_ DEGREE\*

(Tampering)

N.J.S.A. 2C:21-11a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages which govern it, did tamper with person, animal or thing, contrary to the provisions of N.J.S.A. 2C:21-11a(2); and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Amount of benefit

\* See N.J.S.A. 2C:21-11(2)c for grading. If the benefit is \$75,000 or more it is a second degree crime, exceeds \$1,000 but is less than \$75,000 it is a third degree crime and \$1,000 or less, it is a fourth degree crime.

RIGGING PUBLICLY EXHIBITED CONTEST - \_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-11b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to prevent a publicly exhibited contest from being conducted in accordance with the rules and usages which govern it, knowingly did solicit, accept or agree to accept a benefit in the amount of \_\_\_\_\_\*, contrary to the provisions of N.J.S.A. 2C:21-11b and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Amount of benefit

\* N.J.S.A. 2C:21-11(2)c for grading. If the benefit is \$75,000 or more it is a second degree offense, exceeds \$1,000 but is less than \$75,000 it is a third degree offense and \$1,000 or less it is a fourth degree offense.

PARTICIPATION IN RIGGED CONTEST - FOURTH DEGREE

N.J.S.A. 2C:21-11e

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with knowledge that a publicly exhibited contest was being conducted in violation of N.J.S.A. 2C:21-11a, did engage in, sponsor, produce, judge, or otherwise participate in the said publicly exhibited contest, contrary to the provisions of N.J.S.A. 2C:21-11e, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

DEFRAUDING SECURED CREDITORS - FOURTH DEGREE

N.J.S.A. 2C:21-12

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did destroy, remove, conceal, encumber, transfer or otherwise deal with property subject to a security interest, that is, describe property, with purpose to hinder enforcement of that interest, contrary to the provisions of N.J.S.A. 2C:21-12, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Property description

FRAUD IN INSOLVENCY - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-13a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowing that proceedings had been or were about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, (or that any other composition or liquidation for the benefit of creditors had been or was about to be made) with purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to the administration of property for the benefit of creditors, knowingly did destroy, remove, conceal, encumber, transfer, or otherwise deal with any property or obtain any substantial part of or interest in the debtor's estate, thereby deriving a benefit of \$amount\*, contrary to the provisions of N.J.S.A. 2C:21-13a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Amount of benefit derived

\* See N.J.S.A. 2C:21-13 for grading. If the benefit is \$75,000 or more it is a crime of the Second Degree; exceeds \$1,000 but is less than \$75,000 it is a crime of the Third Degree; and \$1,000 or less it is a crime of the Fourth Degree.

FRAUD IN INSOLVENCY - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-13b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowing that proceedings had been or were about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors (or that any other composition or liquidation for the benefit of creditors had been or was about to be made), knowingly did falsify a writing or record relating to the property, thereby deriving a benefit of \$Amount\*, contrary to the provisions of N.J.S.A. 2C:21-13b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

\* See N.J.S.A. 2C:21-13 for grading. If the benefit is \$75,000 or more it is a crime of the second degree; exceeds \$1,000 but is less than \$75,000 it is a crime of the third degree; and \$1,000 or less it is a fourth degree.

FRAUD IN INSOLVENCY - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-13c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowing that proceedings had been or were about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors (or that any other composition or liquidation for the benefit of creditors has been or was about to be made), knowingly did misrepresent or refuse to disclose to a receiver or other person entitled to administer property for the benefit of creditors, the existence, amount or location of the property or any other information which Defendant(s) could be legally required to furnish in relation to such administration of property, thereby deriving a benefit of \$Amount\*, contrary to the provisions of N.J.S.A. 2C:21-13c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Amount of benefit

\* See N.J.S.A. 2C:21-13 for grading. If the benefit is \$75,000 or more it is a crime of the second degree; exceeds \$1,000 but is less than \$75,000 it is a crime of the third degree; and \$1,000 or less it is a fourth degree.

RECEIVING DEPOSITS IN A FAILING  
FINANCIAL INSTITUTION - FOURTH DEGREE

N.J.S.A. 2C:21-14

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, being an officer or manager or other person who directed or participated in the direction of a financial institution, knowing that due to financial difficulties, the institution was about to suspend operations or to go into receivership or reorganization, did receive or permit reception of a deposit, premium payment or other investment in the institution, from Victim, the said Victim unaware of the precarious situation of the the institution, contrary to the provisions of N.J.S.A. 2C:21-14, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.
4. Victim's name.

MISAPPLICATION OF ENTRUSTED PROPERTY OR PROPERTY  
OF GOVERNMENT OR FINANCIAL INSTITUTION - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-15

The Grand Jurors of the State of New Jersey, for the County of \_\_\_\_\_, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of \_\_\_\_\_, and within the jurisdiction of this Court, knowingly did apply or dispose of property, that is, description of property, that had been entrusted to him as a fiduciary [or property belonging to or required to be withheld for the benefit of the government or of a financial institution] in a manner which the said Defendant(s) knew was unlawful and involved substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted, thereby deriving a benefit of \$Amount, contrary to the provisions of N.J.S.A. 2C:21-15, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

\* See N.J.S.A. 2C:21-15 for grading. If the benefit is \$75,000 or more it is a crime of the second degree; exceeds \$1,000 but is less than \$75,000 it is a crime of the third degree; and \$1,000 or less it is a crime of the fourth degree.

SECURING THE EXECUTION OF DOCUMENTS BY  
DECEPTION - FOURTH DEGREE

N.J.S.A. 2C:21-16

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did cause or induce victim to execute an instrument which affected, purported to affect or which was likely to affect the pecuniary interest of Victim, by deception as to the contents of the instrument, contrary to the provisions of N.J.S.A. 2C:21-16, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality and county of offense.

CRIMINAL USURY - SECOND DEGREE

(Any Person - Rate in Excess of 50%)

N.J.S.A. 2C:21-19(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths, present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, without being authorized or permitted by law to do so, knowingly did [Option 1] loan or agree to loan, directly or indirectly, money or other property,

(or)

[Option 2] take, agree to take or receive money or other property as interest on a loan or on the forbearance of any money or other interest, at a rate of interest in excess of 50% per annum or the equivalent rate for a longer or shorter period,

contrary to the provisions of N.J.S.A. 2C:21-19(a), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1 or 2

CRIMINAL USURY - THIRD DEGREE

(Individual Victim - Rate in Excess of 30%)

N.J.S.A. 2C:21-19(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths, present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, without being authorized or permitted by law to do so, knowingly did [Option 1] loan or agree to loan, directly or indirectly, to an individual, money or other property,

(or)

[Option 2] take, agree to take or receive money or other property as interest on a loan or on the forbearance of any money or other interest, at a rate of interest in excess of 30% per annum or the equivalent rate for a longer or shorter period, which rate did exceed the maximum rate permitted by law, which loan or forbearance did exceed \$1,000,

contrary to the provisions of N.J.S.A. 2C:21-19(a), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1 or 2

**BUSINESS OF CRIMINAL USURY - SECOND DEGREE**

**N.J.S.A. 2C:21-19b**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, the said Defendant(s), not being authorized or permitted by law to do so, knowingly did engage in the business of making loans or forbearances at a rate of \_\_\_\_\_% per annum, which rate did exceed the maximum rate permitted by law and in violation of N.J.S.A. 2C:21-19a, contrary to the provisions of N.J.S.A. 2C:21-19b, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Interest Rate

POSSESSION OF USURIOUS LOAN RECORD - THIRD DEGREE

N.J.S.A. 2C:21-19c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths, present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, the said Defendant(s), with knowledge of the contents thereof, did possess a writing, paper instrument or article used to record a loan or forbearance or to record criminally usurious loan transactions in violation of N.J.S.A. 2C:21-19a, contrary to the provisions of N.J.S.A. 2C:21-19c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Interest Rate

CRIMINAL USURY - FOURTH DEGREE

N.J.S.A. 2C:21-19f

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths, present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, the said Defendant(s), not being authorized or permitted by law to do so, knowingly did act or offer to act as a debt adjuster, that is, Defendant(s), did

[option 1] act or offer to act for consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, (or)

[option 2] for the purpose of settling, compounding, or otherwise altering the terms of payment of a debt(s) of a debtor, receive money or property from the debtor, or on behalf of the debtor, for payment to or distribution among the creditors of the debtor, contrary to the provisions of N.J.S.A. 2C:21-19f, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1 or 2

PRACTICE OF MEDICINE BY UNLICENSED PERSON - THIRD DEGREE

N.J.S.A. 2C:21-20

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court,

[Option A] knowing that he did not possess a license or permit to practice (medicine)(surgery)(podiatry), did

(or)

[Option B] knowing that his license or permit to practice (medicine)(surgery)(podiatry) was suspended, revoked or otherwise limited by an order entered by the State Board of Medical Examiners, did

(and)

[option 1] engage in that practice,

(or)

[option 2] exceed the scope of practice permitted by the board order,

(or)

[option 3] hold himself out to the public or any person as being eligible to engage in that practice,

(or)

[option 4] engage in an activity for which such license or permit is a necessary prerequisite,

(or)

[option 5] practice (medicine)(surgery)(podiatry) under a false or assumed name or did falsely impersonate another person

licensed by the board,

contrary to the provisions of N.J.S.A. 2C:21-20, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose from option A or B, and option 1, 2, 3, 4 or 5.

PIRATING RECORDS - \_\_\_\_\_ Degree\*

N.J.S.A. 2C:21-21(c)(1), (2), (4)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about/between or among Date, in the Town, City of Municipality, in the County of County, and within the jurisdiction of this Court, knowingly did [option 1] transfer sounds recorded on specify # of sound recording(s) sound recording(s), without the consent of the owner, and with the intent to sell the sound recording(s) or use to use the sound recording(s) to promote the sale of a product and which sound recording(s) was/were initially fixed prior to February 15, 1972,

(or)

[option 2] transport, advertise, sell, resell, rent or offer for rental, sale or resale number sound recording(s) or audio visual work(s), knowing that the said sound recording(s) or audio visual work(s) was/were produced in violation of the New Jersey Anti-Privacy Act, that is, state unlawful mean of production,

(or)

[option 3] for commercial advantage or private financial gain sell, resell, rent, transport, advertise or offer for sale, resale or rental, or possess with the intent to advertise, sell, resell, rent or transport number sound recording(s) or audio visual work(s) the label, cover, box or jacket of which does not clearly and conspicuously disclose the true name and address of

manufacturer, or, (in the case of a sound recording only) the name of the actual performer or group,

contrary to the provisions of N.J.S.A. 2C:21-21(c), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
  2. Date of offenses
  3. Municipality and county of offenses
  4. Conform options as needed
- \* N.J.S.A. 2C:21-21d for grading of offenses.

PIRATING RECORDS - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:21-21(c)(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, in the County of County, and within the jurisdiction of this Court, the said Defendant(s), knowingly did manufacture or transfer or did record or fix number sound recording(s) or audio visual work(s) with the intent to sell or distribute for commercial advantage or private gain, with the knowledge that the live performance had been recorded or fixed without the consent of the owner of the said live performance, contrary to the provisions of N.J.S.A. 2C:21-21(c)(3), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offenses
  3. Municipality and county of offenses
  4. Describe recording or performance pirated
- \* N.J.S.A. 2C:21-21d for grading of offenses.

ENDANGERING WELFARE OF CHILD - FOURTH DEGREE

N.J.S.A. 2C:24-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly, did engage in sexual conduct which would impair or debauch the morals of a child under the age of 16, that is, Victim's initials born DOB, contrary to the provisions of N.J.S.A. 2C:24-4a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name (initials) of victim
5. Victim's date of birth

ENDANGERING THE WELFARE OF A CHILD - THIRD DEGREE

(Child Abuse or Neglect)

N.J.S.A. 2C:24-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, having a legal duty for the care of, or having assumed responsibility for the care of Victim's initials, born DOB, knowingly did cause harm to Victim's initials, making Victim's initials an abused or neglected child as defined in R.S. 9:6-1, R.S. 9:6-3 and P.L. 1974, c.119, s.1, (C. 9:6-8:21), contrary to the provisions of N.J.S.A. 2C:24-4a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name (initials) of victim
5. Victim's date of birth

ENDANGERING THE WELFARE OF A CHILD - THIRD DEGREE

(Impairing Morals of Minor Child by Parent)

N.J.S.A. 2C:24-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, having a legal duty for the care of Victim, born DOB, knowingly did engage in sexual conduct which would impair or debauch the morals of the said child, contrary to the provisions of N.J.S.A. 2C:24-4a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name (initials) of victim
5. Victim's date of birth

WILLFUL NON-SUPPORT - FOURTH DEGREE

N.J.S.A. 2C:24-5

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did commit the crime of willful non-support, in that Defendant(s) willfully did fail to provide support which the said Defendant(s) knew he/she was legally obliged to provide to Name of dependent(s), contrary to the provisions of N.J.S.A. 2C:24-5, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name/relationship (if applicable) of dependent(s)

ENDANGERING THE WELFARE OF THE ELDERLY OR  
THE DISABLED - FOURTH DEGREE

N.J.S.A. 2C:24-8

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, having a legal duty (or having assumed a continuing responsibility) for the care of Name of Individual, who is 60 years of age or older (or disabled), knowingly did, unreasonably neglect to (or failed to permit an act to be done) Specify Act or Violation, for the physical or mental health of Name of Individual, contrary to the provisions of N.J.S.A. 2C:24-8, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Choose between legal duty or assumed responsibility
5. Name of individual cared for
6. Choose between neglected or failed to permit act
7. Specify action

BRIBERY IN OFFICIAL MATTERS - SECOND DEGREE\*

N.J.S.A. 2C:27-2c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did directly or indirectly offer, confer or agree to confer upon public servant name and title, a benefit, that is, benefit having a value in excess of \$200\*, as consideration for the violation of an official duty of the said public servant, contrary to the provisions of N.J.S.A. 2C:27-2(c), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of public servant
5. Describe benefit

\* If the benefit offered or conferred is less than \$200.00 in value, the offense is a third degree crime.

THREATENING AND IMPROPER INFLUENCE IN  
OFFICIAL AND POLITICAL MATTERS - THIRD DEGREE

N.J.S.A. 2C:27-3a(1)\*

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did directly or indirectly threaten to harm name of individual, by specify threat, with the purpose to influence a decision, (opinion) (recommendation) (vote) (exercise of discretion) of name of individual, a public servant, (party official) (voter) on specify public issue or public election, contrary to the provisions of N.J.S.A. 2C:27-3a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of individual threatened
5. Specify threat
6. Choose between acts to be influenced and type of public official
7. Specify public issue sought to be influenced

\* N.J.S.A. 2C:27-3a(2) and (3) provide third degree offenses for threats to; (2) influence a judicial or administrative proceeding, and; (3) influence a public or party official to violate their official duty. The indictment form should be changed accordingly, to reflect the specific act subject to the threat.

COMPENSATION FOR PAST OFFICIAL  
BEHAVIOR - SECOND DEGREE\*

N.J.S.A. 2C:27-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did directly or indirectly, solicit\*\* (accept) (agree to accept) a benefit, specify benefit, in an amount having a value in excess of \$200.00\* as compensation for having, as describe or state position as a public servant, given a decision, (opinion) (recommendation) (vote) (otherwise exercised a discretion) (for violating his official duty) (for performing his official duty) that is, describe decision or action, contrary to the provisions of N.J.S.A. 2C:27-4, and against the peace of this State, the government, and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Chose method of solicitation
5. Specify benefit
6. Describe public position
7. Choose act
8. Describe action taken in exchange for solicitation

\* It is a crime of the Third Degree if the value of the benefit is \$200 or less.

\*\* N.J.S.A. 2C:27-4 also, criminalizes the offer to give, or the giving or agreeing to give a benefit in exchange for an action by a public official. The indictment form should be changed to reflect difference where noted.

RETALIATION FOR PAST OFFICIAL  
ACTION - FOURTH DEGREE

N.J.S.A. 2C:27-5

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did harm name of person, by an unlawful act, that is, specify act, with the purpose to retaliate for or on account of the service of name of person, acting as specify person's position as a public servant, a public servant, contrary to the provisions of N.J.S.A. 2C:27-5, and against the peace of this State, the government, and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of offense
4. Name of individual harmed
5. Specify unlawful act
6. Specify individual's position as public servant

GIFTS TO PUBLIC SERVANTS - THIRD DEGREE

(Public Servant)

N.J.S.A. 2C:27-6a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly and under color of his office, did directly or indirectly solicit (accept) (agree to accept) a benefit not allowed by law to influence the performance of his official duties, that is, Defendant(s), (the) (an) title and position as public servant, did solicit (accept) (agree to accept) description of benefit to influence the performance of his official duties, contrary to the provisions of N.J.S.A. 2C:27-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of crime
4. Title of public servant
5. Description of benefit

GIFTS TO PUBLIC SERVANTS - THIRD DEGREE

(Citizen)

N.J.S.A. 2C:27-6b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did directly or indirectly confer (agree to confer) a benefit not allowed by law to influence the performance of a public servant's official duties, that is, Defendant(s), did confer (agree to confer) description of benefit to influence the performance of the official duties of name and title of public servant, contrary to the provisions of N.J.S.A. 2C:27-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of crime
4. Title of public servant
5. Description of benefit

COMPENSATING PUBLIC SERVANT - SECOND DEGREE\*

(Public Servant)

N.J.S.A. 2C:27-7a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, being a public servant, knowingly, directly or indirectly did receive a benefit, that is, description of benefit, having a value of approximately \$Amount \*, in connection with the furnishing to or for the government of any goods, supplies, property or services, that is description, for which the agreement or contract is made, or the expense or consideration is paid, by the branch, subdivision or agency which employs the said public servant, contrary to the provisions of N.J.S.A. 2C:27-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date(s) of crime
3. Municipality and county of crime
4. Title of public servant
5. Description of benefit
6. Description of goods, supplies, property or services

\* If the benefit received is \$200 or less, it is a crime of the Third Degree.

COMPENSATING PUBLIC SERVANT - SECOND DEGREE\*

(Citizen)

N.J.S.A. 2C:27-7b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did pay (offer) (agree to pay) a benefit, that is, description of benefit, having a value of approximately \$Amount\*, to a public servant, that being, name and title of public servant, knowing that acceptance of said benefit by the said public servant to be unlawful, contrary to the provisions of N.J.S.A. 2C:27-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date(s) of crime
3. Municipality and county of crime
4. Name and title of public servant
5. Description of benefit

\* If the benefit paid, offered or agreed upon is of \$200 or less, it is a crime of the Third Degree.

PERJURY - THIRD DEGREE

N.J.S.A. 2C:28-1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did appear at an official proceeding, namely, in the matter of proceeding caption, was duly sworn under oath or equivalent affirmation and at such proceeding Defendant(s) did make a false material statement(s) among other things in substance and in effect as follows: (Assistant Prosecutor must supply statement(s)), which statement(s) Defendant(s) did not believe to be true, contrary to the provisions of N.J.S.A. 2C:28-1, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Location and caption of proceeding
  5. Substance of statement
- \* Materiality is a legal issue for a judicial determination; the Prosecutor may want to set forth the basis for materiality for trial strategy.

PERJURY - THIRD DEGREE

N.J.S.A. 2C:28-1 (Alternative)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did appear at an official proceeding, namely, in the matter of supply proceeding caption and did swear under oath or equivalent affirmation to the truth or a material statement(s) which Defendant(s) had previously made, in substance and in effect as follows: (Assistant Prosecutor must supply statement(s)), which statement(s): Defendant(s) did not believe to be true, contrary to the provisions of N.J.S.A. 2C:28-1, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Location and caption of proceeding
  5. Substance of statement
- \* Materiality is a legal issue for a judicial determination; the Prosecutor may want to set forth the basis for materiality for trial strategy.

FALSE SWEARING - FOURTH DEGREE

N.J.S.A. 2C:28-2a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did option A or B (Assistant Prosecutor must supply statement(s)) and such statement(s) Defendant(s) did not believe to be true, contrary to the provisions of N.J.S.A. 2C:28-2a, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. falsely state while under oath or equivalent affirmation, in substance and in effect as follows:
- B. falsely swear or affirm to the truth of a statement which had been previously made, in substance and in effect as follows:

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Substance of false statement

**FALSE SWEARING - FOURTH DEGREE**

(Inconsistent Statements)

**N.J.S.A. 2C:28-2a and c**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did state while under oath or equivalent affirmation in substance and in effect as follows: Statement, and whereas Defendant(s), on or about Date, in the Town, City, of Municipality, County of County, did state while under oath or equivalent affirmation in substance and in effect as follows: Statement, and Defendant(s) subscribed to both statements, one or the other of which was a false statement which the defendant did not believe to be true, contrary to the provisions of N.J.S.A. 2C:28-2a and c, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Substance of both statements

UNSWORN FALSIFICATION - FOURTH DEGREE

N.J.S.A. 2C:28-3a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did make a written false statement which he did not believe to be true on or pursuant to a form, that is describe form, said form bearing notice, authorized by law, to the effect that false statements made therein are punishable, contrary to the provisions of N.J.S.A. 2C:28-3a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Description of form

FALSE INCRIMINATION - FOURTH DEGREE

N.J.S.A. 2C:28-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did give or cause to give false information to law enforcement officer, of the police agency, with purpose to falsely implicate Victim in the commission of an offense, contrary to the provisions of N.J.S.A. 2C:28-4a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of law enforcement officer
5. Name of police agency
6. Name of victim

\* The statute does not specify whether the defendant must have purpose to implicate another in connection with a crime or whether any criminal offense will suffice. This model indictment assumes that any criminal offense is sufficient. If the statute is interpreted to require implication in connection with a crime, this model indictment should be amended.

**WITNESS TAMPERING - THIRD DEGREE\***

(force, deception, threat or bribe used)

**N.J.S.A. 2C:28-5a**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, believing that an official proceeding or investigation was pending or about to be instituted, knowingly did attempt to induce or otherwise cause name of witness or informant, to describe offensive conduct using the appropriate statutory terms from N.J.S.A. 2C:28-5a(1), (2), (3) or (4), contrary to the provisions of N.J.S.A. 2C:28-5a and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY:**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Description of offensive conduct:
  - (1) testify/inform falsely;
  - (2) withhold testimony/information;
  - (3) elude legal process, or
  - (4) absent himself.

**NOTE:** If the defendant tampered with a confidential informant you may wish to avoid public exposure of the informant's identity until the trial. If so, do not name the informant in the indictment.

This crime is a second degree if force is used, the phrase "by the employment of force" should be inserted after the description of the offense conduct.

RETALIATION AGAINST A WITNESS OR INFORMANT - FOURTH DEGREE

N.J.S.A. 2C:28-5b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did harm victim's name, by an unlawful act with purpose to retaliate for or on account of the service of victim's name as a witness or informant, contrary to the provisions of N.J.S.A. 2C:28-5b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of victim

WITNESS OR INFORMANT TAKING BRIBE - THIRD DEGREE

N.J.S.A. 2C:28-5c

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, being a witness or informant, did (solicit) (accept) (agree to accept) describe the benefit as a benefit in consideration of the said Defendant(s) option 1, 2, 3 or 4, contrary to the provisions of N.J.S.A. 2C:28-5c, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Describe position of defendant
5. Describe benefit
6. Describe conduct per N.J.S.A. 2C:28-5a(1)(2)(3)(4)

\*OPTIONS

- (1) testifying or informing falsely
- (2) withholding any testimony, information, document or thing
- (3) eluding legal process summoning Defendant to testify or supply evidence
- (4) absenting him (her) self from a (proceeding) (investigation) to which Defendant had been legally summoned

FABRICATING PHYSICAL EVIDENCE - FOURTH DEGREE

N.J.S.A. 2C:28-6(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, believing that an official proceeding or investigation was pending or about to be instituted, knowingly did (make) (devise) (prepare) (present) (offer) (use) an object, article, record, document or other thing of physical substance, that is, description, knowing it to be false and with purpose to mislead a public servant who is engaged in such proceeding or investigation, contrary to the provisions of N.J.S.A. 2C:28-6(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

TAMPERING WITH PUBLIC RECORDS OR INFORMATION - THIRD DEGREE

N.J.S.A. 2C:28-7a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud or injure, did make a false entry in a - or - a false alteration of a record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government, that is, the said Defendant(s), knowing the same to be false, did describe false entry or alteration in the specific record, document or thing, contrary to the provisions of N.J.S.A. 2C:28-7a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose between options
5. Describe falsity

TAMPERING WITH PUBLIC RECORDS OR INFORMATION - THIRD DEGREE

N.J.S.A. 2C:28-7a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud or injure did make, present offer for filing or use any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government, that is, identify the record document or thing and the falsity, contrary to the provisions of N.J.S.A. 2C:28-7a(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Describe falsity

TAMPERING WITH PUBLIC RECORDS OR INFORMATION - THIRD DEGREE

N.J.S.A. 2C:28-7a(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, with purpose to defraud or injure, purposely and unlawfully did destroy, conceal, remove, mutilate, or otherwise impair the verity or availability of any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government, that is, the said Defendant(s) did describe conduct and identify the record or thing, contrary to the provisions of N.J.S.A. 2C:28-7a(3), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Describe falsity

OBSTRUCTING ADMINISTRATION OF LAW  
OR OTHER GOVERNMENTAL FUNCTION - FOURTH DEGREE

N.J.S.A. 2C:29-1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did option A or B contrary to the provisions of N.J.S.A. 2C:29-1, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. obstruct, impair or prevent the administration of law or other governmental function thereby obstructing the investigation or detection of a crime or the prosecution of person for a crime
- B. prevent (attempt to prevent) public servant, a public servant, from lawfully performing an official function by means of intimidation, force, violence or physical interference or obstacle, or by means of any independently unlawful act, that is, describe the defendant's conduct, thereby obstructing the detection or investigation of a crime or the prosecution of persons for a crime,

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B

RESISTING ARREST - FOURTH DEGREE

N.J.S.A. 2C:29-2a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did prevent Officer's name, a law enforcement officer of the Name of department Police Department from effecting a lawful arrest by (using or threatening to use physical force or violence against) (using describe means to create a substantial risk of causing physical injury to) public servant or another, contrary to the provisions of N.J.S.A. 2C:29-2a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of officer(s)
5. Name of department
6. Describe means of creating risk if using that option

HINDERING APPREHENSION OR PROSECUTION - THIRD DEGREE\*

(Of Another Person)

N.J.S.A. 2C:29-3a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to hinder the apprehension, prosecution, conviction or punishment of another person, that is, name of person, did

harbor or conceal the said name of person provide or aid in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape,

(or)

suppress, by way of concealment or destruction, any evidence of the crime, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of the said name of person, or in the lodging of a charge against name of person,

(or)

prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of the said name of person, or in the lodging of a charge against the said name of person,

(or)

aid the said name of person to protect or expeditiously profit from an advantage derived from such crime,

(or)

volunteer false information to a law enforcement officer,

contrary to the provisions of N.J.S.A. 2C:29-3b, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date(s) of crime
3. Municipality and county of crime
4. Name of "Other Person."

**Prosecutor Must Select Appropriate Language**

- \* The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise, it is a disorderly persons offense.

HINDERING APPREHENSION OR PROSECUTION - THIRD DEGREE\*

(Of Self)

N.J.S.A. 2C:29-3b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with purpose to hinder his own apprehension, prosecution, conviction or punishment, did (insert appropriate language)

suppress, by way of concealment or destruction, any evidence of the crime or tamper with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against the said defendant,

(or)

prevent or obstruct by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against the said defendant,

(or)

prevent or obstruct by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against the said defendant,

(or)

volunteer false information to a law enforcement officer,

contrary to the provisions of N.J.S.A. 2C:29-3b, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date(s) of crime
3. Municipality and county of crime

**A\P Must Select Appropriate Language**

- \* The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise, it is a disorderly persons offense.

COMPOUNDING - SECOND DEGREE\*

(Accepting, Agreeing to Accept)

N.J.S.A. 2C:29-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did accept or agree to accept pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense or from seeking prosecution for an offense, contrary to the provisions of N.J.S.A. 2C:29-4, and against the peace of this State, the government and dignity of the same.

- \* If the thing of value accepted or agreed upon is any benefit of \$200 or less, an offense prescribed by this section is a crime of the Third Degree.

COMPOUNDING - SECOND DEGREE\*

(Confers, Agrees to Confer)

N.J.S.A. 2C:29-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did confer or agree to confer pecuniary benefit in consideration of another person refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense or from seeking prosecution for an offense, contrary to the provisions of N.J.S.A. 2C:29-4, and against the peace of this State, the government and dignity of the same.

\* If the thing of value conferred or agreed to be conferred is any benefit of \$200 or less, the offense proscribed by this section is a crime of the Third Degree.

ESCAPE - SECOND DEGREE

(Force or Weapon)

N.J.S.A. 2C:29-5(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did without lawful authority option A or B, and did employ option I, II, III or IV to effect the escape, contrary to the provisions of N.J.S.A. 2C:29-5, and against the peace of this State, the government and dignity of the same.

OPTION A or B

- A. remove himself(herself) from official detention
- B. fail to return to official detention following temporary leave granted for a specific purpose or limited period

OPTION I, II, III or IV

- I. force
- II. threat
- III. a deadly weapon
- IV. a dangerous instrumentality

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B
5. Choose option I, II, III or IV

**ESCAPE - THIRD DEGREE**

(No Force or Weapon)

N.J.S.A. 2C:29-5(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did without lawful authority option A or B, contrary to the provisions of N.J.S.A. 2C:29-5, and against the peace of this State, the government and dignity of the same.

**OPTIONS**

- A. remove himself(herself) from official detention
- B. fail to return to official detention following temporary leave granted for a specific purpose or limited period

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A or B

**ESCAPE - THIRD DEGREE**  
**(Absconding from Parole)**

**N.J.S.A. 2C:29-5(b)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, the said Defendant(s), being a person subject to parole and with purpose to avoid supervision, did option A or B, contrary to the provisions of N.J.S.A. 2C:29-5(b), and against the peace of this State, the government and dignity of the same.

**OPTIONS**

- A. go into hiding
- B. leave the State

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A or B

PERMITTING ESCAPE - \_\_\_\_\_ \* DEGREE

N.J.S.A. 2C:29-5(c)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, being a public servant concerned with detention, that is, a job title, knowingly (recklessly) did permit an escape,\* contrary to the provisions of N.J.S.A. 2C:29-5(c), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Defendant(s) job title

\* Permitting escape is a crime of the Third Degree unless one of the following elements exists, in which case it is a crime of the Second Degree, and the following language should be added: the said escape being one effected through the use of (force) (a threat) (a deadly weapon) (a dangerous instrumentality).

IMPLEMENTS FOR ESCAPE - THIRD DEGREE\*\*

(Inmate Procuring)

N.J.S.A. 2C:29-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly and unlawfully did, while an inmate in name of institution\*, procure, make, or otherwise provide himself with or have in his possession implement of escape or weapon\*\*, contrary to the provisions of N.J.S.A. 2C:29-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of institution
5. Type of implement or weapon

\* Must be institution as defined in N.J.S.A. 2C:4-8, (or detention facility).

\*\* It is a second degree crime if the item is a weapon as defined at N.J.S.A. 2C:39-1(r).

IMPLEMENTS FOR ESCAPE - THIRD DEGREE\*\*

(Other Person Introducing or Providing)

N.J.S.A. 2C:29-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly and unlawfully did option A or B, which could be useful for escape, contrary to the provisions of N.J.S.A. 2C:29-6, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. introduce within name of institution or detention facility, type of weapon, tool, instrument or document
- B. provide name of inmate a type of implement or weapon

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of institution or inmate
5. Type of implement or weapon

\* Must be institution as defined in N.J.S.A. 2C:4-8, (or detention facility).

\*\* It is a Second Degree crime for the introduction of a weapon as defined at N.J.S.A. 2C:39-1(r) into an institution or detention facility.

BAIL JUMPING - THIRD OR FOURTH DEGREE\*

N.J.S.A. 2C:29-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, having been set at liberty by court order in the Matter of State v. Defendant(s) name, County Indictment Number number, upon condition that he would appear at a specified time and place, namely, date and place, in connection with an offense punishable by a period of incarceration, that is, offense and degree, did without lawful excuse fail to appear, contrary to the provisions of N.J.S.A. 2C:29-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. County and indictment number
5. Date and place of required appearance
6. Offense and degree

\* Where the underlying offense is a crime of the Third Degree or greater, bail jumping is a crime of the Third Degree. Where the underlying offense is a crime of the Fourth Degree, bail jumping is a crime of the Fourth Degree.  
N.J.S.A. 2C:29-7.

**CORRUPTING OR INFLUENCING A JURY - THIRD DEGREE**

**N.J.S.A. 2C:29-8**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly\* did\*\*

[OPTION 1] directly or indirect, corrupt, influence, or attempt to corrupt or influence a jury or juror to be more favorable to the one side than to the other by promises, persuasions, entreaties, threats, letters, money, entertainment or other sinister means, (or)

[OPTION 2] employ any unfair or fraudulent practice, art or contrivance to obtain a verdict, (or)

[OPTION 3] attempt to instruct a jury or juror beforehand at any place or time, or in any manner or way, by the strength of the evidence, the arguments of the parties or their counsel, or the opinion or charge of the court,

contrary to the provisions of N.J.S.A. 2C:29-8\*, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose acts

\* Note that for attempts, the appropriate mental state is purposely, vice knowingly.

\*\* To convert the Third Degree crime of corrupting or influencing a jury to a crime of the second degree, insert the statutory phrase, "by means of violence or the threat of violence," after the culpability phrase "knowingly did", and delete inapplicable language

**JUROR CONTACT WITH MEDIA - FOURTH DEGREE**

N.J.S.A. 2C:29-8.1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, the said Defendant(s), a person empaneled as a specify petit or grand juror, in a criminal action in this State, knowingly did, before the rendering of a verdict, entry of a plea, or the termination of service as a grand juror, solicit, negotiate, accept or agree to accept a contract for a movie, book, magazine article, other literary expression, recording, radio or television presentation, or live entertainment or presentation of any kind which would depict his service as a juror, contrary to the provisions of N.J.S.A. 2C:29-8.1, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify petit or grand juror
5. Specify acts

OFFICIAL MISCONDUCT - \_\_\_\_\_ DEGREE\*

N.J.S.A. 2C:30-2

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, being a public servant, that is, title, and acting with a purpose to A and/or B and/or C and/or D, did E and/or F, that is, the said Defendant(s) knowingly did describe the specific act or omission, contrary to the provisions of N.J.S.A. 2C:30-2, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. obtain a benefit for himself
- B. obtain a benefit for another
- C. to injure another
- D. to deprive another of a benefit
- E. commit an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was committed in an unauthorized manner
- F. refrain from performing a duty imposed upon him by law or clearly inherent in the nature of his office

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Unauthorized act if (applicable)
5. Degree of crime

\* If the benefit obtained or sought is solely pecuniary and of a value of \$200 or less, the crime is of the Third Degree.  
N.J.S.A. 2C:30-2.

SPECULATING OR WAGERING ON OFFICIAL  
ACTION OR INFORMATION - SECOND\* DEGREE

N.J.S.A. 2C:30-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, in contemplation of official action by defendant or by a governmental unit with which the said defendant is or has been associated, namely specify governmental unit if appropriate, or in reliance on information to which defendant has or has had access in an official capacity and which has not been made public, knowingly did option A, B or C, thereby acquiring a benefit, or having sought to acquire a benefit of a value of more than \$200, contrary to the provisions of N.J.S.A. 2C:30-3, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. acquire a pecuniary interest in any property, transaction or enterprise which may be affected by such information or official
- B. speculate or wager on the basis of such information or official action
- C. aids another to specify by restating the language in either A or B above while in office, or after leaving office with a purpose of using such information,

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Amount of benefit
- 5. Choose option A, B or C

**PROSECUTOR SHOULD**

1. If "C" is appropriate based on the facts, Prosecutor should specify either A or B by restating the appropriate A or B language.
2. Specify the governmental unit.
- \* If value of benefit is \$200 or less, it is a crime of the Third Degree.

DISBURSEMENT OF MONEY OR INCURRING OF  
OBLIGATION BY PUBLIC OFFICIAL IN  
EXCESS OF APPROPRIATIONS OR LIMITS - FOURTH DEGREE

N.J.S.A. 2C:30-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, being a member of a board or body charged with or having the control of a State office, division, department or institution or a member of a county or municipal governing body, or a member of a board of education, that is, specify, purposely and knowingly did

[OPTION 1] disburse, order or vote for the disbursement of public moneys in excess of the appropriation for that office, division, department, institution, board or body, (or)

[OPTION 2] incur obligations in excess of the appropriation and limit of expenditure provided by law for that office, division, department, institution, board or body,

contrary to the provisions of N.J.S.A. 2C:30-4, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify body or board

RIOT - THIRD DEGREE\*

N.J.S.A. 2C:33-1a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, with purpose to option I A or B did participate, with four or more other persons in a course of disorderly conduct as defined in N.J.S.A. 2C:33-2a, option II A or B, contrary to the provisions of N.J.S.A. 2C:33-1a, and against the peace of this State, the government and dignity of the same.

OPTIONS I

- A. commit or facilitate the commission of a crime
- B. prevent or coerce official action

OPTIONS II

- A. in which a firearm or other deadly weapon was used by one of the participants known to the defendant(s)
- B. knowing that a firearm or other deadly weapon would be used or was planned to be used by at least one of the participants

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose A or B in options

\*Note: Delete option II if inapplicable and change to a crime of the Fourth Degree.

FALSE PUBLIC ALARMS - FOURTH\* DEGREE

N.J.S.A. 2C:33-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did cause a false alarm of an option I, II, III, IV, V or VI to be transmitted to the (\_\_\_\_\_ Police Department) (\_\_\_\_\_, an official organization for dealing with emergencies involving danger to life or property), knowing the said alarm would be likely to cause option A, B, C, D or E, [choose one and if A, B or C, identify the location,] [\*to charge a crime of the Third Degree, add: and the said Defendant(s), did place or cause to be placed a false or facsimile bomb in the said (building) (place) (facility)], contrary to the provisions of N.J.S.A. 2C:33-3, and against the peace of this State, the government and dignity of the same.

OPTIONS

- I. impending fire
- II. explosion
- III. bombing
- IV. crime
- V. catastrophe
- VI. emergency

**OPTIONS**

- A. evacuation of building
- B. evacuation of a place of assembly
- C. evacuation of facility of public transport
- D. public inconveniences
- E. alarm

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Name of police department or other official organization

PLACING SIGNS OR DISPLAYS THAT IMPLY  
THREATS OR VIOLENCE - THIRD DEGREE

N.J.S.A. 2C:33-10

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely, knowingly or recklessly did put [\*purposely did attempt to put] another in fear of bodily violence by placing on specify location (may be public or private property) a symbol, an object, a characterization, an appellation or graffiti that exposes another to threats of violence, contempt, or hatred on the basis of race, color, creed or religion,\*\* contrary to the provisions of N.J.S.A. 2C:33-10, and against the peace of this State, the government and dignity of the same.

\* If "purposely did attempt to put" is used, the Prosecutor must insert "thereby causing a serious and imminent likelihood of causing fear of unlawful bodily violence," at\*\*

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify location of property

PROSECUTOR SHOULD

1. Select culpability requirement. Note that "purposely" includes all lower mental states but "recklessly" does not including knowingly or purposely. Select an appropriate culpability requirement based on facts.
2. Note: If "attempt to put" is selected, prosecutor must plead that "action caused serious and imminent likelihood of causing fear of unlawful bodily violence."

DEFACEMENT OR DAMAGE TO PROPERTY - FOURTH DEGREE

(Threat of Violence)

N.J.S.A. 2C:33-11

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did deface or damage, without authorization of the owner or tenant, the private premises or the property of name and description of property\* by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence, contempt or hatred on the basis of race, color, creed or religion, contrary to the provisions of N.J.S.A. 2C:33-11, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name and description of private premises or property

\*Note: Property must meet criteria in N.J.S.A. 2C:33-11.

USE OF PAGING DEVICE WHILE ENGAGED IN COMMISSION  
OF CHAPTER 35 AND 36 OFFENSES - FOURTH DEGREE

N.J.S.A. 2C:33-20

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, while engaged in option A, B, C or D, did use a remotely activated paging device, contrary to the provisions of N.J.S.A. 2C:33-20, and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. the commission of a crime or offense (in violation of N.J.S.A. 2C:35-1, et seq.) (in violation of N.J.S.A. 2C:36-1, et seq.)
- B. an attempt to commit a crime or offense (in violation of N.J.S.A. 2C:35-1, et seq.) (in violation of N.J.S.A. 2C:36-1, et seq.)
- C. flight after committing a crime or offense (in violation of N.J.S.A. 2C:35-1, et seq.) (in violation of N.J.S.A. 2C:36-1, et seq.)
- D. flight after attempting to commit any crime or offense (in violation of N.J.S.A. 2C:35-1, et seq.) (in violation of N.J.S.A. 2C:36-1, et seq.)

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B, C or D

USE OF INFORMATION INTERCEPTED FROM POLICE, FIRE  
OR EMERGENCY MEDICAL COMMUNICATIONS SYSTEM TO FACILITATE  
COMMISSION OF CRIME - FOURTH DEGREE

N.J.S.A. 2C:33-21

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oaths present that Defendant(s), on  
or about Date, in the City, Town of Municipality,  
County of County, and within the jurisdiction of this Court,  
option A or B, and did use the information obtained thereby  
option C or D, contrary to the provisions of N.J.S.A.  
2C:33-21, and against the peace of this State, the government and  
dignity of the same.

OPTIONS

- A. knowingly did intercept a message or transmission made on or  
over any police, fire, or emergency medical communications  
system
- B. the said Defendant(s), being the recipient of information  
known to be information from an interception of a message or  
transmission made on or over any police, fire, or emergency  
medical communications system
- C. to facilitate the commission of or the attempt to commit a  
crime or a violation of any law of this State
- D. in a manner which interfered with the discharge of police  
operations

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A or B
- 5. Choose option C or D

UNLAWFUL POSSESSION OF RADIO CAPABLE OF RECEIVING  
POLICE, FIRE, OR EMERGENCY MEDICAL COMMUNICATIONS  
SYSTEM TO FACILITATE COMMISSION OF CRIME - FOURTH DEGREE

N.J.S.A. 2C:33-22

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, while in the course of committing or attempting to commit a crime, (including the immediate flight therefrom) knowingly did possess or control a radio capable of receiving a message or transmission made on or over a police, fire or emergency medical communication system, contrary to the provisions of N.J.S.A. 2C:33-22, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

PROMOTING PROSTITUTION - THIRD DEGREE

N.J.S.A. 2C:34-1b(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did promote prostitution by

[OPTION 1] owning, controlling, managing, supervising or otherwise keeping, alone or in association with another, a house of prostitution or a prostitution business, (or)

[OPTION 2] procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate, (or)

[OPTION 3] encouraging, inducing or otherwise purposely causing another to become or remain a prostitute,

contrary to the provisions of N.J.S.A. 2C:34-1b(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1, 2, or 3 - method of promoting prostitution, delete inapplicable options

LEADER OF A NARCOTICS TRAFFICKING  
NETWORK - FIRST DEGREE

N.J.S.A. 2C:35-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did conspire with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to unlawfully manufacture, distribute, dispense, bring into or transport in this State option 1-5, contrary to the provisions of N.J.S.A. 2C:35-3, and against the peace of this State, the government and dignity of the same.

OPTIONS

1. methamphetamine
2. lysergic acid diethylamide
3. phencyclidine
4. name of CDS, a Schedule I controlled dangerous substance
5. name of CDS, a Schedule II controlled dangerous substance

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offenses
3. Municipality and county of offenses
4. Option 1-5

**MAINTAINING OR OPERATING A CONTROLLED DANGEROUS  
SUBSTANCE PRODUCTION FACILITY - FIRST DEGREE**

N.J.S.A. 2C:35-4

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did maintain or operate (knowingly did participate in the maintenance or operations of) a premise, place or facility used for manufacturing a controlled dangerous substance, that is, specify CDS, contrary to the provisions of N.J.S.A. 2C:35-4 and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify type of CDS (must conform to statutory limitations)

Note: A marijuana production facility is not punishable under this statute.

DISTRIBUTION OF HEROIN OR COCAINE  
IN A QUANTITY OF FIVE OUNCES  
OR MORE - FIRST DEGREE

N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths, present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did distribute option 1 or 2 in a quantity of five ounces or more including any adulterants or dilutants, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1 or 2
  1. heroin
  2. cocaine

POSSESSION WITH INTENT TO DISTRIBUTE HEROIN  
OR COCAINE IN A QUANTITY OF ONE-HALF OUNCE  
OR MORE BUT LESS THAN FIVE OUNCES - SECOND DEGREE

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(2)

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oaths, present that Defendant(s), on or  
about Date, in the City, Town, of Municipality, County of  
County, and within the jurisdiction of this Court, knowingly or  
purposely did possess with intent to distribute option 1 or 2  
in a quantity of one-half ounce or more including any adulterants  
or dilutants, contrary to the provisions of N.J.S.A. 2C:35-5b(2),  
and against the peace of this State, the government and dignity  
of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1 or 2
  1. heroin
  2. cocaine

DISTRIBUTION OF HEROIN OR COCAINE - THIRD DEGREE

(In a quantity of less than one-half ounce)

N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths, present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did distribute option 1 or 2, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(3), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option 1 or 2
  1. heroin
  2. cocaine

**MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - SECOND DEGREE**

(Schedule I or II Narcotic Drug In  
A Quantity Of One Ounce Or More)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(4)

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oath present that Defendant(s), on  
or about Date, in the City, Town of Municipality, County  
of County, and within the jurisdiction of this Court, knowingly  
or purposely did option A, B, C or D, a controlled dangerous  
substance or a controlled dangerous substance analog, that is,  
name of CDS, a Schedule I or II narcotic drug, in a quantity  
of one ounce or more including any adulterants or dilutants,  
contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A.  
2C:35-5b(4), and against the peace of this State, the government  
and dignity of the same.

**OPTIONS**

- A. manufacture
- B. distribute
- C. dispense
- D. possess or have under (his/her/their) control with intent to  
manufacture, distribute or dispense

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B, C or D
- 5. Name of CDS
- 6. Schedule I or II

MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - THIRD DEGREE

(Schedule I or II Narcotic Drug In  
A Quantity Of Less Than One Ounce)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(5)

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oath present that Defendant(s), on or  
about Date, in the City, Town of Municipality, County  
of County, and within the jurisdiction of this Court, knowingly  
or purposely did option A, B, C or D a controlled dangerous  
substance or a controlled dangerous substance analog, that is,  
name of CDS, a Schedule I or II narcotic drug, contrary to  
the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(5),  
and against the peace of this State, the government and dignity  
of the same.

OPTIONS

- A. manufacture
- B. distribute
- C. dispense
- D. possess or have under (his/her/their) control with intent to  
manufacture, distribute or dispense

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Choose option A, B, C or D
- 5. Name of CDS
- 6. Schedule I or II

MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - SECOND DEGREE

(Methamphetamine in a Quantity of  
One Ounce or More)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(8)

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oath present that Defendant(s), on or  
about Date, in the City, Town of Municipality, County  
of County, and within the jurisdiction of this Court,  
knowingly or purposely did option A, B, C or D  
methamphetamine, or its analog, in a quantity of one ounce or  
more including any adulterants or dilutants, contrary to the  
provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(8), and  
against the peace of this State, the government and dignity of  
the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of Offense
4. Choose option A, B, C or D
  - A. manufacture
  - B. distribute
  - C. dispense
  - D. possess or have under (his/her/their) control with  
intent to manufacture, distribute or dispense

**MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - THIRD DEGREE**

(Methamphetamine in a Quantity of  
Less Than One Ounce)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(9)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oath present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did option A, B, C or D methamphetamine, or its analog, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(9), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality of Offense
4. Choose option A, B, C or D
  - A. manufacture
  - B. distribute
  - C. dispense
  - D. possess or have under (his/her/their) control with intent to manufacture, distribute or dispense

**MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - SECOND DEGREE**

(Marijuana in a Quantity of Five Pounds or More  
Hashish in a Quantity of One Pound or More)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(10)

The Grand Jurors of the State of New Jersey, for the County  
of County, upon their oath present that Defendant(s), on or  
about Date, in the City, Town of Municipality, County  
of County, and within the jurisdiction of this Court, knowingly  
or purposely did option A, B, C or D option 1 or 2  
including any adulterants and dilutants, contrary to the  
provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(10), and  
against the peace of this State, the government and dignity of  
the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality of Offense
4. Choose option A, B, C or D
  - A. manufacture
  - B. distribute
  - C. dispense
  - D. possess or have under (his/her/their) control with  
intent to manufacture, distribute or dispense
5. Choose option 1 or 2
  1. marijuana in a quantity of five pounds or more
  2. hashish in a quantity of one pound or more

**MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - THIRD DEGREE**

**(Marijuana in a Quantity of One Ounce or More  
Hashish in a Quantity of Five Grams or More)**

**N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(11)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oath present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did option A, B, C or D option 1 or 2 including any adulterants and dilutants, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(11), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality of Offense
4. Choose option A, B, C or D
  - A. manufacture
  - B. distribute
  - C. dispense
  - D. possess or have under (his/her/their) control with intent to manufacture, distribute or dispense
5. Choose option 1 or 2
  1. marijuana in a quantity of one ounce or more but less than five pounds
  2. hashish in a quantity of five grams or more but less than one pound

MANUFACTURING/DISTRIBUTION OF/DISPENSING/POSSESSION  
WITH INTENT TO MANUFACTURE/DISTRIBUTE/DISPENSE  
A CONTROLLED DANGEROUS SUBSTANCE - FOURTH DEGREE

(Marijuana Less Than One Ounce Or  
Hashish Less Than Five Grams)

N.J.S.A. 2C:35-5a(1) and  
N.J.S.A. 2C:35-5b(12)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oath present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did option A, B, C or D option 1 or 2 including any adulterants and dilutants, contrary to the provisions of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(12), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality of Offense
4. Choose option A, B, C or D
  - A. manufacture
  - B. distribute
  - C. dispense
  - D. possess or have under (his/her/their) control with intent to manufacture, distribute or dispense
5. Choose option 1 or 2
  1. marijuana in a quantity of less than one ounce
  2. hashish in a quantity of less than five grams

EMPLOYING A JUVENILE IN A DRUG DISTRIBUTION  
SCHEME - SECOND DEGREE

N.J.S.A. 2C:35-6

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), being at least 18 years of age, on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did use, solicit, direct, hire or employ a person 17 years of age or younger to violate N.J.S.A. 2C:35-4 or N.J.S.A. 2C:35-5a, contrary to the provisions of N.J.S.A. 2C:35-6, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY:

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

DISTRIBUTION OF/POSSESSION WITH INTENT TO DISTRIBUTE  
A CONTROLLED DANGEROUS SUBSTANCE ON OR WITHIN  
1000 FEET OF SCHOOL PROPERTY OR A SCHOOL BUS - THIRD DEGREE

N.J.S.A. 2C:35-7

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did option A or B name of CDS, in violation of N.J.S.A. 2C:35-5a, option 1 or 2 identify School or School Bus, which is owned by or leased to the \_\_\_\_\_ Board of Education and used for school purposes, contrary to the provisions of N.J.S.A. 2C:35-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s).
2. Date of offense.
3. Municipality of Offense.
4. Choose option A or B
  - A. distribute
  - B. possess with intent to distribute
5. Choose option 1 or 2
  1. while on
  2. while within 1000 feet of

DRUG INDUCED DEATH - FIRST DEGREE

N.J.S.A. 2C:35-9

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did manufacture, distribute or dispense a Schedule I or II controlled dangerous substance or analog thereof in violation of N.J.S.A. 2C:35-5a, that is, name of CDS or analog, and Decedent-Victim's Name, did die on or about Date at geographic location as the result of injecting, inhaling or ingesting the said name of CDS or analog manufactured, distributed or dispensed by the said Defendant(s), contrary to the provisions of N.J.S.A. 2C:35-9, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of CDS or analog
5. Name of decedent-victim
6. Date of death
7. Location of death

POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE - THIRD DEGREE

(Schedule I, II, III, IV)

N.J.S.A. 2C:35-10a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did possess a controlled dangerous substance, that is, Name of CDS, a Schedule I, II, III or IV controlled dangerous substance, contrary to the provisions of N.J.S.A. 2C:35-10a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of CDS and Schedule

**POSSESSION OF A CONTROLLED  
DANGEROUS SUBSTANCE - FOURTH DEGREE**

**(Marijuana Over 50 Grams or  
Hashish Over 5 Grams)**

**N.J.S.A. 2C:35-10a(3)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly or purposely did possess a controlled dangerous substance, that is, option A or B, including any adulterants or dilutants, contrary to the provisions of N.J.S.A. 2C:35-10a(3), and against the peace of this State, the government and dignity of the same.

**OPTIONS**

- A. marijuana in a quantity of more than 50 grams
- B. hashish in a quantity of more than 5 grams

**PROSECUTOR MUST SUPPLY**

- 1. Name of defendant(s)
- 2. Date offense
- 3. Municipality and county of offense
- 4. Select option A or B

DISTRIBUTION OF/POSSESSION WITH INTENT TO  
DISTRIBUTE AN IMITATION CONTROLLED  
DANGEROUS SUBSTANCE - THIRD DEGREE

N.J.S.A 2C:35-11a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did distribute, possess with intent to distribute a substance not a controlled dangerous substance, option 1, 2 or 3, contrary to the provisions of N.J.S.A 2C:35-11a, and against the peace of this State, the government and dignity of the same.

OPTIONS

1. upon the express or implied representation that the substance was a controlled dangerous substance
2. upon the express or implied representation that the substance was of such nature, appearance or effect that a recipient would be able to distribute or use the substance as a controlled dangerous substance
3. under circumstances which would lead a reasonable person to believe the substance was a controlled dangerous substance

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date(s) of crime
3. Municipality and county of crime
4. Select appropriate language

MANUFACTURING AN IMITATION CONTROLLED  
DANGEROUS SUBSTANCES - THIRD DEGREE

N.J.S.A 2C:35-11b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did manufacture, compound, encapsulate, package or imprint a substance not a controlled dangerous substance with the purpose that is resemble, duplicate the physical appearance of the finished form, package, label, imprint of a controlled dangerous substance, that is, name of CDS, contrary to the provisions of N.J.S.A 2C:35-11b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date(s) of crime
3. Municipality and county of crime
4. Name of CDS

OBTAINING A CONTROLLED DANGEROUS  
SUBSTANCE BY FRAUD - THIRD DEGREE

N.J.S.A. 2C:35-13

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did acquire or obtain possession of a controlled dangerous substance, that is, name of CDS, by misrepresentation, fraud, forgery, deception or subterfuge, contrary to the provisions of N.J.S.A. 2C:35-13, and against the peace of the State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of Controlled Dangerous Substance

**ATTEMPT TO OBTAIN A CONTROLLED  
DANGEROUS SUBSTANCE BY FRAUD - THIRD DEGREE**

**N.J.S.A. 2C:5-1 & N.J.S.A. 2C:35-13**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely did attempt to acquire or obtain possession of a controlled dangerous substance, that is, name of CDS, by misrepresentation, fraud, forgery, deception or subterfuge, contrary to the provisions of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:35-13, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of controlled dangerous substance

POSSESSION WITH INTENT TO DISTRIBUTE  
DRUG PARAPHERNALIA - FOURTH DEGREE

N.J.S.A. 2C:36-3

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess drug paraphernalia with the intent to distribute same, knowing that it would be used to option A, B, C or D, a controlled dangerous substance or controlled dangerous substance analog, in violation of N.J.S.A. 2C:35-1 et seq., contrary to the provisions of N.J.S.A. 2C:36-3; and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. plant, propagate, cultivate, grow or harvest
- B. manufacture, compound, convert, produce, process, prepare, test or analyze
- C. pack, repack, store, contain or conceal
- D. ingest, inhale of otherwise introduce into the human body

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date(s) of crime
- 3. Municipality and county of crime
- 4. Select appropriate language

PROMOTING GAMBLING - THIRD DEGREE  
(Lottery, Policy Scheme, Enterprise)

N.J.S.A. 2C:37-2a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did promote gambling by knowingly accepting or receiving money or other property, pursuant to an agreement or understanding with any person whereby the said Defendant(s) did participate or would participate in the proceeds of gambling activity, by receiving, in connection with an option A, B or C,

- A. illegal lottery
- B. illegal policy scheme
- C. illegal enterprise

option a or b

- a. money or written records from a person other than a player whose chances or plays are represented by such money or records,
- b. more than \$100 in any one day of money played in such

(If b, select) option A, B or C,

- A. illegal lottery
- B. illegal policy scheme
- C. illegal enterprise

contrary to the provisions of N.J.S.A. 2C:37-2, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A, B or C
5. Choose option a or b

PROMOTING GAMBLING - THIRD DEGREE

(Bookmaking)

N.J.S.A. 2C:37-2a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did promote gambling by knowingly accepting or receiving money or other property, pursuant to an agreement or understanding with any person whereby the said Defendant(s) did participate or would participate in the proceeds of gambling activity, by engaging in bookmaking to the extent that Defendant(s) did receive or accept in any one day more than five bets totalling more than \$1,000, contrary to the provisions of N.J.S.A. 2C:37-2a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY:

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

PROMOTING GAMBLING - FOURTH DEGREE

(Bookmaking)

N.J.S.A. 2C:37-2a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did promote gambling by knowingly accepting or receiving money or other property, pursuant to an agreement or understanding with any person whereby the said Defendant(s) did participate or would participate in the proceeds of gambling activity, by engaging in bookmaking to the extent that Defendant(s) did receive or accept three or more bets in any two week period, contrary to the provisions of N.J.S.A. 2C:37-2a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

PROMOTING GAMBLING - FOURTH DEGREE

(Bookmaking)

N.J.S.A. 2C:37-2a(1), (2) and b(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did promote gambling by knowingly

accepting or receiving money or other property, pursuant to an agreement or understanding with any person whereby the said Defendant(s) did (or would) participate in the proceeds of gambling activity

or

engaging in conduct which materially aids any form of gambling activity

by engaging in bookmaking to the extent that he received or accepted three or more bets in any two week period, contrary to the provisions of N.J.S.A. 2C:37-2a and N.J.S.A. 2C:37-2b(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Select appropriate language

PROMOTING GAMBLING - THIRD DEGREE

(Bookmaking)

N.J.S.A. 2C:37-2a(1), (2) and b(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did promote gambling by knowingly

accepting or receiving money or other property, pursuant to an agreement or understanding with any person whereby the said Defendant(s) did (or would) participate in the proceeds of gambling activity

or

engaging in conduct which materially aids any form of gambling activity

by engaging in bookmaking to the extent that he received or accepted in any one day more than five bets totaling more than \$1000, contrary to the provisions of N.J.S.A. 2C:37-2a and N.J.S.A. 2C:37-2b(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Select appropriate language

PROMOTING GAMBLING - THIRD DEGREE (Alternative)

(Lottery, Policy Scheme, Enterprise)

N.J.S.A. 2C:37-2a(1), (2) and b(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did promote gambling by knowingly

accepting or receiving money or other property, pursuant to an agreement or understanding with any person whereby the said Defendant(s) did (or would) participate in the proceeds of gambling activity, (or)

engaging in conduct which materially aids any form of gambling activity

by receiving, in connection with an Illegal lottery, illegal policy scheme, illegal enterprise,

(and)

money or written records from a person other than a player whose chances or plays are represented by such money or records, (or) more than \$100 in any one day of money played in such Illegal lottery, illegal policy scheme, illegal enterprise,

contrary to the provisions of N.J.S.A. 2C:37-2a and N.J.S.A. 2C:37-2b(2), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. **Name of defendant(s)**
2. **Date of offense**
3. **Municipality and county of offense**
4. **Select appropriate language**

POSSESSION OF GAMBLING RECORDS - THIRD DEGREE

(Bookmaking)

N.J.S.A. 2C:37-3a(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, with knowledge of the contents thereof, did possess a writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, constituting, reflecting or representing more than five bets totaling more than \$1000, contrary to the provisions of N.J.S.A. 2C:37-3a(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

POSSESSION OF GAMBLING RECORDS - THIRD DEGREE

(Lottery, Policy Scheme, Enterprise)

N.J.S.A. 2C:37-3a(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about the Date, in the Town, City, of Municipality, County of County, and within the jurisdiction of this Court, with knowledge of the contents thereof, did possess a writing, paper, instrument or article of a kind commonly used in the operation or promotion or play of an illegal lottery, illegal policy scheme, illegal enterprise, constituting, reflecting or representing more than one hundred plays or chances therein, contrary to the provisions of N.J.S.A. 2C:37-3a(2), and against the peace of this State, the Government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Select appropriate language

MAINTENANCE OF A GAMBLING RESORT - FOURTH DEGREE

(General)

N.J.S.A. 2C:37-4a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, having substantial proprietary or other authoritative control over premises being used with Defendant(s) knowledge for purposes of activity to occur or continue or make no effort to prevent its occurrence or continuation, did accept or receive money or other property pursuant to an agreement or understanding with any person whereby the said Defendant(s) did (or would) participate in the proceeds of such gambling activity on such premises, contrary to the provisions of N.J.S.A. 2C:37-4a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

MAINTENANCE OF A GAMBLING RESORT - FOURTH DEGREE

(Open to the Public)

N.J.S.A. 2C:37-4b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, having substantial proprietary or other authoritative control over premises open to the general public being used with Defendant(s) knowledge for purposes of gambling activity, did permit such gambling activity to occur or continue or did make no effort to prevent its occurrence or continuation, contrary to the provisions of N.J.S.A. 2C:37-4b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

**UNLAWFUL POSSESSION OF A PROHIBITED WEAPON - THIRD DEGREE**

**N.J.S.A. 2C:39-3a**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did have in his possession a prohibited weapon, that is, a type of weapon\*, serial number, etc., contrary to the provisions of N.J.S.A. 2C:39-3a, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of weapon\*, serial number

**NOTE:** List of weapons: destructive device, sawed-off shotgun, silencer (Fourth Degree) defaced firearm (Fourth Degree) certain weapons enumerated in N.J.S.A. 2C:39-3e.

PROHIBITED WEAPON - THIRD DEGREE

(Sawed-off Shotgun)

N.J.S.A. 2C:39-3b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a sawed-off shotgun, contrary to the provisions of N.J.S.A. 2C:39-3b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

PROHIBITED WEAPON - FOURTH DEGREE

N.J.S.A. 2C:39-3e

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a certain weapon, that is, Type of weapon without any explainable lawful purpose, contrary to the provisions of N.J.S.A. 2C:39-3e, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of weapon

\* Weapons are defined as "any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sand club, slingshot, cestuis or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife ; ... " N.J.S.A. 2C:39-3e.

**PROHIBITED DEVICES - FOURTH DEGREE**

**(Possession of Dum-Dum (Hollow Nose)  
or Body Armor Penetrating Bullets)**

**N.J.S.A. 2C:39-3f**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a certain weapon or device, that is, type of bullet, contrary to the provisions of N.J.S.A. 2C:39-3f, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of bullet

\* See N.J.S.A. 2C:39-3 for exemptions.

See N.J.S.A. 2C:39-3f for definition of bullets.

PROHIBITED DEVICES - FOURTH DEGREE

(Stun gun)

N.J.S.A. 2C:39-3h

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a stun gun, contrary to the provisions of N.J.S.A. 2C:39-3h, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

UNLAWFUL POSSESSION OF A LARGE CAPACITY  
AMMUNITION MAGAZINE - FOURTH DEGREE

N.J.S.A. 2C:39-3j

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a large capacity ammunition magazine, contrary to the provisions of N.J.S.A. 2C:39-3j, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

POSSESSION OF A WEAPON FOR AN  
UNLAWFUL PURPOSES - SECOND DEGREE\*

N.J.S.A. 2C:39-4(insert a, b, c or d)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, did possess a certain weapon, that is, type of weapon\* with purpose to use it unlawfully against the person or property of another, contrary to the provisions of N.J.S.A. 2C:39-4(insert a, b, c or d), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of weapon\* - note change in degree
  - a. firearm - N.J.S.A. 2C:39-4(a)
  - b. explosives - N.J.S.A. 2C:39-4(b)
  - c. destructive devices - N.J.S.A. 2C:39-4(c)
  - d.\* other weapons - N.J.S.A. 2C:39-4(d) (a crime of the Third Degree)

POSSESSION OF AN IMITATION FIREARM - FOURTH DEGREE

N.J.S.A. 2C:39-4(e)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess an imitation firearm under circumstances that would lead an observer to reasonably believe that it was possessed for an unlawful purpose, contrary to the provisions of N.J.S.A. 2C:39-4(e), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

UNLAWFUL POSSESSION OF A WEAPON - THIRD DEGREE

(Handgun)

N.J.S.A. 2C:39-5b

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a certain weapon, that is, type and manufacturer of weapon and serial number, without having first obtained a permit to carry same as provided in N.J.S.A. 2C:58-4, contrary to the provisions of N.J.S.A. 2C:39-5b, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of weapon and serial number

UNLAWFUL POSSESSION OF A WEAPON - THIRD DEGREE

(Possession of a Rifle or Shotgun  
Without Firearms Purchaser Identification)

N.J.S.A. 2C:39-5c(1)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a firearm, that is, description of rifle or shotgun without having first obtained a firearms purchaser identification card in accordance with the provisions of N.J.S.A. 2C:58-3, contrary to the provisions of N.J.S.A. 2C:39-5c(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of firearm - rifle or shotgun
5. Description of firearm, i.e., manufacturer, serial number, etc.

UNLAWFUL POSSESSION OF A WEAPON - THIRD DEGREE

(Loaded Rifle or Shotgun)

N.J.S.A. 2C:39-5c(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a loaded description of rifle or shotgun, contrary to the provisions of N.J.S.A. 2C:39-5c(2), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of firearm - rifle or shotgun and description of same

UNLAWFUL POSSESSION OF A WEAPON - FOURTH DEGREE

(Knife or similarly inappropriate weapon)

N.J.S.A. 2C:39-5d

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did possess a certain weapon, that is, type of weapon under circumstances not manifestly appropriate for such lawful uses as it may have, contrary to the provisions of N.J.S.A. 2C:39-5d, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of weapon

UNLAWFUL POSSESSION OF AN ASSAULT FIREARM - THIRD DEGREE

N.J.S.A. 2C:39-5f

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did have in his possession an assault firearm, that is, description of weapon, serial number, contrary to the provisions of N.J.S.A. 2C:39-5f, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Type of weapon and serial number

\* N.J.S.A. 2C:29-5f exempts assault firearms which are licensed pursuant to N.J.S.A. 2C:58-5; registered pursuant to section 11 of P.L. 1990, a. 32 (C. 2C:58-12) or rendered inoperable pursuant to section 12 of P.L. 1990, a. 32 (C. 2C:58-13).

POSSESSION OF A WEAPON BY A CONVICTED PERSON - FOURTH DEGREE

N.J.S.A. 2C:39-7a

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, having been convicted of the crime of crime\*, on indictment number & county, did purchase, own, possess or control a description of weapon\*\*, contrary to the provisions of N.J.S.A. 2C:39-7, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY:

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Crime for which previously convicted\*
5. Indictment number and county where convicted
6. Description of weapons\*\*

\* Defendant(s) must have been previously convicted of a crime of aggravated assault, arson, burglary, escape, extortion, homicide, kidnapping, robbery, aggravated sexual assault, sexual assault or possession, use or sale of controlled dangerous substance (other than A DP)

\*\* Must be a weapon enumerated in N.J.S.A. 2C:39-1r

**DEFACING FIREARMS - THIRD DEGREE**

**N.J.S.A. 2C:39-9(e)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did deface a firearm, that is, description of firearm, contrary to the provisions of N.J.S.A. 2C:39-9(e), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Description of firearm

DEFACING FIREARMS - FOURTH DEGREE

N.J.S.A. 2C:39-9(e)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did buy, receive, dispose of or conceal a defaced firearm, that is, description of firearm, contrary to the provisions of N.J.S.A. 2C:39-9(e), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Description of firearm

**UNLAWFUL ACQUISITION OF HANDGUN - FOURTH DEGREE**

**N.J.S.A. 2C:39-10(c)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly did receive, purchase, or otherwise acquire a handgun without (being licensed as a dealer under N.J.S.A. 2C:58-1, et seq.) (having first secured a permit to purchase a handgun as provided by N.J.S.A. 2C:58-3), contrary to the provisions of N.J.S.A. 2C:39-10c, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense

UNLAWFUL USE OF BODY VEST - THIRD DEGREE

N.J.S.A. 2C:39-13

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did use or wear a body vest while engaging in (the commission of) (an attempt to commit) (flight after committing or attempting to commit) option A, B, C, D, E, F, G, H or I, contrary to the provisions of N.J.S.A. 2C:39-13; and against the peace of this State, the government and dignity of the same.

OPTIONS

- A. murder
- B. manslaughter
- C. robbery
- D. sexual assault
- E. arson
- F. burglary
- G. kidnapping
- H. criminal escape
- I. assault in violation of N.J.S.A. 2C:12-1a

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Choose option A, B, C, D, E, F, G, H or I

TEACHING THE USE, APPLICATION OR MAKING OF A (AN)  
OPTION A, B OR C - SECOND DEGREE

N.J.S.A. 2C:39-14(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did teach or demonstrate to names the use, application or making of a(n) option A, B or C, knowing, or having reason to know, or intending that the said option A, B or C would be employed for use in, or in furtherance of, an illegal activity, contrary to the provisions of N.J.S.A. 2C:39-14(a), and against the peace of this State, the government and dignity of the same.

OPTIONS:

- A. firearm
- B. explosive or destructive device
- C. technique capable of causing injury or death to a person

PROSECUTOR MUST SUPPLY

- 1. Name of defendant(s)
- 2. Date of offense
- 3. Municipality and county of offense
- 4. Name of person taught
- 5. Choose option A, B or C

ASSEMBLING FOR PURPOSE OF OPTION A, B OR C A (AN)  
OPTION D, E OR F - SECOND DEGREE

N.J.S.A. 2C:39-14(b)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, did assemble with one or more persons for the purpose of option A, B or C a (an) option D, E or F, intending to unlawfully employ it for use in, or in furtherance of an illegal activity, contrary to the provisions of N.J.S.A. 2C:39-14(b), and against the peace of this State, the government and dignity of the same.

OPTION 1

- A. training with
- B. practicing with
- C. being instructed in the use of

OPTION 2

- D. firearm
- E. explosive or destructive device
- F. technique capable of causing injury or death to a person

PROSECUTOR MUST SUPPLY:

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Select appropriate option

**CHILD NEGLECT - FOURTH DEGREE**

**N.J.S.A. 9:6-3**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, knowingly, did willfully fail to provide proper and sufficient food, clothing, maintenance, medical attendance, or a clean and proper home, and did willfully fail to act to protect the physical and moral well being of victim's initials, born DOB, while said child/children were in his/her custody and control, contrary to the provisions of N.J.S.A. 9:6-3, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Initials of victim
5. Victim's date of birth

**UNLAWFUL TRANSPORTATION\* OF HAZARDOUS WASTE - THIRD DEGREE\*\***

**N.J.S.A. 13:1E-9g**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did transport hazardous waste without authorization from the New Jersey Department of Environmental Protection and Energy, in that Defendant(s) knowingly did transport one or more of the following wastes: specify hazardous substance from options, from the facility located at location/jurisdiction, to location/jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 13:1E-9g, and against the peace of this State, the government and dignity of the same.

**OPTIONS**

Specify hazardous waste by citing N.J.S.A. 13:1E-38c and description from N.J.A.C. 7:26-8.1 et seq.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify hazardous substance from options
5. Specify location establishing jurisdiction

\* N.J.S.A. 13:1E-9g and h provide crimes for those who 1) transport; 2) generate and cause or permit to be transported; 3) dispose, treat, store or transport; 4) make false or misleading statements to any person who prepares a hazardous waste document; or 5) make a false or misleading statement on any hazardous waste document. Modify the indictment to the act committed.

\*\* For Fourth Degree crime, substitute "recklessly" for "knowingly." N.J.S.A. 13:1E-9h.

UNLAWFUL DISPOSAL AND STORAGE OF REGULATED\*\*  
MEDICAL WASTE - THIRD DEGREE\*

N.J.S.A. 13:1E-48.20

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, purposely and knowingly did dispose or store regulated medical waste without authorization from either the New Jersey Department of Environmental Protection and Energy or Department of Health, and in violation of the provisions of the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq. and the rules and regulations adopted pursuant thereto, in that Defendant(s), purposely and knowingly did store and dispose of regulated medical waste as defined in N.J.S.A. 13:1E-498.3 and N.J.A.C. 7:26-3A.6, that is, specify defined items of regulated medical waste disposed or stored, by commingling the regulated medical waste with other solid waste specify location/jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 13:1E-48.20g(1), and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify items of regulated medical waste disposed or stored
5. Location establishing jurisdiction

- \* N.J.S.A. 13:1E-48.20g and h provide crimes for those who; (1) dispose or store; (2) makes any false or misleading statement to any person who prepares any regulated medical waste application, etc., (3) makes any false or misleading statement or any regulated medical waste application; or (4) fails to properly treat regulated medical waste.
- \*\* For Fourth Degree crime, substitute "recklessly or negligently" for "purposely or knowingly." N.J.S.A. 13:1E-48.20h.

UNLAWFUL REGULATED ACTIVITY IN A  
FRESHWATER WETLAND - FOURTH DEGREE

N.J.S.A. 13:9B-21f

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the City, Town of Municipality, County of County, and within the jurisdiction of this Court, willfully or negligently did engage in unlawful regulated activity in a freshwater wetland without a permit issued by the New Jersey Department of environmental Protection pursuant to N.J.S.A. 13:9B-1 et seq., in that Defendant(s) did specify "regulated activity" from N.J.S.A. 13:9B-3 at or near location/jurisdiction, which area has been designated as a freshwater wetland by the Department of Environmental Protection, contrary to the provisions of N.J.S.A. 13:9B-3, N.J.S.A. 13:9B-4, N.J.S.A. 13:9B-21f, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify "regulated activity from N.J.S.A. 13:9B-3
5. Location establishing jurisdiction

VIOLATION OF THE AIR POLLUTION  
CONTROL ACT - THIRD DEGREE\*

N.J.S.A. 26:2C-19f

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did violate the provisions of P.L. 1954, c. 212 (C. 26:2C-1 et seq.), in that, Defendant(s) purposely or knowingly did specify violation of act, code, rule, regulation (N.J.A.C. 7:27-1.1 et seq.), administrative order or curt order promulgated or issued pursuant thereto, from (or at) location/jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 26:2C-19f(1)\*, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify violation pursuant to statute

\* Fourth Degree crime, substitute "recklessly" for "purposely or knowingly." N.J.S.A. 26:2C-19f(2).

**MEDICAID FRAUD - THIRD DEGREE\***

**N.J.S.A. 30:4D-17(a)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City, of Municipality, County of County, and within the jurisdiction of this Court, willfully did obtain medical assistance payments under New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 et seq. to which Defendant(s) was not entitled (or in a greater amount than that to which Defendant(s) was entitled), that is, Defendant(s) knowingly and willfully did receive amount in medical assistance payments based upon claims containing false representations caused to be submitted to the New Jersey Medical Assistance and Health Services Program by Defendant(s), contrary to the provisions of N.J.S.A. 30:4D-17(a), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
5. Amount in medical assistance

\* N.J.S.A. 2C:43-1(b) provides that a "high misdemeanor" is equivalent to a third degree crime.

**MEDICAID FRAUD\***

**N.J.S.A. 30:4D-17(b)**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City, of Municipality, County of County, and within the jurisdiction of this Court, acting with an intent to fraudulently secure payments not authorized under the New Jersey Medical Assistance and Health Services Act, N.J.S.A. 30:4D-1 et seq., and payments in a greater amount than that which is authorized under the said Act, knowingly and willfully did make or cause to be made false statements and representations of material facts in documents necessary to apply for and receive medical assistance payments under the Act, that is, Defendant(s), did cause to be submitted to the New Jersey Medical Assistance and Health Services Program, specify act, contrary to the provisions of N.J.S.A. 30:4D-17(b), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify act

\* N.J.S.A. 2C:43-1(b) provides that a "high misdemeanor" is equivalent to a third degree crime.

**MEDICAID FRAUD\***

N.J.S.A. 30:4D-17(c)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did solicit (offer) (receive) a kickback, rebate or bribe in connection with the furnishing of medical services for which payment is made in whole or in part under the Medical Assistance and Health Services Act, Defendant(s) having describe act of solicitation, offer or receipt, contrary to the provisions of N.J.S.A. 30:4D-17(c), and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify Act

\* Note, N.J.S.A. 2C:43-1(b) provides that a "high misdemeanor" is equivalent to a third degree crime.

ENGAGING IN THE BUSINESS OF SOLID WASTE COLLECTION  
AND DISPOSAL WITHOUT A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY - FOURTH DEGREE

N.J.S.A. 48:13A-12

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly did violate the "Solid Waste Utility control Act of 1970" in that the said Defendant(s), did engage in the business of solid waste collection and disposal without holding a certificate of public convenience and necessity issued by the Board of Public Utility Commissioners, pursuant to the "Solid Waste Utility Control Act of 1970," that is, customers, whose identities are known to the grand jurors, did pay monies to Defendant(s) to collect and dispose of solid waste from their premises, and the said Defendant(s) without holding a certificate of public convenience and necessity issued by the Board of Public Utility Commissioners, did collect the said solid waste and did dispose of the said solid waste at Location/ jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 48:13A-6 and N.J.S.A. 48:13A-12a, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Location establishing jurisdiction

FILING FALSE OR FRAUDULENT SALES AND USE TAX RETURN

N.J.S.A. 54:52-1

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, in the City of Trenton, County of Mercer, and within the jurisdiction of this Court, with the intent to evade the payment of tax which was due pursuant to the provisions of the New Jersey Sale and Use Tax Act, did file for the \_\_\_\_\_ quarter of year, a false and fraudulent tax return required to be filed pursuant to the provisions of the New Jersey Sales and Use Tax Act, required by and under N.J.S.A. 54:32B-17, contrary to the provisions of N.J.S.A. 54:52-1, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of crime
4. Quarterly of tax year for which false return filed

NOTE: Always include Trenton, Mercer County as one of locations of crime.

**FAILURE TO FILE CORPORATION BUSINESS TAX RETURN**  
(Ordinarily charging individual and corporation)

N.J.S.A. 54:52-8

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, in the City of Trenton, County of Mercer, and within the jurisdiction of this Court, with the intent to evade the payment of tax which was due pursuant to the provisions of the New Jersey Corporation Business Tax Act, did fail to file a tax return required to be filed pursuant to the provisions of the New Jersey Corporation Business Tax Act, required by and under N.J.S.A. 54:10A-1 et seq., contrary to the provisions of N.J.S.A. 54:52-1, N.J.S.A. 2C:2-7 and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of crime

**NOTE:** Always include Trenton, Mercer County as one of locations of crime.

**FAILURE TO PAY GROSS INCOME TAX  
WITH INTENT TO EVADE - THIRD DEGREE**

**N.J.S.A. 54:52-9**

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, in the City of Trenton, County of Mercer, and within the jurisdiction of this Court, with the intent to evade, avoid or otherwise not make timely payment of the tax required to be paid pursuant to N.J.S.A. 54A:8-1 et seq. for the calendar year ending Date, Defendant(s) did fail to pay and turn over the gross income taxes due by approximately amount of tax, contrary to the provisions of N.J.S.A. 54:52-9, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of crime
4. Amount of unpaid/underpaid tax

**NOTE:** Always include Trenton, Mercer County as one of locations of crime.

PURPOSELY FAILING TO TURN OVER  
GROSS INCOME TAXES - THIRD DEGREE

(Income Tax)

N.J.S.A. 54:52-15.

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, in the City of Trenton, County of Mercer, and within the jurisdiction of this Court, after having collected and withheld taxes as required by the New Jersey Gross Income Tax Act, purposely did fail to turn over the said taxes to the Director of the Division of Taxation in the manner and at the time prescribed by and under N.J.S.A. 54A:7-1, et seq., contrary to the provisions of N.J.S.A. 54:52-15, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of Crime

NOTE 1: Always include Trenton, Mercer County as one of locations of crime.

NOTE 2: Determine whether it is also appropriate to charge theft by failure to make required disposition of property - N.J.S.A. 2C:20-9.

**PURPOSELY FAILING TO TURN OVER SALES TAX - THIRD DEGREE**

(Sales and Use Tax)

N.J.S.A. 54:52-15

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, in the City of Trenton, County of Mercer, and within the jurisdiction of this Court, after having collected and withheld taxes as required by the provisions of the New Jersey Sales and Use Tax Act, purposely did fail to turn over the said taxes to the Director of the Division of Taxation in the manner and at the time prescribed by the New Jersey Sales and Use Tax, required by and under N.J.S.A. 54:32B-1, et seq., contrary to the provisions of N.J.S.A. 54:52-15, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of crime
3. Municipality and county of crime

NOTE 1: Always include Trenton, Mercer County as one of locations of crime.

NOTE 2: Determine whether it is also appropriate to charge theft by failure to make required disposition of property - N.J.S.A. 2C:20-9.

UNLAWFUL DISCHARGE OF A POLLUTANT - SECOND DEGREE

(To Waters of State)

N.J.S.A. 58:10A-10f(1)(a)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely, knowingly or recklessly did discharge a pollutant not in conformity with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the Commissioner of Environmental Protection or a valid National Pollution Discharge Elimination System permit issued by the Administrator of the United States Environmental Protection Agency, that is, Defendant(s) purposely, knowingly or recklessly did discharge a pollutant specify pollutant from N.J.S.A. 58:10A-3r into the waters of the State of New Jersey, that being, specify body of water/location/jurisdiction, New Jersey, not in conformity with a valid New Jersey or National Pollution Discharge Elimination System permit, and thereby caused a significant adverse environmental effect as defined in N.J.S.A. 58:10A-10f(1)(b), contrary to the provisions of N.J.S.A. 58:10A-10f(a) and N.J.S.A. 58:10A-6a, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of individual
5. Specify pollutants, N.J.S.A. 58:10A-3r
6. Specify body of water and location within jurisdiction of State

\* N.J.S.A. 58:10A-6b makes it criminal for "any person to build, install, modify or operate any facility for the collection, treatment or discharge of and pollutant" without first having obtained approval from the Department of Environmental Protection and Energy. This may be substituted for the 6a discharge violation.

Further, N.J.S.A. 58:10A-10f(1) criminalizes any violations of the Water Pollution Control Act, N.J.S.A. 58:10A et seq. This form indictment does not suggest that other acts cannot be charged, but only anticipate the common or typical charges.

UNLAWFUL DISCHARGE OF A POLLUTANT - THIRD DEGREE

(To Waters of State)

N.J.S.A. 58:10A-10f(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely, knowingly or recklessly did discharge a pollutant not in conformity with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the Commissioner of Environmental Protection or a valid National Pollution Discharge Elimination System permit issued by the Administrator of the United States Environmental Protection Agency, that is, Defendant(s) purposely, knowingly or recklessly did discharge a pollutant specify pollutant from N.J.S.A. 58:10A-3r into the waters of the State of New Jersey, that being, specify body of water/location/jurisdiction, New Jersey, not in conformity with a valid New Jersey or National Pollution Discharge Elimination System permit, contrary to the provisions of N.J.S.A. 58:10A-10f(2)\* and N.J.S.A. 58:10A-6a, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of individual
5. Specify pollutants, N.J.S.A. 58:10A-3r
6. Specify body of water and location within jurisdiction of State

- \* For a crime of the Fourth Degree, substitute "negligently" for "purposely, knowingly or recklessly." N.J.S.A. 58:10A-10f(3).

N.J.S.A. 58:10A-6b makes it criminal for "any person to build, install, modify or operate any facility for the collection, treatment or discharge of and pollutant" without first having obtained approval from the Department of Environmental Protection and Energy. This may be substituted for the 6a discharge violation.

Further, N.J.S.A. 58:10A-10f(1) criminalizes any violations of the Water Pollution Control Act, N.J.S.A. 58:10A at seq. This form indictment does not suggest that other acts cannot be charged, but only anticipate the common or typical charges.

**UNLAWFUL DISCHARGE OF A POLLUTANT - THIRD DEGREE\***

(To Treatment Works)

N.J.S.A. 58:10A-10f(2)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely, knowingly or recklessly did discharge a pollutant into the specify treatment works sewer system, in the area of location establishing jurisdiction, a municipal treatment works, without a valid industrial pretreatment permit issued by the specify treatment works, that is Defendant(s) purposely, knowingly or recklessly discharged a pollutant, specify pollutant from N.J.S.A. 58:10A-3, into waters of the State, without a valid industrial treatment permit issued to Defendant(s) by the specify treatment works, contrary to the provisions of N.J.S.A. 58:10A-10f(2)\* and N.J.S.A. 58:10A-6a, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Specify treatment works (municipal utilities authority/sewage authority)
5. Specify pollutant from N.J.S.A. 58:10A-3r
6. Location establishing jurisdiction

\* For a crime of the Fourth Degree, substitute "negligently" for "purposely, knowing or recklessly." N.J.S.A. 58:10A-10f(3).

N.J.S.A. 58:10A-6b makes it criminal for "any person to build, install, modify or operate any facility for the collection, treatment or discharge of a pollutant" without first having obtained approval from the Department of Environmental Protection and Energy. This may be substituted for the 6a discharge violation.

Further, N.J.S.A. 58:10A-10f(1) criminalizes any violations of the Water Pollution Control Act, N.J.S.A. 58:10A et seq. This form indictment does not suggest that other acts cannot be charged, but only anticipate the common or typical charges.

UNLAWFUL DISCHARGE OF A POLLUTANT - FIRST DEGREE

(To Waters of State)

N.J.S.A. 58:10A-10f(4)

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, purposely or knowingly did discharge a pollutant without a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the Commissioner of Environmental Protection or a valid National Pollution Discharge Elimination System permit issued by the Administrator of the United States Environmental Protection Agency (or violated an effluent limitation or other condition of a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the Commissioner of Environmental Protection or a valid National Pollution Discharge Elimination System permit issued by the Administrator of the United States Environmental Protection Agency), and Defendant(s) knew at that time another person, name of individual, was placed in imminent danger of death or serious bodily injury, as defined in N.J.S.A. 2C:11-1b and purposely or knowingly did discharge specify substance from N.J.S.A. 58:10A-3r into the waters of the State of New Jersey, specifically, Specify body of water/location/jurisdiction, New Jersey, contrary to the provisions of N.J.S.A. 58:10A-10f(4), and N.J.S.A. 58:10A-6a, and against the peace of this State, the government and dignity of the same.

**PROSECUTOR MUST SUPPLY**

1. Name of defendant(s)
2. Date of offense
3. Municipality and county of offense
4. Name of individual
5. Specify substance from N.J.S.A. 58:10A-3r
6. Specify body of water and location within jurisdiction of State

FAILURE TO TAKE REQUIRED ACTION RELATING TO  
AN UNDERGROUND STORAGE TANK - THIRD DEGREE\*

N.J.S.A. 58:10A-32

The Grand Jurors of the State of New Jersey, for the County of County, upon their oaths present that Defendant(s), on or about Date, in the Town, City of Municipality, County of County, and within the jurisdiction of this Court, knowingly or recklessly did possess or exercise control over an underground storage tank and fail to take actions required pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., in that Defendant(s) purposely, knowingly or recklessly did possess or exercise control over an underground storage tank located at location/jurisdiction, New Jersey and failed to specify violation of regulations from N.J.A.C. 7:14B-1.1 et seq., contrary to the provisions of N.J.S.A. 58:10A-25, N.J.S.A. 58:10A-32 and N.J.S.A. 58:10A-10(2)\*, and against the peace of this State, the government and dignity of the same.

PROSECUTOR MUST SUPPLY

1. Name of defendant(s)
  2. Date of offense
  3. Municipality and county of offense
  4. Specify violation of regulations from N.J.A.C. 7:14B-1.1 et seq.
  5. Location establishing jurisdiction
- \* For a crime of the Fourth Degree, substitute "negligently" for "purposely, knowingly or recklessly." N.J.S.A. 58:10A-10f(3).